



Hurricane Harvey  
Medicaid and Children's Health Insurance Program (CHIP)  
Frequently Asked Questions from Managed Care Organizations (MCOs)

August 30, 2017

On August 25, 2017, Hurricane Harvey hit the Texas coast and caused significant damage and flooding in numerous counties forcing many to evacuate to temporary locations.

Texas Health and Human Services (HHS) is committed to sharing pertinent Hurricane Harvey information with you via a Frequently Asked Questions (FAQs) on a daily basis. This document will provide Medicaid and CHIP MCOs with the tools and resources needed to ensure the provision of services and supports to needy residents in Texas in the aftermath of this natural disaster.

Each day, new and revised information contained in the FAQ document will be highlighted in yellow.

Federal Waivers and Modifications

**1. Does the Health and Human Services Commission (HHSC) plan to apply for federal waivers as they have done for past natural disasters?**

A: On Friday, August 25, 2017, the Health and Human Services (HHS) Executive Commissioner, Charles Smith, sent a letter to Secretary Price, requesting a waiver from certain provisions of the Social Security Act. CMS acted quickly, approving an 1135 waiver.

This authority, issued under Section 1135 of the Social Security Act, waives or modifies various federal provisions, including health care provider participation, certification and licensing requirements (permitting those with out of state licenses to render services in Texas), while also providing relief from specific sanctions or penalties. The waivers and modifications are retroactive to August 25th, 2017.

The 1135 waiver can be accessed here:

<https://www.phe.gov/emergency/news/healthactions/section1135/Pages/harvey-26aug2017.aspx>.

On August 26, 2017, HHSC also submitted a request to the Centers for Medicare and Medicaid Services (CMS) for an 1115 waiver. CMS subsequently indicated that 1115 waiver authority may not be necessary for certain components detailed in the draft documents, which may be accomplished under existing regulation or a State Plan Amendment. HHSC and CMS are working on an aggressive timeline to finalize the appropriate agreements.

**Requested flexibilities include:**

- **Provider participation:** The state is requesting permission for physicians and other health care providers who are licensed in other states and not barred from practice to provide services in Texas to Medicaid and CHIP participants without being licensed in Texas. This is consistent with Social Security Act Section 1135(b)(2) and the approval granted to Texas under that law by Secretary Price on August 26<sup>th</sup> (see above). The state is specifically requesting that it be granted:
  - Relief from the following regulations issued pursuant to the Affordable Care Act.
    - Application Fee - 42 C.F.R 455.460
    - Criminal background checks - 42 C.F.R Section 455.434
    - Site visits - 42 C.F.R Section 455.432
    - Out-of-state license - 42 C.F.R Section 455.412
  - The authority to expedite enrollment of Texas providers not currently enrolled in the Texas Medicaid program.
- **Cost Sharing:**
  - Medicaid - The state is requesting permission to suspend cost sharing requirements, including applied income, and the related Post -Eligibility Treatment of Income rule (42 C.F.R. 435.733), for Medicaid nursing home residents.
  - CHIP - The state is requesting permission to suspend the collection of co-payments for all services and waive CHIP enrollment fees through November 30, 2017 (and possibly longer).
- **Notice & Comments:** The state is requesting permission to suspend the 30-day public notice and comment period.

**2. Governor Abbott has issued a disaster proclamation certifying that Hurricane Harvey posed a threat of imminent disaster, including severe flooding to 54 counties as of August 28, 2017. Will the federal waivers and modifications apply to the same geographical area?**

A: Federal waivers and modifications apply to the geographical area identified by the Federal Emergency Management Agency (FEMA). Those counties are periodically updated. The list can be accessed here: <https://www.fema.gov/disaster/4332>

**3. Did CMS issue any blanket waivers under Sec. 1135 or 1812(f) of the Social Security Act so individual facilities do not need to apply?**

A: Yes, CMS issued the following three blanket waivers:

- **Skilled Nursing Facilities**
  - 1812(f): This waiver of the requirement for a 3-day prior hospitalization for coverage of a skilled nursing facility stay provides temporary emergency coverage of Skilled Nursing Facility (SNF) services without a qualifying hospital stay, for those people who are evacuated, transferred, or otherwise dislocated as a result of the effect of Hurricane Harvey in the State of Texas in 2017. In addition, for certain beneficiaries who recently exhausted their SNF benefits, it authorizes renewed SNF coverage without first having to start a new benefit period. (Blanket waiver for all impacted facilities)

- 483.20: This waiver provides relief to Skilled Nursing Facilities on the timeframe requirements for Minimum Data Set assessments and transmission. (Blanket waiver for all impacted facilities)
- Home Health Agencies
  - 484.20(c)(1): This waiver provides relief to Home Health Agencies on the timeframes related to OASIS Transmission. (Blanket waiver for all impacted agencies)
- 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)

These temporary emergency policies would apply to the timeframes specified in the waiver(s) issued under section 1135 of the Act in connection with the effect of Hurricane Harvey in the State of Texas. CMS is reviewing additional waivers and will update the following page as decisions are made. <https://www.cms.gov/About-CMS/Agency-Information/Emergency/Hurricanes.html>

#### Immediate Health Care Needs

#### **4. What resources are available for Texas residents on dialysis?**

A: If a Texas resident is on dialysis and needs assistance finding a dialysis provider, they may call 1.866.407.ESRD for support. If a managed care plan needs assistance in finding a dialysis provider for a member, they can contact a member of Texas' End stage renal disease (ESRD) network directly:

Javoszia Sterling  
[JSterling@nw14.esrd.net](mailto:JSterling@nw14.esrd.net)

Mary Albin  
[Mary.Albin@alliantquality.org](mailto:Mary.Albin@alliantquality.org)

Glenda Harbert  
[GHarbert@nw14esrd.net](mailto:GHarbert@nw14esrd.net)

#### **5. People often forget their medicines when they evacuate and need an early refill from a pharmacy. In most cases, pharmacists may not dispense more than a 72-hour supply of medication. Is there any way a prescription can be filled sooner?**

A: Yes, HHSC implemented an emergency procedure for pharmacists to follow if a prescription rejects with an error code "79" ("Refill Too Soon"), but only for individuals the pharmacist identifies as affected by Hurricane Harvey. Pharmacy staff should use their professional judgement when filling prescriptions to ensure adherence to state and federal law. HHS guidance on how to fill a prescription earlier may be found here:

<https://www.txvendordrug.com/hurricane-harvey>

#### **6. May pharmacists refill Schedule II medications early?**

A: Yes, in the event of an emergency, a practitioner may prescribe a controlled substance telephonically and follow up within 7 days with a written prescription. The pertinent citation is as follows:

*Texas Controlled Substances Act*

*Sec. 481.074. Prescriptions.*

*(b) Except in an emergency as defined by rule of the board or as provided by Subsection (o) or Section 481.075(j) or (m), a person may not dispense or administer a controlled substance listed in Schedule II without a written prescription of a practitioner on an official prescription form or without an electronic prescription that meets the requirements of and is completed by the practitioner in accordance with Section 481.075. In an emergency, a person may dispense or administer a controlled substance listed in Schedule II on the oral or telephonically communicated prescription of a practitioner. The person who administers or dispenses the substance shall:*

*(1) if the person is a prescribing practitioner or a pharmacist, promptly comply with Subsection (c); or*

*(2) if the person is not a prescribing practitioner or a pharmacist, promptly write the oral or telephonically communicated prescription and include in the written record of the prescription the name, address, and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state of the prescribing practitioner, all information required to be provided by a practitioner under Section 481.075(e)(1), and all information required to be provided by a dispensing pharmacist under Section 481.075(e)(2).*

*(c) Not later than the seventh day after the date a prescribing practitioner authorizes an emergency oral or telephonically communicated prescription, the prescribing practitioner shall cause a written or electronic prescription, completed in the manner required by Section 481.075, to be delivered to the dispensing pharmacist at the pharmacy where the prescription was dispensed. A written prescription may be delivered in person or by mail. The envelope of a prescription delivered by mail must be postmarked no later than the seventh day after the date the prescription was authorized. On receipt of a written prescription, the dispensing pharmacy shall file the transcription of the telephonically communicated prescription and the pharmacy copy and shall send information to the board as required by Section 481.075. On receipt of an electronic prescription, the pharmacist shall annotate the electronic prescription record with the original authorization and date of the emergency oral or telephonically communicated prescription.*

Nursing Facility Evacuations

**7. Numerous Medicaid beneficiaries have been evacuated and relocated to new nursing facility.**

**What are the evacuating facility responsibilities?**

A. During an evacuation, the evacuating facility retains responsibility for the care of their evacuated residents. As with past disasters, the evacuating facility will be responsible for payment to the accepting facility [or facilities] for the care of their residents. HHS recommends that evacuating facilities establish an agreement with the accepting facilities as soon as feasible regarding housing and care of evacuees, and for reimbursement of services the receiving facility provides to support the evacuee details.

- B. Monitor the care of their residents for the duration of the event, including the potential re-evacuation of a resident.
- C. After residents have returned to the evacuating facility or have been discharged, the evacuating facility must complete all assessments in accordance with federal guidance.
- D. Bill the appropriate Medicaid managed care plan.
- E. After payment by the managed care plan, the evacuating facility must pay the accepting facility for their resident's care for the duration of his/her residency at the accepting facility, per the payment agreement.
- F. Be responsive to the member's managed care plan.

**8. What are the accepting facility responsibilities?**

- A. Communicate regularly with the evacuating facility on the status of their residents.
- B. Maintain records, as required, about each resident to be sent when the resident returns to the evacuating facility.
- C. Work with the evacuating facility on an informal payment agreement.
- D. Support service delivery to residents as though they are your own, and in accordance with their indicated care plans that were provided by the evacuating facility.
- E. Be responsive to the member's managed care organization

**9. What are the managed care plan's responsibilities?**

- A. Track and monitor members that have been evacuated.
- B. Provide support to evacuating and accepting facilities, proactively, and as needed.
- C. The managed care plan service coordinator must work with the evacuating and receiving facility to continue to meet all responsibilities outlined in contract including: addressing identified needs, assisting the member in locating providers of add-on services, and referring for any necessary services.
- D. Pay the evacuating facility for the services rendered by the accepting facility; even if the accepting facility is out-of-network or a non-Medicaid provider. Be flexible and cooperative with providers so they receive prompt and proper payment for the care delivered by both facilities.

- E. Promptly reply to inquiries and complaints from facilities and members, or their representatives. Offer dedicated contact information or e-mail box, if necessary, to facilitate disaster-related communications, even outside of normal business hours.

**10. Will the state reduce the number of forms required during the duration of the disaster?**

A: Yes, the following forms are not required from either facility for the duration of this disaster:

- Form 3618 Resident Transaction Notice;
- Form 3619 Medicare/Skilled Nursing Facility Patient Transaction Notice; or
- For evacuating facilities, continue to complete MDS according to the OBRA schedule -- see the guidelines from CMS by clicking on the link in the MDS Emergency Notice (August 24, 2017).

The August 24, 2017 MDS Emergency Notice is available on-line at following location:

<https://hhs.texas.gov/sites/default/files//documents/doing-business-with-hhs/providers/long-term-care/mds/mds-emergency-protocol.pdf>.

Out-of-State Providers

**11. Are there special provisions for out-of-state providers assisting with disaster response?**

A. Yes, for health care providers employed by a hospital and licensed and in good standing in another state to practice in Texas, the Office of the Governor in accordance with section 418.016 of the Texas Government Code, temporarily suspended all necessary statutes and rules to allow these providers to assist with the disaster response operations.

Hospitals must submit to the applicable licensing entity each out-of-state provider's name, provider type, state of license, and license identification number.

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.

E-mail health care provider information (provider's name, provider type, state of license, and license identification number) to: [TMBtransition@tmb.state.tx.us](mailto:TMBtransition@tmb.state.tx.us)

Benefits

**12. Once the devastating floodwaters recede, there will be a substantial increase of mosquitoes in the affected areas of the state. Do Medicaid, CHIP and other state programs cover mosquito repellent products for the prevention of Zika virus?**

A: Yes. Medicaid, CHIP, CHIP-Perinatal, Healthy Texas Women, Children with Special Health Care Needs (CSHCN) and the Family Planning Program cover mosquito repellent products for pregnant women of any age, women and girls ages 10-55, and men and boys 14 and older.

**13. What is the benefit?**

A: The benefit began May 1, 2017 and ends on December 31, 2017. One can or bottle of mosquito repellent is permitted per pharmacy fill, with 1 refill allowed per month. Mosquito

repellent won't count against the monthly 3-prescription limit for those clients with a monthly limit.

**14. How do clients get the repellent?**

A: Many pharmacies can provide clients mosquito repellent without a prescription from their doctor. Clients should contact their pharmacy to make sure they are participating in this benefit.

If a pharmacy recommends getting a prescription or if the client is enrolled in CSHCN, they may contact their healthcare provider and ask them to send a prescription to the pharmacy.

Providers can send a prescription to their pharmacy via phone, fax, or e-prescription.

If the client receives services from the Family Planning Program, and their healthcare provider offers this benefit, they can pick up mosquito repellent at a participating Family Planning Program clinic.