

2024 Hurricane Helene Available Waivers for Affected Counties in the States of South Carolina and Tennessee Health Care Providers

CMS is empowered to take proactive steps to help providers through waivers issued pursuant to section 1135 of the Social Security Act (the Act). In addition, the statute provides for discretionary SNF coverage authority under section 1812(f) of the Act, and extended coverage until December 2024 for certain telehealth services. The following blanket waivers and other flexibilities are in effect through the end of the Hurricane Helene public health emergency declaration of the State of South Carolina signed 09/30/2024, retroactively from 09/25/24, and the State of Tennessee signed 09/30/2024, retroactively from 09/26/2024 for both states or when no longer needed. Despite the availability of blanket waivers, suppliers and providers should strive to return to their normal practice as soon as possible.

Blanket waivers DO NOT need to be submitted via the CMS 1135 Waiver Portal (https://cmsqualitysupport.servicenowservices.com/cms_1135) or via notification to the CMS Survey & Operations Group and are applied automatically by surveyors.

Hospitals, Psychiatric Hospitals, and Critical Access Hospitals (CAHs), including Cancer Centers and Long-Term Care Hospitals (LTCHs)

- **Emergency Medical Treatment & Labor Act (EMTALA).** CMS is waiving the enforcement of section 1867(a) of the Act to allow hospitals, psychiatric hospitals, and critical access hospitals (CAHs) to screen patients at a location offsite from the hospital's campus, so long as it is not inconsistent with a state's emergency preparedness plan or pandemic plan.
- **Medical Staff.** CMS is waiving requirements under 42 CFR §482.22(a)(1)-(4) to allow for physicians whose privileges will expire to continue practicing at the hospital and for new physicians to be able to practice before full medical staff/governing body review and approval to address workforce concerns. CMS is waiving §482.22(a)(1)-(4) regarding details of the credentialing and privileging process.
- **Physical Environment.** CMS is waiving **certain** physical environment requirements under the hospital, psychiatric hospital, and critical access hospital conditions of participation at 42 CFR §482.41 and 42 CFR §485.623 to allow increased flexibilities for surge capacity. CMS will permit facility and non-facility space that is not normally used for patient care to be utilized for patient care, provided the location is approved by the state (ensuring that safety and comfort for patients and staff are sufficiently addressed) and is consistent with the

state's emergency preparedness or pandemic plan. States are still subject to obligations under the integration mandate of the Americans with Disabilities Act, to avoid subjecting persons with disabilities to unjustified institutionalization or segregation.¹

- **Telemedicine.** CMS is waiving the provisions related to telemedicine at 42 CFR §482.12(a) (8)– (9) for hospitals and §485.616(c) for CAHs, making it easier for telemedicine services to be furnished to the hospital's patients through an agreement with an off-site hospital. This allows for increased access to necessary care for hospital and CAH patients, including access to specialty care.
- **CAH Staff Licensure.** CMS is deferring staff licensure, certification, or registration to state law by waiving 42 CFR §485.608(d) regarding the requirement that staff of the CAH be licensed, certified, or registered in accordance with applicable federal, state, and local laws and regulations.

Temporary Expansion Locations. CMS is waiving certain physical environment requirements under 42 CFR §482.41 and §485.623 (as noted elsewhere in this waiver document) and the provider-based department location requirements at §413.65(e)(3) to allow hospitals to establish and operate as part of the hospital any location meeting those conditions of participation for hospitals, including any existing provider-based departments of the hospital. This extends to any entity operating as a hospital so long as the relevant location meets the conditions of participation and other requirements not waived by CMS.

Expanded Ability for Hospitals to Offer Long-term Care Services (“Swing-Beds”) for Patients Who do not Require Acute Care but do Meet the Skilled Nursing Facility (SNF) Level of Care Criteria as Set Forth at 42 CFR 409.31. Under section 1135(b)(1) of the Act, CMS is waiving the eligibility requirements at 42 CFR 482.58(a)(1)-(4), “*Special Requirements for hospital providers of long-term care services (‘swing-beds’)*” to allow hospitals to establish SNF swing beds payable under the SNF prospective payment system (PPS) to provide additional options for hospitals with patients who no longer require acute care but are unable to find placement in a SNF.

¹ Please note that consistent with the integration mandate of Title II of the ADA and the *Olmstead vs LC* decision, States are obligated to offer/provide discharge planning and/or case management/ transition services, as appropriate, to individuals who are removed from their Medicaid home and community based services under these authorities during the course of the public health emergency as well as to individuals with disabilities who may require these services in order to avoid unjustified institutionalization or segregation. Transition services/ case management and/or discharge planning would be provided to facilitate these individuals in their return to the community when their condition and public health circumstances permit.

In order to qualify for this waiver, hospitals must:

- Not use SNF swing beds for acute level care.
 - Comply with all other hospital conditions of participation and those SNF provisions set out at 42 CFR 482.58(b) to the extent not waived.
 - Be consistent with the state’s emergency preparedness or pandemic plan.
- **CAH Status and Location.** CMS is waiving the requirement at 42 CFR §485.610(b) that the CAH be located in a rural area or an area being treated as being rural, allowing the CAH flexibility in the establishment of temporary surge site locations. CMS is also waiving the requirement at §485.610(e) regarding the CAH’s off-campus and co-location requirements, allowing the CAH flexibility in establishing temporary off-site locations. In an effort to facilitate the establishment of CAHs without walls, these waivers will also suspend restrictions on CAHs regarding their location relative to other hospitals and CAHs consistent with a state’s emergency preparedness or pandemic plan.
 - **CAH Length of Stay.** CMS is waiving the requirements that CAHs limit the number of beds to 25, and that the length of stay be limited to 96 hours (per patient, on an annual average basis) under the Medicare conditions of participation for number of beds and length of stay at 42 CFR § 485.620.

Housing Acute Care Patients in the Inpatient Rehabilitation Facility (IRF) Excluded Distinct Part Units

Flexibility for Inpatient Rehabilitation Facilities Regarding the “60 Percent Rule”

- CMS is allowing IRFs to exclude patients from the freestanding hospital’s or excluded distinct part unit’s inpatient population for purposes of calculating the applicable thresholds associated with the requirements to receive payment as an IRF (commonly referred to as the “60 percent rule”) if an IRF admits a patient solely to respond to the emergency and the patient’s medical record properly identifies the patient as such. In addition, during the applicable waiver time period, we would also apply the exception to facilities not yet classified as IRFs, but that are attempting to obtain classification as an IRF.

Housing Acute Care Patients in the Inpatient Psychiatric Facility (IPF) Excluded Distinct Part Units

Housing Acute Care Patients In Excluded Distinct Part Units

- CMS is allowing acute care hospitals to house acute care inpatients in excluded distinct part units, where the distinct part unit’s beds are appropriate for acute care inpatient. The Inpatient Prospective Payment System (IPPS) hospital should bill for the care and annotate

the patient's medical record to indicate the patient is an acute care inpatient being housed in the excluded unit because of capacity issues related to the disaster or emergency.

Long-Term Care Facilities and Skilled Nursing Facilities (SNFs) and/or Nursing Facilities (NFs)

- **Reporting Minimum Data Set (MDS).** CMS is modifying the requirements at 42 CFR §483.20(b)(2) to provide relief to SNFs on the timeframes in which they must conduct a comprehensive assessment and collect MDS data. CMS is not waiving the requirements for facilities to conduct the assessment and collect MDS data at 42 CFR 483.20(b)(1).
- **Waive Pre-Admission Screening and Annual Resident Review (PASARR).** CMS is waiving 42 CFR § 483.20(k), allowing nursing homes to admit new residents who have not received Level 1 or Level 2 Preadmission Screening. Level 1 assessments may be performed postadmission. On or before the 30th day of admission, new patients admitted to nursing homes with a mental illness (MI) or intellectual disability (ID) should be referred promptly by the nursing home to State PASARR program for Level 2 Resident Review.

Supporting Care for Patients in Long-Term Care Acute Hospitals (LTCHs)

- CMS has determined it is appropriate to issue a blanket waiver to long-term care hospitals (LTCHs) where an LTCH admits or discharges patients in order to meet the demands of the emergency from the 25-day average length of stay requirement at § 412.23(e)(2), which allows these hospitals to participate in the LTCH PPS.

Skilled Nursing Facilities (SNFs)

- **3-Day Prior Hospitalization.** Using the authority under Section 1812(f) of the Act, CMS may cover SNF stays without a 3-day prior inpatient hospitalization. In addition, for certain beneficiaries who recently exhausted their SNF benefits, it authorizes a one-time renewal of SNF coverage without first having to start a new benefit period (this portion of the waiver will apply only for those beneficiaries who have been delayed or prevented by the emergency itself from commencing or completing the process of ending their current benefit period and renewing their SNF benefits that would have occurred under normal circumstances).
- **Physician Visits in Skilled Nursing Facilities/Nursing Facilities.** CMS is waiving the requirement in 42 CFR 483.30 for physicians and non-physician practitioners to perform in-person visits for nursing home residents and allow visits to be conducted, as appropriate, via telehealth options.

- **Physical Environment.** CMS is waiving requirements under 42 CFR 483.90 to temporarily allow for rooms in a long-term care facility not normally used as a resident's room, to be used to accommodate beds and residents for resident care in emergencies and situations needed to help with surge capacity. Rooms that may be used for this purpose include activity rooms, meeting/conference rooms, dining rooms, or other rooms, as long as residents can be kept safe, comfortable, and other applicable requirements for participation are met. This can be done so long as it is not inconsistent with a state's emergency preparedness or pandemic plan, or as directed by the local or state health department.

Hospice

- **Comprehensive Assessments.** CMS is modifying certain requirements at 42 CFR §418.54 related to updating comprehensive assessments of patients. This modifies the timeframes for updates to the comprehensive assessment found at §418.54(d). Hospices must continue to complete other required assessments (i.e., initial and ad-hoc assessments based on a change in the patient's condition); however, the timeframes for updating the comprehensive assessment may be extended from 15 to 21 days.

Home Health Agencies (HHAs)

- **Reporting.** CMS is providing relief to HHAs on the timeframes related to OASIS Transmission through the following actions below:
 - Extending the 5-day completion requirement for the comprehensive assessment to 30 days.
 - Modifying the 30-day OASIS submission requirement. Delayed submission is permitted during the PHE.
- **Initial Assessments.** CMS is waiving the requirements at 42 CFR §484.55(a) to allow HHAs to perform Medicare-covered initial assessments and determine patients' homebound status remotely or by record review. This will allow patients to be cared for in the best environment for them while reducing the impact on acute care and long-term care facilities. This will allow for maximizing coverage by already scarce physician, and advanced practice clinicians, and allow those clinicians to focus on caring for patients with the greatest acuity.
- **Allow Physical Therapists (PTs), and Speech Language Pathologists (SLPs)** to perform Initial and Comprehensive Assessment for all Patients: CMS is waiving the requirements in 42 CFR § 484.55(a)(2) and § 484.55(b)(3) that rehabilitation skilled professionals may only perform the initial and comprehensive assessment when only therapy services are ordered. This

temporary waiver will allow any rehabilitation professional (PT, or SLP) to perform the initial and comprehensive assessment for all patients receiving therapy services as part of the plan of care, to the extent permitted under state law, regardless of whether or not the service establishes eligibility for the patient to be receiving home care.

- **Of note**, as a part of the CY 2022 Home Health Prospective Payment System Final Rule (CMS 1747-F), CMS finalized changes to § 484.55(a) and (b)(2) to permanently allow Occupational Therapists (OT) to complete the initial and comprehensive assessments for patients, in accordance with Division CC, section 115 of CAA 2021.
- **CMS is waiving the requirements at CFR 418.76(h)(1) and CFR 418.76(h)(2) for Hospice and 42 CFR §484.80(h)(1) for HHAs**, which require a nurse to conduct an onsite visit every two weeks. This would include waiving the requirements for a nurse or other professional to conduct an onsite visit every two weeks to evaluate if aides are providing care consistent with the care plan, as this may not be physically possible for a period of time. This waiver is also temporarily suspending the two-week aide supervision by a registered nurse for home health agencies' requirement at §484.80(h)(1), but virtual supervision is encouraged during the period of the waiver. All postponed annual onsite assessments (direct observation) for each aide that provides services on behalf of the agency must be completed by these professionals no later than 60 days after the expiration of the PHE.

Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)

- **Staffing Flexibilities.** CMS is waiving the requirements at 42 CFR §483.430(c)(4), which requires the facility to provide sufficient Direct Support Staff (DSS) so that Direct Care Staff (DCS) are not required to perform support services that interfere with direct client care. DSS performs activities such as cleaning of the facility, cooking, and laundry services. DCS performs activities such as teaching clients appropriate hygiene, budgeting, or effective communication and socialization skills. During the time of this waiver, DCS may be needed to conduct some of the activities normally performed by the DSS. This will allow facilities to adjust staffing patterns while maintaining the minimum staffing ratios required at §483.430(d)(3).
- **Physical Environment.** CMS is waiving **certain** physical environment requirements under the ICF/IID conditions of participation at 42 CFR §483.470 to allow increased flexibilities for surge capacity. CMS will permit facility and non-facility space that is not normally used for patient care to be utilized for patient care, provided the location is approved by the state (ensuring that safety and comfort for patients and staff are sufficiently addressed) and is consistent with the state's emergency preparedness or pandemic plan. States are still

subject to obligations under the integration mandate of the Americans with Disabilities Act, to avoid subjecting persons with disabilities to unjustified institutionalization or segregation.²

Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)

- When DMEPOS is lost, destroyed, irreparably damaged, or otherwise rendered unusable, CMS is allowing DME Medicare Administrative Contractors (MACs) to have the flexibility to waive replacements requirements such that the face-to-face requirement, a new physician's order, and new medical necessity documentation are not required. Suppliers must still include a narrative description on the claim explaining the reason why the equipment must be replaced and are reminded to maintain documentation indicating that the DMEPOS was lost, destroyed, irreparably damaged, or otherwise rendered unusable or unavailable as a result of the emergency.

This also allows CMS to temporarily extend the 10-business day deadline to provide notification of any subcontracting arrangements. During the temporary extension period, affected contract suppliers will have 30 business days to provide notice to the Competitive Bidding Implementation Contractor of any subcontracting arrangements. CMS will notify DMEPOS Competitive Bidding contract suppliers via e-mail when this temporary extension expires. All other competitive bidding program requirements remain in force. Note: CMS will provide notice of any changes to reporting timeframes for future events.

Replacement Prescription Fills

- Medicare payment may be permitted for replacement prescription fills (for a quantity up to the amount originally dispensed) of covered Part B drugs in circumstances where dispensed medication has been lost or otherwise rendered unusable by damage due to the disaster or emergency.

Practitioner Locations

- CMS is temporarily waiving requirements that out-of-state practitioners be licensed in the state where they are providing services when they are licensed in another state. CMS will waive the physician or non-physician practitioner licensing requirements when the

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following four conditions are met: 1) must be enrolled as such in the Medicare program; 2) must possess a valid license to practice in the state, which relates to his or her Medicare enrollment; 3) is furnishing services – whether in person or via telehealth – in a state in which the emergency is occurring in order to contribute to relief efforts in his or her professional capacity; and, 4) is not affirmatively excluded from practice in the state or any other state that is part of the 1135 emergency area.

In addition to the statutory limitations that apply to 1135-based licensure waivers, an 1135 waiver, when granted by CMS, does not have the effect of waiving state or local licensure requirements or any requirement specified by the state or a local government as a condition for waiving its licensure requirements. Those requirements would continue to apply unless waived by the state. Therefore, in order for the physician or non-physician practitioner to avail him- or herself of the 1135 waiver under the conditions described above, the state also would have to waive its licensure requirements, either individually or categorically, for the type of practice for which the physician or non-physician practitioner is licensed in his or her home state.

Provider Enrollment

- Waive the following screening requirements:
 - Application Fee - (to the extent applicable) - 42 CFR §424.514
 - Criminal background checks associated with fingerprint-based criminal background checks (FCBC) (to the extent applicable) - 42 CFR §424.518.
 - Site visits (to the extent applicable) - 42 CFR §424.517.
- Providers and Suppliers in the impacted states, including SNFs will be granted revalidation due date extensions until May 2025.