

Blanket Waivers-CMS

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Blanket Waiver # 1

Request for Blanket Waiver (Use Of Out-Of-State Healthcare Providers)

Consideration Requested:

1. We respectfully request that a blanket waiver be issued in accordance with Governor Abbott’s statement regarding out-of-**state** healthcare providers. This waiver will allow hospitals operating in the impacted counties to supplement their staff with healthcare providers licensed in other states.
2. We respectfully request that a blanket waiver be issued regarding out-of-**country** healthcare providers. There are international hospital systems operating in Texas with hospitals located outside the U.S. This waiver will allow hospitals in the impacted counties to supplement their staff with healthcare providers from other countries (e.g. Mexico).
3. If the impacted counties are expanded in the future, we request the additional hospitals located in these counties be automatically included in these waivers.

Background:

Hurricane Harvey is the first storm of category 3 or higher to hit the U.S. in twelve years. This storm has produced catastrophic flooding across thousands of square miles of South and Southeast Texas. Rain continues to fall in historic quantities. Rivers are rising to levels never before seen. People have taken refuge in attics or on rooftops awaiting rescue. According to FEMA director, William Long, Harvey is probably the worst disaster Texas has seen.

Supporting Information:

1. On August 26, 2017, Secretary Price declared a public health emergency in the state of Texas as a result of Hurricane Harvey. This declaration was effective August 25. Governor Abbott has declared that Hurricane Harvey posed a threat of imminent disaster including severe flooding, storm surge and damaging winds for numerous counties. As of August 28, these Texas counties include:

Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bexar, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Jackson, Jasper, Jefferson, Jim Wells, Karnes, Kerr, Kleberg, Lavaca, Lee, Leon, Liberty, Live Oak, Madison, Matagorda, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Willacy and Wilson counties.

(<https://gov.texas.gov/news/post/governor-abbott-again-adds-additional-counties-for-hurricane-harvey-disaste>)

2. As of July 14, 2017 there are 649 hospitals licensed by the Texas Department of State Health Services as either a general or special hospital. As of the same date, there are 57 hospitals licensed in the Texas as a private psychiatric hospital. As Texas does not license any military, state or federal hospitals, these hospitals are not included in total number of hospitals. There are approximately 245 general or special hospitals and 21 private psychiatric hospitals located in the counties listed in the disaster declaration. I have attached an excel file containing hospital-specific information. (Please note this includes all licensed hospitals in the impacted counties-not just THA member hospitals.)
 - a. DSHS License Category (general/special, psychiatric)
 - b. Name
 - c. License Number
 - d. CCN
 - e. License Expiration Date
 - f. License Effective Date
 - g. Designation/Services/Accreditation
 - h. CEO Name

- i. Hospital Address
 - j. City
 - k. State
 - l. Zip Code
 - m. Phone Number
 - n. County
 - o. Located in Disaster County
 - p. Mailing Address
 - q. Mailing City
 - r. Mailing State
 - s. Mailing Zip Code
3. Governor Abbott has issued a statement regarding out-of-state providers assisting with disaster response. (<http://www.tmb.state.tx.us/>)

Hospital-affiliated Providers-In accordance with section 418.016 of the Texas Government Code, the Office of the Governor temporarily suspends all necessary statutes and rules to allow health care providers employed by a hospital and licensed and in good standing in another state to practice in Texas in order assist with the Tropical Depression Harvey disaster response operations. This suspension is in effect until terminated by the Office of the Governor or until the Tropical Depression Harvey disaster declaration is lifted or expires

The Texas Medical Board interprets the Governor’s declaration to include health care providers credentialed by a hospital or a member of hospital staff.). Hospitals must submit to the applicable licensing entity each out-of-state provider’s name, provider type, state of license, and license identification number.

4. Many hospitals in the impacted counties are affiliated with national hospital systems who have the ability to supplement their Texas staff with providers from other states. In addition, many healthcare providers from other states have volunteered to come to Texas and work in the impacted areas.

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Blanket Waiver # 2

Request for Blanket Waiver (Ability To Treat Medical/Surgical Patients In Non-PPS Setting)

Consideration Requested:

1. We respectfully request a blanket waiver be issued allowing hospitals the ability to treat medical/surgical patients in non-PPS hospitals and/or units (e.g. Rehabilitation, LTCH)
2. If the impacted counties are expanded in the future, we request the additional hospitals located in these counties be automatically included in these waivers.

Background:

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before seen. People have taken refuge in attics or on rooftops awaiting rescue. According to FEMA director, William Long, Harvey is probably the worst disaster Texas has seen.

Supporting Information:

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3. The area impacted by Hurricane Harvey includes Houston, the fourth largest city in the nation. As described above, there are numerous hospitals located in the impacted counties. Many of these hospitals are located in the Texas Medical Center which is the largest medical complex in the world. Due to the complex nature of the patients treated, there are numerous specialty hospitals located in this area. These specialty hospitals (e.g. LTCH, Rehabilitation) fall outside the normal medical/surgical prospective payment system. Under normal circumstances, hospitals have the ability to transfer patients within their own hospital system or geographic area depending on the care needed. Due to the catastrophic nature of Hurricane Harvey, many hospitals are flooded or are restricted in treating patients. If there is a hospital willing and able to take the patient during these disasters, hospitals should not be penalized because of the classification of the hospital (PPS versus non-PPS). In recognition of these unique disaster situations, Medicare has already developed special billing provisions that allow a hospital to bill using a disaster modifier on their claim.

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Blanket Waiver # 3

**Request for Blanket Waiver (Waive Critical Access Hospital Requirements) -
Supplemental Information**

Consideration Requested:

1. We respectfully request the Critical Access Hospital blanket waiver released by CMS be applied to the CAHs listed in the attachment.
2. If the impacted counties are expanded in the future, we request the additional CAHs located in these counties be automatically included in these waivers.

Background:

Hurricane Harvey is the first storm of category 3 or higher to hit the U.S. in twelve years. This storm has produced catastrophic flooding across thousands of square miles of South and Southeast Texas. Rain continues to fall in historic quantities. Rivers are rising to levels never

before seen. People have taken refuge in attics or on rooftops awaiting rescue. According to FEMA director, William Long, Harvey is probably the worst disaster Texas has seen.

Supporting Information:

1. On August 26, 2017, Secretary Price declared a public health emergency in the state of Texas as a result of Hurricane Harvey. This declaration was effective August 25. Governor Abbott has declared that Hurricane Harvey posed a threat of imminent disaster including severe flooding, storm surge and damaging winds for numerous counties. As of August 28, these Texas counties include:

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2. As of July 14, 2017 there are 649 hospitals licensed by the Texas Department of State Health Services as either a general or special hospital. This list includes approximately 80 Critical Access Hospitals. I have attached an excel file containing hospital-specific information for the **seventeen** CAHs in the impacted counties. (Please note the list includes all CAHs-not just THA member hospitals.)

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- aa. CEO Name
- bb. Hospital Address
- cc. City
- dd. State
- ee. Zip Code

- ff. Phone Number
 - gg. County
 - hh. Located in Disaster County
 - ii. Mailing Address
 - jj. Mailing City
 - kk. Mailing State
 - ll. Mailing Zip Code
3. This afternoon (August 31), CMS released a Medicare Learning Network article (attached) entitled “Hurricane Harvey and Medicare Disaster Related Texas Claims”. This article is intended for providers and suppliers who submit claims to Medicare Administrative Contractors for services provided to Medicare beneficiaries in the State of Texas who were affected by Hurricane Harvey. Under the authority of Section 1135, CMS has issued several blanket waivers in the affected areas of Texas. It states that individual facilities do not need to apply for the approved blanket waivers including one specifically addressing the requirements for Critical Access Hospitals.

“Critical Access Hospitals- This action waives the requirements that Critical Access Hospitals limit the number of beds to 25, and that the length of stay be limited to 96 hours. (Blanket waiver for all impacted hospitals)”

Although CAHs do not need to request individual approval, we are providing a list (attached) of the seventeen CAHs located in the impacted counties. We believe both the impacted CAHs and CMS will benefit if we identify, up front, who the impacted hospitals are. This will enable us to work through these challenges together!

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Blanket Waiver # 4

Request for Blanket Waiver (Temporary Suspension Of Survey Enforcement Timelines/Plans Of Correction)

Consideration Requested:

1. We respectfully request a blanket waiver be issued providing for the temporary suspension of survey agency requirements of plans of correction and/or other survey enforcement timelines that were in process for hospitals in the impacted counties. We are not requesting a lapse of enforcement for actions of ill intentions.
2. If the impacted counties are expanded in the future, we request the additional hospitals located in these counties be automatically included in these waivers.

Background:

Hurricane Harvey is the first storm of category 3 or higher to hit the U.S. in twelve years. This storm has produced catastrophic flooding across thousands of square miles of South and Southeast Texas. Rain continues to fall in historic quantities. Rivers are rising to levels never

before seen. People have taken refuge in attics or on rooftops awaiting rescue. According to FEMA director, William Long, Harvey is probably the worst disaster Texas has seen.

Supporting Information:

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2. As of July 14, 2017 there are 649 hospitals licensed by the Texas Department of State Health Services as either a general or special hospital. As of the same date, there are 57 hospitals licensed in the Texas as a private psychiatric hospital. As Texas does not license any military, state or federal hospitals, these hospitals are not included in total number of hospitals. There are approximately 245 general or special hospitals and 21 private psychiatric hospitals located in the counties listed in the disaster declaration. I have attached an excel file containing hospital-specific information. (Please note this includes all licensed hospitals in the impacted counties-not just THA member hospitals.)

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oo. License Number

pp. CCN

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rr. License Effective Date

ss. Designation/Services/Accreditation

tt. CEO Name

uu. Hospital Address

- vv. City
- ww. State
- xx. Zip Code
- yy. Phone Number
- zz. County
- aaa. Located in Disaster County
- bbb. Mailing Address
- ccc. Mailing City
- ddd. Mailing State
- eee. Mailing Zip Code

Although I have attached a list of all the hospitals licensed by DSHS in the impacted counties, I am unable to identify which hospitals are impacted by this waiver request. Only CMS and the state agency are aware of the specific hospitals impacted by this waiver request.

3. The Medicare Conditions of Participation are sets of requirements for acceptable quality in the operation of hospitals. The state agency, by a survey, determines whether and how each standard is met. When a hospital is found to be out of compliance, a determination must be made that the hospital no longer meets the requirements for participation as a provider in the Medicare program. If the hospital has not come into substantial compliance with the COPs within the time period accepted as reasonable, the state agency certifies noncompliance notwithstanding a Plan Of Correction. An acceptable POC must contain several elements including a plan for correcting the specific deficiency, the procedure for implementing the acceptable plan of correction, and the monitoring procedure to ensure the plan of correction is acceptable. Termination can only be averted by correction of the deficiencies and subsequent verification of compliance by the state agency.

Due to the significant impact of noncompliance, hospitals devote enormous time and resources to ensure a successful Plan of Correction. The state agency, and CMS, must also devote significant time and resources to ensure the hospital has corrected the deficiencies. Once Hurricane Harvey was projected to impact Texas, hospital resources were focused solely on ensuring the patients were safe and out of harm's way. Neither the state agency, nor the hospitals, are currently in a position to be focused on impending timelines of submission of plans of correction or response to survey dates. Patient care remains the number one priority for hospitals.

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Blanket Waiver # 5

Request for Blanket Waiver (Temporary Suspension Of Audit/Medical Review Activities)

Consideration Requested:

1. We respectfully request a blanket waiver be issued providing for the temporary suspension of Medicare contractor requirements regarding medical review and some benefit integrity responsibilities in the impacted counties. This includes the following:
 - Assurances that future retrospective denials based on inappropriate place of service will take into account the period of time and circumstances when the disaster occurred;
 - Assurances that future medical review audits and denials will take into account the period of time and circumstances when the disaster occurred;
 - Assurances that Medicare's two day payment policy used in determining whether an inpatient admission is reasonable and payable under Medicare Part A will take into account the period of time and circumstances when the disaster occurred;
 - A delay in requests by Medicare contractors (e.g. MACs, RACs, ZPICs, CERTs) for additional documentation requests/medical records from hospitals;
 - A delay in the amount of time a hospital has to appeal audit findings;
 - A delay in any hearings to challenge RAC determinations; and
 - A delay in the 30 day period before the RAC sends the results of their audit to the MAC for recoupment.

We are not requesting a lapse of enforcement for actions relating to fraud and abuse.

2. If the impacted counties are expanded in the future, we request the additional hospitals located in these counties be automatically included in these waivers.

Background:

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Supporting Information:

1. On August 26, 2017, Secretary Price declared a public health emergency in the state of Texas as a result of Hurricane Harvey. This declaration was effective August 25.

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iii. CCN

jjj. License Expiration Date

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lll. Designation/Services/Accreditation

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ttt. Located in Disaster County

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Although I have attached a list of all the hospitals licensed by DSHS in the impacted counties, I am unable to identify which hospitals are impacted by this waiver request. Only CMS and their contractors are aware of the specific hospitals impacted by this waiver request.

3. When catastrophe strikes, hospitals are provided administrative relief from medical review and some benefit integrity responsibilities by CMS. Chapter 3 of the Medicare Program Integrity Manual (Administrative Relief from Medical Review During a Disaster) outlines the administrative flexibility available to Medicare Administrative Contractors and Recovery Audit Contractors during a disaster. CMS' definition of a disaster includes significantly limiting a provider's daily operations. CMS defines different types of administrative relief from audits based on whether the provider was directly or indirectly affected by the disaster.

Many audits may overwhelm the provider with requests for information. Even electronic health records take time to access, review, and duplicate. Providers have expressed numerous concerns about the RAC program since its inception. These audits are time and resource demanding. Due to the significant financial impact of noncompliance, hospitals devote enormous time and resources to comply with the various audit requests. RACs and MACs are not alone in their audit activities. Similar information is requested by ZPIC and CERT auditors.

Once Hurricane Harvey was projected to impact Texas, hospital resources were focused solely on ensuring the patients were safe and out of harm's way. The hospitals are not currently in a position to be focused on meeting strict timelines for record submission and/or appeal. Patient care remains the number one priority for hospitals.

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Blanket Waiver # 6

Request for 1135 Blanket Waiver (Waiving Increased Costs For Medicare Shared Savings Program)

Consideration Requested:

1. We respectfully request a blanket waiver be issued concerning the Medicare Shared Savings Program. We are requesting that any costs above the CMS defined per beneficiary per month benchmark, due in October per CMS, be waived for the 1135 Waiver time period from 8/24/17 through 9/30/17, or until such time as any additional extensions expire, to cover acute response and recovery period.
2. If the impacted counties are expanded in the future, we request the additional hospitals located in these counties be automatically included in these waivers.

Background:

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- n. County
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3. The Medicare Shared Savings Program offers providers and suppliers an opportunity to create a new type of health care entity, an Accountable Care Organization (ACO). An ACO agrees to be held accountable for the quality, cost, and experience of care of an assigned Medicare fee-for-service (FFS) beneficiary population. ACOs must have at least 5,000 Medicare fee-for-service (FFS) beneficiaries assigned to their ACO in each of the benchmark years to be eligible for participation in the Shared Savings Program.

The Shared Savings Program has different tracks that allow ACOs to select an arrangement that makes the most sense for their organization. Track 3 is a performance-based risk option that includes prospective beneficiary assignment, a higher sharing rate, and the opportunity to use new care coordination tools. Track 3 ACOs may share in savings or repay Medicare losses depending on performance. Track 3 ACOs take on the greatest amount of risk..

The goal of this program is to provide the highest value of care by coordinating care across a continuum of patient health facilities to include services at home, in EDs, Urgent Care centers, hospitals, and post-acute facilities (SNFs, LTACs, and Rehabs). The CMS defined per beneficiary per month is claims based on the past 3 years of costs for this population.

Hurricane Harvey has significantly impacted providers as they were unable to coordinate care. Not only were patients waiting to be admitted, many patients were

unable to be discharged as the follow-up care was either unavailable or inaccessible. We have heard from several large tertiary hospitals whose average length-of-stay increased by more than half day during the disaster. When multiplied times the increased number of patients seen, you have significant additional costs incurred and attributable to the ACO. Several hospital providers in the disaster areas have taken on significant financial risk with potential losses exceeding \$30M for this population. Providers should not be penalized for natural catastrophes.

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CMS has approved THA's request to extend the application deadlines to October 2, 2017 for the following:

1. Low-volume adjustment
2. Medicare-dependent hospitals that want to apply for sole community hospital status

Low-Volume Adjustment

Legislative action by Congress over the past several years mandated changes to the low-volume hospital adjustment criteria, allowing more hospitals to qualify for the adjustment and modifying the amount of the adjustments. MACRA had extended the relaxed low volume adjustment criteria (15-mile/ <1,600 discharges) for an additional 30 months, through the end of FFY 2017. However, as no further legislation has been put into place, beginning October 1, 2017 the criteria for the low-volume hospital adjustment will return to the more restrictive pre-ACA levels. In order to receive a low-volume adjustment, subsection (d) hospitals will need to meet the following criteria:

- Be located more than 25 road miles from another subsection (d) hospital; and
- Have fewer than 200 total discharges (All Payer) during the fiscal year.

In order for a hospital to acquire low-volume status, including for those currently assigned low-volume status, its MAC must receive a written request by Oct. 2.) This written request must include supporting documentation that the hospital meets the updated mileage and discharge criteria. If accepted, the adjustment will be applied prospectively within 30 days of low-volume hospital determination

An extension was granted from September 1, 2017 until October 2, 2017 for hospitals in the states of Texas and Louisiana to make a written request to Novitas for low-volume hospital status in order for the 25-percent low-volume hospital payment adjustment to be applied to payments for its discharges beginning on or after the start of the Federal fiscal year (FY) 2018. CMS is currently granting a 31-day extension to the deadline established in the FY 2018 Inpatient Prospective Payment System (IPPS)/LTCH PPS Long-Term Care Hospital Prospective Payment System (LTCH PPS) final rule (82 FR 38186) for the States of Texas and Louisiana.

Requests for low-volume hospital status for FY 2018 from a hospital located in these areas must be received by Novitas no later than October 2, 2017 in order for the low-volume hospital payment adjustment to be applied beginning with the start of the FY 2018 (that is, for discharges occurring on or after October 1, 2017). If hospitals encounter difficulty meeting this extended deadline of October 2, 2017, hospitals should communicate their concerns to Novitas and an additional extension will be considered.

Medicare-Dependent Hospitals Applying for Sole Community Status

The Medicare-Dependent Hospital (MDH) program has been extended several times by Congressional legislative action. Most recently, MACRA extended this program by an additional 30 months, through the end of FFY 2017.

Absent legislation, beginning October 1, 2017, the MDH program will expire, and hospitals that qualified for the MDH program in prior years would be paid based on the IPPS Federal rate. **Hospitals that will lose MDH status that intend to apply for SCH status for FFY 2018 must do so by Oct 2,** and must also request that, if approved, SCH status would be effective with the expiration of the MDH program. Hospitals that do not meet this deadline will have an effective date, if approved, for SCH classification beginning 30 days after the date of CMS' written notification of approval.

Sole Community Criteria

A hospital paid under the Medicare IPPS is eligible for classification as a SCH if it meets one of these criteria:

- The hospital is located at least 35 miles from other like hospitals
- The hospital is rural, located between 25 and 35 miles from other like hospitals, and meets one of these criteria:
 - No more than 25 percent of residents who become hospital inpatients or no more than 25 percent of the Medicare beneficiaries who become hospital inpatients in the hospital's service area are admitted to other like hospitals located within a 35-mile radius of the hospital or, if larger, within its service area
 - The hospital has fewer than 50 beds and would meet the 25 percent criterion above if not for the fact that some beneficiaries or residents were forced to seek specialized care outside of the service area due to the unavailability of necessary specialty services at the hospital
- The hospital is rural and located between 15 and 25 miles from other like hospitals but because of local topography or periods of prolonged severe weather conditions, the other like hospitals are inaccessible for at least 30 days in each of 2 out of 3 years
- The hospital is rural and because of distance, posted speed limits, and predictable weather conditions, the travel time between the hospital and the nearest like hospital is at least 45 minutes

For Medicare-dependent small, rural hospitals (MDHs), an extension has been granted from September 1, 2017 until October 2, 2017 for hospitals in the States of Texas and Louisiana to apply for sole community hospital (SCH) status in advance of the expiration of the MDH program with an effective date of an approval of SCH status that is the day following the expiration date of the MDH program (that is, September 30, 2017 under current law). CMS is currently granting a 31-day extension to the deadline at § 412.92(b)(2)(v) for the States of Texas and Louisiana.

If a hospital located in these areas that is classified as an MDH applies for classification as an SCH under the provisions of § 412.92(b)(2)(v), and that hospital's SCH status is approved, the effective date of approval of SCH status will be the day following the expiration date of the MDH program if such hospital applies for classification as a SCH not later than October 2, 2017. Novitas must receive the applications and supporting documentation by October 2, 2017. If hospitals encounter difficulty meeting this extended deadline of October 2, 2017, hospitals should communicate their concerns to Novitas, and an additional extension will be considered.

Please contact me if you have any questions

Florida Waiver Request

Thanks for all your help with the waivers. We did a couple on the CMS 13 for rehab and also still waiting on one related to scheduled dialysis.