

SUMMARY OF SECRETARY AZAR'S 1135 WAIVER FOR HURRICANE FLORENCE

This is a brief summary of the waiver issued by Secretary Azar on September 11, 2018 in response to Hurricane Florence for North Carolina and South Carolina. This summary does not constitute legal advice. Please consult with your counsel concerning these waiver issues:

1. The following items are addressed in the 1135 waiver:
 - a. Waives Certain conditions of participation to the extent necessary to ensure that sufficient health care items and services are available to meet the needs of patients. See <https://go.cms.gov/2N94rKt> and <https://go.cms.gov/2N6fIR0>
 - b. Waives in-state licensing requirements for Medicare provider: Out of state physicians, nurses and other can practice in-state, provided they would have an equivalent license and are not barred from practice.
Note: the state still has their own licensure requirements and are developing a waiver process.
 - c. Waives the sanctions for EMTALA violations: May Direct or relocate an individual to another location prior to a medical screening or stabilization provided they are following a state emergency preparedness plan.
 - d. Waives the penalty for the physician self-referral under conditions established by CMS.
 - e. Waives limitations on payments for treating Medicare Advantage plan members if out of network.
2. The waiver also waives the sanctions for non-compliance with the following HIPAA requirements *for those hospitals that have disaster protocols in operation during the period of the waiver:*
 - a. Communicating with family members without consent
 - b. Honoring a patient's request to opt out of a facility directory
 - c. Requirement to distribute notice of privacy practices
 - d. Patient's right to request privacy restrictions or confidential communications
3. Modify deadlines and timetables of compliance and notification requirements, to the extent CMS determines necessary for reimbursement for services, as well as providing exemptions from sanctions absent fraud or abuse.
4. Effective September 13, retroactively applied to September 7, 2018.
5. Applies to both North Carolina and South Carolina.

For further information see:

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/1135-Waivers.html>