

PUBLICATION

Temporary Regulatory Relief for South Carolina Health Care Providers Responding to Hurricane Helene

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October 04, 2024

South Carolina Governor Henry McMaster declared a State of Emergency on September 25, 2024, to prepare for Hurricane Helene. On September 29, 2024, the Federal Emergency Management Agency (FEMA) issued a Federal Major Disaster Declaration (FEMA-4829-DR) for South Carolina. On September 30, 2024, the United States Department of Health and Human Services (HHS) declared a public health emergency in South Carolina, and the Centers for Medicare and Medicaid Services (CMS) issued several blanket waivers to provide greater compliance flexibility and continuity of care while responding to Helene in the geographic area covered by the President's declaration. These waivers (detailed below) provide health care facilities with flexibility in service delivery, staffing, and patient care, aimed at alleviating the strain caused by Helene. Further, HHS, the South Carolina Department of Health and Human Services (SCDHHS), and other regulatory bodies have announced relief efforts, all aimed at reducing administrative burdens so providers can continue to care for and treat those in need.

South Carolina Medicaid Flexibilities

On October 2, 2024, SCDHHS implemented [temporary flexibilities](#) for South Carolina's Healthy Connections Medicaid program, which extended these flexibilities from September 25, 2024, to October 31, 2024. The current flexibilities include:

- Physical environment requirements waived in hospitals, pending state approval;
- Expanded capacity for hospital swing beds;
- Expedited Skilled Nursing Facility (SNF) services for displaced members;
- Postponed SNF screenings, reviews, data collection, and assessments;
- Physician and non-physician practitioner visits for nursing home residents may be conducted via telehealth;
- Expanded non-resident room use in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) and adjusted staffing requirements;
- Home health agencies may conduct initial assessments remotely or by record review and timeframes are extended for assessments and [Outcome and Assessment Information Set \(OASIS\)](#) transmission;
- Prior authorizations, quantity limits, and assessments waived for certain durable medical equipment (DME) replacement orders; and
- Replacement prescription refills allowed for lost or damaged medications, excluding controlled substances.

South Carolina Professional Licensing Board Actions

In order to facilitate more efficient disaster response, the [South Carolina Board of Nursing](#) activated Limited Emergency Licensure for out-of-state nurses seeking to volunteer their services during the recovery period. Similarly, the [South Carolina Board of Pharmacy](#) has implemented procedures to allow out-of-state

pharmacists to dispense prescription medications, excluding controlled substances, in affected counties. These actions enable more professionals to assist communities in need while ensuring sufficient legal and regulatory oversight.

CMS Blanket Waivers

As in other states in the region affected by Helene, CMS has issued blanket waivers impacting several Medicare-certified provider types.

1. General CMS Waivers for Health Care Facilities

- **Emergency Medical Treatment & Labor Act (EMTALA) Waiver:** CMS waived the enforcement of EMTALA (Section 1867(a) of the Social Security Act), allowing hospitals, including psychiatric hospitals and critical access hospitals (CAHs), to screen patients at offsite locations, provided it aligns with state emergency preparedness plans.
- **Telemedicine:** CMS waived provisions under 42 CFR § 482.12(a)(8)-(9) for hospitals and § 485.616(c) for CAHs, allowing hospitals to more easily furnish telemedicine services through agreements with offsite hospitals. This waiver will increase access to care for patients, especially those requiring specialty services, during the emergency.
- **Medical Staff Credentialing:** Hospitals may allow physicians whose privileges are set to expire to continue practicing, and newly hired physicians can begin work without full medical staff or governing body approval. This waiver provides flexibility for workforce shortages.

2. Critical Access Hospitals (CAHs)

- **Licensure and Location Flexibility:** CMS deferred staff licensure requirements to state laws, allowing facilities more flexibility in deploying staff across different locations.
- **Bed and Length of Stay Limits Waived:** The usual limit of 25 beds for CAHs and the 96-hour annual average length of stay per patient requirement have been waived to allow facilities to handle increased patient volume.

3. Hospital and Long Term Care Facilities

- **Swing-Bed Waiver:** CMS granted a waiver under section 1135(b)(1) of the Act allowing hospitals to use beds normally reserved for acute care patients to provide SNF care, provided the hospital meets the applicable SNF standards. This allows hospitals to transition patients who no longer need acute care but cannot be placed in an SNF.
- **Physical Environment Waivers:** Hospitals and long term care facilities are permitted to use spaces not typically intended for patient care, such as conference rooms and dining areas, provided the space is safe and approved by the state.

4. Skilled Nursing Facilities (SNFs)

- **3-Day Prior Hospitalization Waiver:** Under Section 1812(f) of the Social Security Act, CMS is allowing SNFs to admit Medicare beneficiaries without the usual requirement of a three-day prior inpatient hospitalization. This waiver also includes a one-time renewal of SNF coverage for beneficiaries who were delayed in completing their benefit period due to the emergency.
- **Telehealth and Physician Visits:** CMS is waiving the requirement for in-person physician visits in SNFs, allowing for visits to be conducted via telehealth, reducing the strain on health care providers.

5. Home Health Agencies (HHAs)

- **Initial Assessments:** HHAs can now perform initial Medicare-covered patient assessments remotely or via record review, helping to reduce the need for in-person visits during the emergency.

- **OASIS Submission Deadlines Extended:** CMS has extended the five-day comprehensive assessment deadline to 30 days and modified the 30-day OASIS submission requirement, permitting delays during the public health emergency.

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

- **DMEPOS Replacement:** If durable medical equipment (DME) is lost, destroyed, or damaged during the disaster, CMS is waiving the face-to-face requirement, a new physician's order, and new medical necessity documentation for replacements. Suppliers must provide a narrative explanation of the need for replacement due to the emergency.

7. Hospices

- **Assessment Timeframe Extension:** CMS is extending the timeframe for updating comprehensive hospice patient assessments from 15 to 21 days, though initial and ad-hoc assessments must still be completed based on patient needs.

8. Practitioner Licensure and Enrollment

- **Out-of-State Practitioner Waiver:** CMS is allowing practitioners who are licensed in another state to provide services in South Carolina without requiring additional licensure, provided they meet certain criteria (e.g., enrollment in Medicare, valid licensure, and participation in emergency relief efforts).
- **Provider Enrollment Flexibility:** Screening requirements for provider enrollment are waived, including application fees, fingerprint-based criminal background checks, and site visits. This allows providers to render services outside their state of enrollment during the emergency.

These waivers enable health care facilities to adapt to the operational challenges presented by Helene and ensure continuity of care for patients despite the public health emergency. Health care providers should utilize these flexibilities where necessary but strive to return to normal operations as soon as feasible.

HIPAA

HHS issued a limited waiver of HIPAA sanctions during the public health emergency for Helene in South Carolina. This waiver allows covered entities to bypass certain HIPAA Privacy Rule requirements, such as obtaining patient consent to share health information with family or emergency personnel. The waiver is effective for 72 hours after hospitals implement disaster protocols. The HIPAA Privacy Rule still allows sharing necessary health information for treatment, public health activities, and preventing imminent threats. More details are available [here](#).

Disaster Relief Funding may be Available to Some SC Health Care Providers

Although health care providers are currently focused on their patients and staff, it is also important to remember that some may be eligible for significant federal support to cover certain emergency expenses and the cost of "repairing, restoring, reconstructing, or replacing" damaged facilities. Potentially eligible providers include:

- Public entities (e.g., local and state governments, public hospitals, public school districts); or
- Private non-profit entities that provide governmental-type services or essential social services (e.g., utilities, hospitals, custodial/long term care facilities, private educational facilities, houses of worship, and community centers open to the public).

Providers' eligibility to receive this assistance (and to retain it) is jeopardized if they do not comply with federal regulations, including those applicable to procurements funded by federal grants, which are enforced strictly.

Given the rapidly evolving situation on the ground and the emerging public health and regulatory issues, we anticipate the above guidance will change and that we will see further regulatory relief efforts directed at health care providers. If you have any questions or would like to discuss this further, please contact a member of Baker Donelson's [Health Law Team](#) or [Disaster Recovery and Government Services Group](#).