



## **Division of Survey and Certification, Region VI**

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**DATE:** August 30, 2017

**TO:** Mary Henderson, Associate Commissioner, Regulatory Services, Texas Department of Aging & Disability Services (TDADS)

Patrick Waldron, Branch Manager, Health Facility Compliance, Patient Quality Care Unit, Texas Department of State Health Services

**FROM:** Gerardo Ortiz, Associate Regional Administrator

**RE:** 1135 Waiver Authority and Approvals

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The Secretary of Health and Human Services declared a Public Health Emergency (PHE) on August 26, 2017, for the State of Texas. This, combined with the President’s Major Disaster Declaration on August 25, 2017, allows for the approval of 1135 waiver requests by providers impacted by Hurricane Harvey. The following is guidance you may share with impacted providers that may have questions regarding 1135 waivers and the 1135 waiver process. In addition, all questions from providers in the impacted geographical area should be submitted to the Dallas Regional Office (RO) at [RODALDSC@cms.hhs.gov](mailto:RODALDSC@cms.hhs.gov).

Section 1135 of the Social Security Act [42 USC §1320b–5] permits the Secretary of Health and Human Services to waive certain requirements for healthcare facilities in response to emergencies. In addition, waivers are permitted only to the extent they ensure that sufficient health care items and services are available to meet the needs of Medicare, Medicaid, and CHIP beneficiaries in the emergency area during the emergency period. The “emergency area” and the “emergency period” are the geographic area, in which, and the time period, during which, the dual declarations exist. If there are other health care facilities in the area that can meet the needs of the patients, a waiver would not be appropriate.

As of August 30, 2017, the CMS Dallas Regional Office’s Division of Survey & Certification has approved the following 1135 Waiver requests:

### **Blanket Waivers**

- CMS has waived the Requirements that Critical Access Hospitals limit the number of beds to 25, and that the length of stay be limited to 96 hours. This waiver is limited to identified impacted counties and geographical areas. The State or impacted provider (i.e. CAH) should still forward provider information and waiver requests to the CMS Dallas RO for tracking purposes.
- CMS has waived the 3-day prior hospitalization for coverage of a skilled nursing facility stay. The 1812(f) waiver allows nursing facility admission without the 3-day hospital stay and also waives the spell of illness requirement for evacuees and others affected by the hurricane who need skilled nursing facility care. This waiver is limited to identified

impacted counties and geographical areas. The State or impacted provider (i.e. skilled nursing facility) should still forward provider information and waiver requests to the CMS Dallas RO for tracking purposes.

- CMS has waived the timeframe requirements for OASIS and Minimum Data Set (MDS) assessments and transmission. This waiver is limited to identified impacted counties and geographical areas. The State or impacted provider (i.e. home health agencies and skilled nursing facilities, respectively) should still forward provider information and waiver requests to the CMS Dallas RO for tracking purposes.

### **Case By Case Waiver Approvals**

- During a public health emergency, hospitals located in the emergency area generally may not use beds in an IPPS excluded psychiatric or rehabilitation unit for the provision of acute care services. However, if after the emergency/disaster declaration, the IRF believes that it should be exempt from meeting certain requirements due to exigent circumstances, it can submit an 1135 waiver request for the facility to the respective Regional Office and copy the State Survey Agency. CMS will review each waiver request and make a determination on a case by case basis. If granted, the provider would be able to bill for services under the IPPS in accordance with the terms and conditions of any waiver that may be granted.

This information will be updated and shared with the State as waivers are approved. CMS is committed to working through the process as efficiently and timely as possible with impacted providers. In addition, the CMS Regional Office will be sensitive to the evolving situation and community needs.

Gerardo Ortiz, MHSM  
Associate Regional Administrator (ARA)  
Centers for Medicare & Medicaid Services (CMS) - Dallas Regional Office

Attachments