

Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop C5-15-12  
Baltimore, Maryland 21244-1850



Center for Medicare

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**DATE:**

**TO:** Chiquita Brooks-LaSure  
Administrator

**FROM:** Meena Seshamani, M.D., Ph.D.  
Deputy Administrator for Medicare and Director, Center for Medicare

**SUBJECT:** Authority for Beneficiaries Affected by Wildfires in Hawaii in 2023 to Receive Nursing Home Coverage (a) without a 3-day Hospitalization and (b) in the Absence of a Break in the Spell of Illness - **ACTION**

ISSUE

By law, Medicare generally only pays for care in a skilled nursing facility (SNF) when a beneficiary first has an inpatient hospital stay of at least 3 consecutive days and has established a new SNF benefit period requiring at least 60 consecutive days in a non-institutional or custodial level of care. However, we can use our authority in section 1812(f) of the Social Security Act (the Act) to effectively waive these SNF coverage requirements temporarily. We generally use this authority to respond to a declared Public Health Emergency (PHE), for people who are evacuated, transferred, or otherwise affected by the disruptions arising from the emergency. As discussed below, we believe that it would be appropriate to provide such waivers in connection with the above-captioned emergency.

First, we recommend providing temporary emergency coverage under this authority for SNF services that are not post-hospital SNF services. This policy is necessary because we are aware that, in such a situation, it can often be impossible for providers to determine whether the 3-day stay requirement has been met.

In addition, we recommend recognizing special circumstances for those beneficiaries who have utilized all of their available SNF benefit days but, as a result of the current emergency, are delayed or prevented from commencing or completing the process of ending their current benefit period and renewing their available SNF benefit days that would have occurred under normal

circumstances. Existing Medicare regulations state that these beneficiaries cannot receive additional SNF benefits until they establish a new benefit period (i.e., by breaking the “spell of illness” by being discharged to a custodial care or non-institutional setting for at least 60 days). We recommend utilizing our authority under section 1812(f) of the Act to provide a one-time renewal of coverage for extended care services which will not require a new spell of illness in order to receive coverage of additional SNF services. The beneficiary could then receive up to 100 days of renewed SNF Part A coverage as a result of the waiver.

These temporary emergency policies would apply to the timeframes and geographic areas specified in the waiver(s) issued under section 1135 of the Act pursuant to the above-captioned emergency. Accordingly, both the effective date(s) and expiration date(s) for these temporary emergency policies are the same as those specified pursuant to the corresponding section 1135 waiver(s). Further, the policies would apply to all beneficiaries affected by the emergency, regardless of where the “host” SNF that provides care is located.

## DISCUSSION

Section 1861(i) of the Act permits Medicare payment for SNF care only when a beneficiary first has an inpatient hospital stay of at least 3 consecutive days. However, section 1812(f) of the Act allows for coverage of SNF care when the 3-day requirement is not met if we determine that such coverage will not increase total payments made under the Medicare program or change the essential acute-care nature of the SNF benefit. CMS believes that, because of the disruptions in hospital care resulting from the above-captioned emergency, hospitals serving the affected areas may need to discharge less critically-ill beneficiaries to a SNF sooner than usual due to overcrowding. Not allowing this would unfairly disadvantage beneficiaries who, under normal circumstances, would qualify for Medicare coverage of their SNF care. There may also be cases in which skilled care is needed, and there is no available hospital bed due to the emergency. Again, applying the 3-day requirement could deny beneficiaries coverage to which they would have been entitled absent the emergency.

In addition, some beneficiaries who otherwise would be able to end their spell of illness and renew their SNF benefits may be prevented from either commencing or completing this process by the disruptions arising from an emergency. For example, beneficiaries who are evacuated from their homes due to a natural disaster (such as a hurricane or wildfire) may experience treatment delays in emergency shelters; as a result, their conditions may deteriorate, and they may be transferred from these emergency centers to nursing homes. Another such instance could involve a beneficiary who had reached the point where a hospital discharge would have been appropriate under normal circumstances but was delayed due to measures associated with a pandemic (e.g., a quarantine). Absent a waiver, we believe the above-captioned emergency may delay or prevent some beneficiaries from commencing or completing the process of ending their current benefit period and renewing their SNF benefits that would have occurred under normal circumstances. Accordingly, this waiver would not apply to those cases where coverage restrictions would have had the effect of prolonging the current benefit period and precluding

benefit renewal even under normal circumstances (such as a SNF resident’s ongoing receipt of skilled care that is unrelated to the emergency).

RECOMMENDATION

I recommend you sign the attached statement of findings to support our decision to provide Medicare SNF coverage without a 3-day hospital stay requirement for beneficiaries affected by the above-captioned emergency, and also to allow such beneficiaries to renew their benefits as described above without having to begin a new benefit period.

DECISION

Approved Chry B Lad Disapproved \_\_\_\_\_ Date August 14, 2023

Attachment:

Tab A – Statement for Administrator’s Signature