



TEXAS
Health and Human
Services

Charles Smith
Executive Commissioner

August 25, 2017

The Honorable Tom Price, MD
Secretary
The U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Price:

In light of the public emergency resulting from the impact of Hurricane Harvey on the State of Texas, the state urgently requests a waiver or modification of certain Title XVIII, Title XIX, and Title XXI requirements of the Act pursuant to authority in Social Security Act Section 1135 and 1115. Specifically, the state requests waiver or modification of the following:

Section 1135

1. Certain conditions of participation, certification requirements, program participation or similar requirements, or pre-approval requirements for individual health care providers or types of health care providers, including as applicable, a hospital or other 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.
2. Requirements that physicians or other health care professionals hold licenses in the State in which they provide services, if they have a license from another State and are not affirmatively barred from practice in that State or any State in the emergency area.
3. Requirements that Critical Access Hospitals limit the number of beds to 25, and that the length of stay be limited to 96 hours.
4. Sanctions under 1867 of the Act (the Emergency Medical Treatment and Labor Act, or EMTALA) for the redirection of an individual to another location to receive a medical screening examination pursuant to a state emergency preparedness plan or transfer of an individual who has not been

stabilized if the transfer arises out of hurricane-related emergency circumstances.

5. Sanctions under section 1877(g) of the Act (relating to limitations on physician referral) under such conditions and in such circumstances as the Centers for Medicare & Medicaid Services determines appropriate.
6. 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.
7. Pursuant to Section 1135(b)(7) of the Act, waiver of sanctions and penalties arising from noncompliance with the following provisions of the HIPAA privacy regulations: (a) the requirements to obtain a patient's agreement to speak with family members or friends or to honor a patient's request to opt out of the facility directory (as set forth in 45 C.F.R. § 164.510); (b) the requirement to distribute a notice of privacy practices (as set forth in 45 C.F.R. § 164.520); and (c) the patient's right to request privacy restrictions or confidential communications (as set forth in 45 C.F.R. § 164.522); but in each case, only with respect to hospitals in the designated geographic area that have hospital disaster protocols in operation during the time the waiver is in effect.
8. Pursuant to Section 1135(b)(5) of the Act, modification of deadlines and timetables and for the performance of required activities, but only to the extent necessary, as determined by the Centers for Medicare & Medicaid Services, 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 and 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.

Section 1115

Eligibility Overview: Eligibility will be based on the eligibility levels contained in the Medicaid State plan, Children's Health Insurance Program (CHIP) State plan, or approved Medicaid Home and Community-Based Services waiver.

Title XIX:

1. Annual Redeterminations of Eligibility - Sections 1902(a)(4) and 1902(a)(19)

To enable Texas to continue eligibility for an additional two months for individuals from a disaster county, as declared by the Federal Emergency Management Agency (FEMA) for Hurricane Harvey. This waiver shall apply only when there is no information presented to HHSC during that period indicating that the individual is no longer eligible.

2. Waive cost sharing, including applied income for nursing home or other long-term care programs identified by the state.

Title XXI:

3. Annual Redeterminations - Sections 2102

HHSC has the authority to continue CHIP eligibility for an additional two months for individuals from a disaster county, as declared by the FEMA for Hurricane Harvey. This waiver shall apply only when there is no information presented to HHSC during that period indicating that the individual is no longer eligible. In addition, anyone requesting CHIP eligibility determination during this time period must be enrolled in Medicaid if Medicaid eligible.

4. Families from a disaster county, as declared by FEMA for Hurricane Harvey that have been determined eligible for CHIP, but have not paid their enrollment fee are allowed a two-month extension to pay such fee. The two month extension applies to families that were approved for renewal, but that had not paid the enrollment fee.
5. Budget Neutrality. In light of the natural disaster, the Demonstration will be presumed to be budget neutral. Therefore, Texas will not be required to provide or demonstrate budget neutrality through "without waiver" and

"with waiver" expenditure data. Title XXI allotment neutrality will not be applicable under this Demonstration program.

The state requests that these waivers and modifications become effective at the earliest possible date, and be retroactive in Texas to the dates of the declarations cited in the paragraph below, and continue through the period described in Sections 1135(e) and 1115. Additionally, the cost of services provided to evacuees deemed eligible are not counted against any other Section 1115, Section 1915 (b) or (c) waiver the State may have, including Home and Community Based Services (HCBS) waiver slots.

The state understands the waivers and modifications described herein apply in the geographic area covered by the President's declaration, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, of an emergency in Texas as a result of Hurricane Harvey; and your determination, pursuant to section 319 of the Public Health Service Act, that a public health emergency exists and has existed in Texas, as a result of Hurricane Harvey.

Your prompt action on this request will help ensure that Texans subject to this natural disaster have access to critical health care services during the emergency.

Thank you.

Sincerely,



Charles Smith



**WAIVER OR MODIFICATION OF REQUIREMENTS
UNDER SECTION 1135 OF THE SOCIAL SECURITY ACT**

September 11, 2008

- I. Pursuant to Section 1135(b) of the Social Security Act (the Act) (42 U.S.C. § 1320b-5), I hereby waive or modify the following requirements of titles XVIII, XIX, or XXI of the Act or regulations thereunder, and the following requirements of Title XI of the Act, and regulations thereunder, insofar as they relate to Titles XVIII, XIX, or XXI of the Act, but in each case, only to the extent necessary, as determined by the Centers for Medicare & Medicaid Services, to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare, Medicaid and SCHIP programs and 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 Ike, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse:
 - a. Certain conditions of participation, certification requirements, program participation or similar requirements, or pre-approval requirements for individual health care providers or types of health care providers, including as applicable, a hospital or other 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.
 - b. Requirements that physicians or other health care professionals hold licenses in the State in which they provide services, if they have a license from another State (and are not affirmatively barred from practice in that State or any State in the emergency area).
 - c. Sanctions under section 1867 of the Act (the Emergency Medical Treatment and Labor Act, or EMTALA) for the redirection of an individual to another location to receive a medical screening examination pursuant to a state emergency preparedness plan or transfer of an individual who has not been stabilized if the transfer arises out of hurricane-related emergency circumstances.



- d. 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.
 - e. 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.
2. Pursuant to Section 1135(b)(7) of the Act, I hereby waive sanctions and penalties arising from noncompliance with the following provisions of the HIPAA privacy regulations: (a) the requirements to obtain a patient's agreement to speak with family members or friends or to honor a patient's request to opt out of the facility directory (as set forth in 45 C.F.R. § 164.510); (b) the requirement to distribute a notice of privacy practices (as set forth in 45 C.F.R. § 164.520); and (c) the patient's right to request privacy restrictions or confidential communications (as set forth in 45 C.F.R. § 164.522); but in each case, only with respect to hospitals in the designated geographic area that have hospital disaster protocols in operation during the time the waiver is in effect.
3. Pursuant to Section 1135(b)(5), I also hereby modify deadlines and timetables and for the performance of required activities, but only to the extent necessary, as determined by the Centers for Medicare & Medicaid Services, to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare, Medicaid and SCHIP programs and 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 Ike, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

These waivers and modifications will become effective at 4:00 P.M. Eastern Standard Time on September 13, 2008, but will have retroactive effect to September 7, 2008, in Texas and will continue through the period described in Section 1135(e).

Notwithstanding the foregoing, the waivers described in paragraphs 1(c) and 2 above are in effect for a period of time not to exceed 72 hours from implementation of a hospital disaster protocol, and such waivers are not effective with respect to any action taken thereunder that discriminates among individuals on the basis of their source of payment or their ability to pay.

The waivers and modifications described herein apply in the geographic area covered by the President's declaration, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, on September 10, 2008, of an emergency in Texas, as a result



of Hurricane Ike; and my September 11, 2008, determination, pursuant to section 319 of the Public Health Service Act, that a public health emergency exists and has existed since September 7, 2008, in Texas, as a result of Hurricane Ike.

Sept 11, 2008
Date:

A large, stylized handwritten signature in black ink, which appears to read "M. Leavitt", is written over the printed name and title.

Michael O. Leavitt

Secretary

Department of Health and Human Services