

PUBLICATION

HHS Seeks to Ease Burden of Hurricane on Health Care Organizations

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As Hurricane Harvey continues to have a devastating impact throughout Southeast Texas, Louisiana and the Southeast, our thoughts are with the hundreds of thousands struggling through this difficult time.

The health care community, also struggling under Harvey's impact, will be a large focus of federal recovery efforts once immediate danger has passed. The U.S. Department of Health and Human Services' (HHS) Secretary Tom Price has declared public health emergencies in affected areas in Texas and Louisiana. More pronouncements are expected, and Baker Donelson will work to ensure that the health care community is aware of evolving issues and industry-specific orders and directives.

Public Health Emergency

Secretary Price declared a public health emergency in Texas, retroactive to August 25, and in Louisiana, retroactive to August 27. The public health emergency determination remains effective until the Secretary declares that the emergency no longer exists or after 90 days, whichever occurs first. An extension is possible at the Secretary's discretion.

HHS General Waiver for Texas and Louisiana

Following the declaration of a public health emergency, the HHS Secretary has the ability to take appropriate action and to use funds from the Public Health Emergency Fund (when appropriated). Secretary Price signed a "Waiver or Modification of Requirements Under Section 1135 of the Social Security Act" as a result of Hurricane Harvey for Texas, retroactive to August 25, and for Louisiana, retroactive to August 27. The waiver does three things:

1. Regarding HIPAA, it waives sanctions and penalties arising from noncompliance by a Texas or Louisiana covered hospital with the following provisions of the Privacy Rule:
 - The requirement to obtain a patient's agreement to speak with family members or friends involved in the patient's care;
 - The requirement to honor a request to opt out of the facility directory;
 - The requirement to distribute a notice of privacy practices;
 - The patient's right to request privacy restrictions; and
 - The patient's right to request confidential communications.
 - **Note that the waiver only applies:**
 - In the emergency area and for the period of the emergency declaration;
 - To hospitals that have instituted a disaster protocol;
 - With respect to the HIPAA regulations identified above; and
 - For up to 72 hours from the time the hospital implements its disaster protocol.
2. Modifies deadlines and timetables for the performance of required activities if the Centers for Medicare & Medicaid Services (CMS) determines such action is necessary to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare, Medicaid and CHIP programs. The waivers are designed 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 as a result of Hurricane Harvey, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse; and

3. Confers authority to CMS to waive certain requirements, which gives Medicare beneficiaries and their health care providers more flexibility in meeting emergency health needs.

CMS Waivers and Other Actions for Texas Providers

Pursuant to the above, and subject to the applicable timeframes determined under the HHS Secretary's public health emergency declaration, CMS issued the following specific waivers and actions with respect to Texas providers:

- Skilled Nursing Facilities/Nursing Home Services Modification. Invoked the authority provided by Section 1812(f) of the Social Security Act allowing payment for coverage for a skilled nursing facility stay or nursing home services in the absence of a qualifying hospital stay for people who evacuated, transferred or are otherwise dislocated because of the effect of Hurricane Harvey in Texas.
- Minimum Data Set Assessments and Transmission. Provided a blanket waiver for all impacted Skilled Nursing Facilities on the timeframe requirements for assessments and transmission.
- Home Health Agencies/484.20(c)(1). Provided a blanket waiver for all impacted Home Health Agencies regarding the timeframes related to OASIS Transmission.
- Critical Access Hospitals. Provided a blanket waiver to all impacted for requirements that Critical Access Hospitals limit the number of beds to 25 and that the length of stay be limited to 96 hours.

Additional CMS Actions for Texas and Louisiana

Pursuant to the above, CMS has also extended deadlines related to Medicare-Dependent Hospitals (MDHs), Low-Volume Hospitals, Medicare Geographic Classification Review Board (MGCRB) applications and Inpatient Prospective Payment System (IPPS) Wage Index revisions.

Quality Reporting Exception

Health care facilities affected by Hurricane Harvey are notified to refer to www.qualitynet.org to review the process for submitting an "Extraordinary Circumstances Exception" request or an extension request for submitting quality data as part of their respective quality reporting programs.

Procurement and Grant Conditions Compliance

Public and private non-profit health care providers and custodial care facilities may be eligible to receive grants through the Federal Emergency Management Agency (FEMA) and/or the U.S. Department of Housing and Urban Development (HUD) for emergency costs and restoration of facilities. These entities should check procurement policies, standards of conduct and forms of contract for any work that might be reimbursable; it is of **critical importance** that these items be compliant with federal regulations to protect the eligibility of associated funding. Baker Donelson's [Disaster Recovery and Government Services Group](#) developed a Procurement Toolkit and other compliance aids to provide assistance in these efforts.

Document Damages, Work Performed and Costs Incurred

All entities or persons impacted should document damage (including photographs to the extent possible), work performed (including paid and volunteer assistance) and costs incurred, including copies of all receipts and time logs. These records can support insurance claims and will be required to support claims to FEMA for additional assistance.

If you would like to discuss any of the immediate recovery issues presented above or how our team may be able to assist in your long-term recovery efforts, please contact Wendy Huff Ellard, or any of the members of our [Disaster Recovery and Government Services Group](#) or our [Health Law Group](#).