

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C: 08-27

DATE: June 17, 2008

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Survey and Certification Issues Related to Iowa and Indiana Flooding Disasters

Memorandum Summary

- **Situation:** Several States in the Midwest have been seriously affected by tornados, severe thunderstorms, and flooding. The citizens of Indiana and Iowa have especially faced extraordinary circumstances in coping with extensive flooding and damage, which has also affected many health care facilities and hundreds of patients and residents.
- **Emergency Declaration:** The President has declared a national emergency in specified counties of Indiana and Iowa, and Mike Leavitt, the Secretary of the U.S. Department of Health and Human Services, has also declared a public health emergency in the specified Indiana and Iowa counties.
- **Authority:** The Centers for Medicare & Medicaid Services (CMS) may waive or modify, to the extent necessary, certain requirements or timetables, if providers, acting in good faith to provide needed services, are unable to comply with the requirements as a result of the effects of the disaster.

During the past weeks, several Midwest States have suffered extensive damage as a result of severe thunderstorms, excessive rainfall, and tornados, which have caused death and destruction. The citizens of Iowa and Indiana have especially been affected, and many health care providers have evacuated hundreds of patients and residents, to ensure their health and safety. We fully support the efforts of all the affected Iowa and Indiana health care providers, as well as those providers that are offering their assistance. These extraordinary circumstances will be taken into account as we apply the Medicare and Medicaid standards that are designed to assure quality of care for all beneficiaries.

Mike Leavitt, the Health and Human Services Secretary, has declared a public health emergency in affected counties in the States of Iowa and Indiana (see attached declarations) which invokes time-limited statutory authority under section 1135(b) of the Social Security Act (SSA) to permit CMS and its agents to waive or modify certain requirements, or modify certain deadlines and timetables for the performance of required activities, but only to the extent necessary to ensure that sufficient health care items and services are available to meet the needs of the individuals enrolled in the Medicare, Medicaid and State Children's Health Insurance Program (SCHIP), and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of these requirements, may be reimbursed and exempted from sanctions that might otherwise apply, absent any determination of fraud or abuse.

The waivers and modifications apply only to the health care providers and suppliers located in the “emergency area” (as defined in section 1135(g)(1) of the SSA) for which the Secretary has declared a public health emergency for an “emergency period,” and only to the extent that the provider in question has been affected by the disaster, or is treating evacuees.

CMS has determined that for Critical Access Hospitals (CAHs) located in the State of Iowa, the 25 inpatient bed limit and 96-hour annual average per patient length of stay limit in section 1820(c)(2)(B)(iii) of the Social Security Act will be waived State-wide. CAHs must notify their State Survey Agency (SA) when patients received and admitted from the declared counties would result in the CAH exceeding its 25-bed limit or a 96-hour average length of stay, although specific waiver requests are not required. Likewise, waiver requests are not required for hospitals or CAHs that have activated their disaster plans and operate under the general Emergency Medical Treatment and Labor Act (EMTALA) waiver. Such waivers are limited to 72 hours. In all other cases, providers or suppliers in Indiana and Iowa must operate under normal rules and regulations, unless they have sought and have been granted waivers from specific requirements. Waiver requests are to be submitted to the SAs.

Related *Frequently Asked Questions (FAQs)* are available at CMS’ FAQ Web site at https://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_alp.php?p_sid=qQvmas6j and will continue to be updated as necessary. To access the questions select “Disasters & Emergencies” under the Section tab. In some cases, specific answers to provider questions depend upon the unique circumstance. Health care providers should be sure to contact their SA for guidance for specific answers to their unique questions.

Websites

For information about the Indiana and Iowa public health emergency declarations, please check the CMS Emergency Web site at http://www.cms.hhs.gov/emergency/20_midwestflooding.asp?

For information regarding general survey and certification emergency preparedness issues, including helpful resources and tools, please see the S&C Emergency Preparedness Website, at <http://www.cms.hhs.gov/SurveyCertEmergPrep/>.

/s/

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cc: Survey and Certification Regional Office Management