



DIVISION OF SURVEY & CERTIFICATION

September 11, 2017

Kathy Reep
Vice President/Financial Services
Florida Hospital Association
307 Park Lake Circle
Orlando, Florida 32803

Re: Hurricane Irma Waiver Requests

Dear Ms. Reep:

We have reviewed your request for the waivers outlined below.

The President declared a state of emergency for Florida and the HHS Secretary declared a Public Health Emergency for Florida which allows for CMS programmatic waivers based on Section 1135 of the Social Security Act.

CMS is granting these waivers and they include the following:

1. Treatment of Medical/Surgical patients in non-PPS hospitals and/or units:

We respectfully request a blanket waiver be issued allowing hospitals the ability to treat medical/surgical patients in non-PPS hospitals and/or units (e.g. Rehabilitation, LTCH).

CMS Response: This waiver is hereby granted. Hospitals utilizing this flexibility should use the "DR" (Disaster Related) condition code for Medicare claims filed for Medicare beneficiaries receiving care in these hospitals/units. When an acute-care patient is placed and billed for in a freestanding non-IPPS hospital, CMS will waive any participation requirements that would prevent this, or that would affect the non-IPPS freestanding hospital's status as a non-IPPS hospital (e.g., 60% rule for a freestanding IRF).

Hospitals are further advised to ensure they restrict the patients admitted to these units to the acuity level the hospital/unit may safely manage. Specific billing questions may be directed to the Medicare Administrative Contractor.

2. Waiver of Three-Day Prior hospitalization for Skilled Nursing Facility Coverage:

We respectfully request a blanket waiver be issued allowing skilled nursing facility coverage of hospital transfers absent a qualifying three day inpatient admission and for people who are evacuated, transferred, or otherwise dislocated due to Hurricane Irma.

CMS Response: This waiver is hereby granted. Skilled Nursing Facilities utilizing this flexibility should use the “DR” (Disaster Related) condition code for Medicare claims filed for Medicare beneficiaries receiving care under this waiver. Specific billing questions may be directed to the Medicare Administrative Contractor.
<https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/Finding-Section-1812-f-SSA-FL.pdf>

3. Waiver of Conditions of Participation and Certification:

We respectfully request a blanket waiver be issued allowing certain conditions of participation, certification requirements, program participation or similar requirements for individual health care providers or types of health care providers, including as applicable, a hospital or provider of services, a physician or other health care practitioner or professional, a health care facility, or a supplier of health care items or services, and pre-approval requirements.

CMS Response: These requirements directly impact the provision of safe patient care. CMS will continue to be responsive to the needs of all impacted providers and provide relief, as necessary and to the extent permitted, to ensure regulatory flexibilities allow for fulsome response and recovery activities. However, the expansive scope of this request exceeds our ability to ensure flexibilities granted do not jeopardize patient health and safety. As specific needs are identified/provided under this section, CMS will immediately consider how best to address those within our authority to permit regulatory flexibilities.

4. Out of State Physician Practice:

We respectfully request a blanket waiver be issued allowing requirements that physicians or other health care professionals hold licenses in the State in which they provide services, if they have an equivalent license from another State (and are not affirmatively barred from practice in that State or any State a part of which is included in the emergency area).

CMS Response: CMS hereby grants this waiver to allow out of state physicians to receive Medicare reimbursement (contingent on any concurrent and necessary State Medical Board or other licensure requirements).

5. EMTALA Waiver:

We respectfully request a blanket waiver be issued for sanctions under section 1867 of the Act (the Emergency Medical Treatment and Labor Act, or EMTALA) for the direction or relocation of an individual to another location to receive medical screening pursuant to an appropriate state emergency preparedness plan or for the transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the declared Federal public health emergency for Hurricane Irma.

CMS Response: Because the EMTALA waiver is limited to the 72-hour period following activation of the hospital’s disaster protocol, CMS should be notified about when hospitals activate their disaster protocols. Further, evacuations and mass relocations of patients are not covered under EMTALA. We encourage hospitals to manage the movement of patients in a manner that best meets the needs of the patients, hospital, and community. If a hospital

believes it needs relief under this waiver, even retroactively, it is encouraged to contact the CMS Atlanta Regional Office.

6. Physician Self-Referral:

We respectfully request a blanket waiver be issued for sanctions under section 1877(g) (relating to limitations on physician referral) under such conditions and in such circumstances as the Centers for Medicare & Medicaid Services determines appropriate.

CMS Response: Please see the specific Questions and Answers about physician self-referral waivers (1135B-22 through 1135B-24 in the Emergency Qs and As applicable only when an applicable 1135 waiver has been granted). These waivers are typically granted on a case-by-case basis because the specific details of proposed financial relationships must be considered.

<https://www.cms.gov/About-CMS/Agency-Information/Emergency/downloads/MedicareFFS-EmergencyQsAs1135Waiver.pdf>

7. Medicare Advantage Plans:

We respectfully request a blanket waiver be issued for limitations on payments under section 1851(i) of the Act for health care items and services furnished to individuals enrolled in a Medicare Advantage plan by health care professionals or facilities not included in the plan's network.

CMS Response: In the event of a public health emergency determination by the Secretary of Health and Human Services or an emergency or disaster declaration by a governor or the President, Medicare Advantage Organizations in affected areas are required to waive prior authorization and other gatekeeper requirements and to allow care to be provided by non-contracted providers and facilities. The requirements were recently addressed in a memo following Hurricane Harvey on the CMS page for hurricanes entitled "Reminder of Pharmacy and Provider Access During a Federal Disaster of Emergency Declaration."

<https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/Reminder-Pharmacy-Provider-Federal-Disaster.pdf>

8. CAH Hospitals Exceeding 25-beds:

We respectfully request a blanket waiver be issued for requirements that Critical Access Hospitals (CAH) limit the number of beds to 25, and that the length of stay be limited to 96 hours. This waiver request is limited to identified impacted counties and geographical areas. The State or impacted provider (i.e. CAH) should still forward provider information and waiver requests to the CMS Atlanta RO for tracking purposes.

CMS Response: This waiver is hereby granted.

9. MDS and OASIS:

We respectfully request a blanket waiver be issued for timeframe requirements for OASIS and Minimum Data Set (MDS) assessments and transmission. The State or impacted provider (i.e. home health agencies and skilled nursing facilities, respectively) should still

forward provider information and waiver requests to the CMS Atlanta RO for tracking purposes.

CMS Response: CMS hereby modifies the deadlines for OASIS and MDS assessments and transmission per the guidance contained in the Emergency Q&As here:

<https://www.cms.gov/About-CMS/Agency-Information/Emergency/downloads/MedicareFFS-EmergencyQsAs1135Waiver.pdf> .

10. Medicare Contractor Requirements:

We respectfully request a blanket waiver be issued for providing for the temporary suspension of Medicare contractor requirements regarding medical review and some benefit integrity responsibilities. This includes the following:

- Assurances that future retrospective denials based on inappropriate place of service will take into account the period of time and circumstances when the disaster occurred;
- Assurances that future medical review audits and denials will take into account the period of time and circumstances when the disaster occurred;
- Assurances that Medicare's two day payment policy used in determining whether an inpatient admission is reasonable and payable under Medicare Part A will take into account the period of time and circumstances when the disaster occurred;
- A delay in requests by Medicare contractors (e.g. MACs, RACs, ZPICs, CERTs) for additional documentation requests/medical records from hospitals;
- A delay in the amount of time a hospital has to appeal audit findings;
- A delay in any hearings to challenge RAC determinations; and
- A delay in the 30 day period before the RAC sends the results of their audit to the MAC for recoupment.

We are not requesting a lapse of enforcement for actions relating to fraud and abuse.

CMS Response: MACs, RACs and UPICs will temporarily deprioritize Medical Review and audit work in the impacted areas.

11. Suspension of Enforcement Activities:

We respectfully request a blanket waiver be issued for the temporary suspension of survey agency requirements of plans of correction and/or other survey enforcement timelines that were in process for hospitals. We are not requesting a lapse of enforcement for actions of ill intentions.

CMS Response: CMS has implemented suspension of current survey and enforcement activities but will continue to investigate allegations of immediate threat to patient health and safety. The Atlanta Regional Office has already processed termination extension dates for two hospitals under EMTALA enforcement.

12. Quality Reporting and Value Based Purchasing Programs:

We respectfully request a blanket waiver be issued for the exceptions under certain Medicare quality reporting and value-based purchasing programs to acute care hospitals, PPS-exempt cancer hospitals, inpatient psychiatric facilities, skilled nursing facilities, home health agencies, hospices, inpatient rehabilitation facilities, Renal Dialysis Facilities, long-term care hospitals, and ambulatory surgical centers located in areas affected by Hurricane Irma due to the devastating impact of the storm.

We ask that this waiver apply to all counties based on the declaration of a Public Health Emergency by the Secretary of Health and Human Services applicable to the entire state of Florida.

CMS Response: CMS will grant exceptions for quality reporting for Hospitals, PPS-Exempt Cancer Hospitals, Inpatient Psychiatric Facilities, Skilled Nursing Facilities, Home Health Agencies, Hospices, Inpatient Rehabilitation Facilities, Long-Term Care Hospitals, Ambulatory Surgical Centers, and Renal Dialysis Facilities quality reporting and value base payment programs, without having to submit an extraordinary circumstances exception request, for counties that have been designated by the Federal Emergency Management Agency (FEMA) as a major disaster county. The scope and duration of the exception under each Medicare quality reporting program will be provided in a memorandum in the next several days.

13. CMS-13 Requirements:

We respectfully request a blanket waiver be issued allowing rehab hospitals the ability to treat medical/surgical patients and receive an exemption from the requirements of CMS-13 which requires that 60 percent of the patients treated at a facility paid under the rehab prospective payment system be treated for one of 13 specified conditions

CMS Response: This blanket waiver is hereby granted. The blanket 1135 waiver discussed under Item #1 allow any IPPS patient to be placed in an IRF bed. For purposes of applying the 60 percent rule, these patients are not counted in determining compliance when a PHE / 1135 waiver is in effect. This is explained in the FAQs (Section 1135 Disaster FAQs / Q1).

<https://www.cms.gov/About-CMS/Agency-Information/Emergency/downloads/MedicareFFS-EmergencyQsAs1135Waiver.pdf>

14. State Request. The State requests the flexibility to temporarily delay scheduling of Medicaid fair hearings and issuing fair hearing decisions during the disaster period.

CMS Response. Current regulations provide the State this flexibility without need for an additional waiver. Section 431.244(f)(4)(i) excuses timely conduct of fair hearings decisions (and, implicitly, conducting the hearing itself) in instances where there is an administrative or other emergency beyond the Agency's control. We believe the current disaster declaration qualifies as such an emergency.

Providers must resume compliance with normal Medicare fee-for-service rules and regulations as soon as they are able to do so and, in any event, the waivers or modifications a provider was operating under are no longer available after the termination of the emergency period.

We acknowledge the devastation providers are currently experiencing, however we hope these waiver provisions will provide the relief requested so provider personnel can focus on the health and safety of those impacted by the Hurricane.

If you have questions or concerns regarding this correspondence, please send inquiries to our corporate mailbox, ROATLHSQ@cms.hhs.gov, or contact me at 404-562-7454 or by e-mail at Sandra.Pace@cms.hhs.gov.

Sincerely,

/s/

Sandra. M. Pace, Associate Consortium Administrator
Consortium for Quality of Improvement and Survey & Certification Operations

cc: Renard Murray, Consortium Administrator
Consortium for Quality Improvement and Survey & Certification Operations

Beth Kidder, Florida Deputy Secretary for Medicaid

Kim Smoak, Chief of Field Operations
Florida State Survey Agency