

Waivers of Regulatory Requirements for Weather-Impacted Long-Term Care Providers

The Health and Human Services Commission and Centers for Medicare and Medicaid Services (CMS) are waiving certain regulatory requirements in response to Harvey.

CMS has issued frequently asked questions (FAQs) and answers related to all health standards and quality issues under declared public health emergencies. The federal guidance in this document is in effect: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/All-Hazards-FAQs.pdf>. CMS may issue further guidance and information related specifically to Harvey.

Following is a list of suspended or amended state and federal requirements for long-term care providers impacted by Harvey and for facilities receiving evacuating residents.

NOTE: Unless specifically noted otherwise, the waivers outlined below apply only to facilities or evacuated residents from facilities located in counties or geographical areas covered by:

- The disaster declaration issued by the Office of the Governor, and
- The president's disaster or emergency declaration under the Stafford Act or National Emergencies Act issued on August 25, 2017.

For tracking purposes, all providers must notify the Dallas Regional Office (RO) and State Survey Agency if they plan to operate under federal waiver authority (i.e., the 1135 waiver). Point of contacts are listed at the end of this document.

Nursing Facilities

- **Admission, Transfer and Discharge**

Waiver of State Licensure Requirement

Until this notice is rescinded, facilities do not need to comply with state admission, transfer, and discharge notification rules for residents being evacuated as a result of Harvey. During an evacuation, the evacuating facility retains responsibility for the care of evacuated residents. As such, discharge notification and transfer/admission paperwork would not apply.

Waiver of Federal Requirement

Evacuating and receiving facilities should refer to questions K-4 and K-5 in the [CMS FAQ document](#) for special Minimum Data Set (MDS) transmission procedures related to admission, transfer, and discharge of impacted residents.

- **Exceeding Licensed Capacity**

Waiver of State Licensure Requirement

Facilities receiving evacuees may exceed license capacity by up to 10% after the request is approved by the DADS Director of Survey Operations. Requests for additional

capacity increases over 10% will be considered on a case-by-case basis. Email all requests for exceeding license capacity to Linda Lothringer at linda.lothringer@hhsc.state.tx.us.

Waiver of Federal Requirement

In regard to certified beds, skilled nursing facilities should follow the CMS guidance in question K-7, Bed Capacity in the [CMS FAQ document](#).

- **3-day Hospital Stay Requirements for Skilled Nursing Facilities**

Waiver of Federal Requirement

CMS has waived the three-day hospital stay requirements for skilled nursing facilities. Please refer to question K-1 in the [CMS FAQ document](#) for additional information.

- **Consultant Pharmacy Requirements**

Waiver of State Licensure Requirement

To allow facilities and pharmacists the bandwidth to focus on challenges that have a more immediate impact to the health and safety of individuals receiving services, DADS is modifying the consulting pharmacy requirements to allow affected NFs to complete August pharmacy consultation documentation requirements (including the monthly drug regimen review) in September.

Waiver of Federal Requirement

Texas has yet to receive information regarding a waiver of federal requirements related to consulting pharmacy and drug regimen review. Facilities wishing to seek a waiver of these requirements should follow the CMS process outlined in the “Other State and Federal Waiver Requests” section of this document.

Assisted Living Facilities

- **Admission, Transfer and Discharge**

Waiver of State Licensure Requirement

Until this notice is rescinded, facilities do not need to comply with state admission, transfer, and discharge notification rules for residents being evacuated as a result of Harvey. During an evacuation, the evacuating facility retains responsibility for the care of its evacuated residents. As such, discharge notification and transfer/admission paperwork would not apply.

- **Exceeding Licensed Capacity**

Waiver of State Licensure Requirement

Facilities may exceed license capacity by up to 10% after the request is approved by the DADS Director of Survey Operations. Requests for additional capacity increases over 10% will be considered on a case-by-case basis. Email all requests for exceeding license capacity to Linda Lothringer at linda.lothringer@hhsc.state.tx.us.

Home and Community Support Services Agencies

- **OASIS Transmission Requirements**

Waiver of Federal Requirement

CMS has authority under the 1135 waiver to modify the Outcome and Assessment Information Set (OASIS) transmission requirements for Medicare-certified home health agencies. See I-2 question and response in the [CMS FAQ document](#). If you have a specific waiver request related to OASIS transmission requirements, please contact the CMS regional office as described below.

- **Exceeding Licensed Capacity**

Waiver of State Licensure Requirement

Inpatient hospice facilities may exceed license capacity by up to 10% after the request is approved by the DADS Director of Survey Operations. Requests for additional capacity increases over 10% will be considered on a case-by-case basis. Email all requests for exceeding license capacity to Linda Lothringer at linda.lothringer@hhsc.state.tx.us.

- **Admission, Transfer and Discharge**

Waiver of State Licensure Requirement

Until this notice is rescinded, inpatient hospice facilities do not need to comply with state admission, transfer, and discharge notification rules for residents being evacuated as a result of Harvey. During an evacuation, the evacuating facility retains responsibility for the care of their evacuated residents. As such, discharge notification and transfer/admission paperwork would not apply.

Intermediate Care Facilities for Individuals with Intellectual Disabilities

- **Admission, Transfer and Discharge**

Waiver of State Licensure Requirement

Until this notice is rescinded, facilities do not need to comply with state admission, transfer, and discharge notification rules for residents being evacuated as a result of Harvey. During an evacuation, the evacuating facility retains responsibility for the care of their evacuated residents. As such, discharge notification and transfer/admission paperwork would not apply.

- **Exceeding Licensed Capacity**

Waiver of State Licensure Requirement

Facilities receiving evacuees may exceed license capacity by up to 10% after the request is approved by the DADS Director of Survey Operations. Requests for additional capacity increases over 10% will be considered on a case-by-case basis. Email all requests for exceeding license capacity to Linda Lothringer at linda.lothringer@hhsc.state.tx.us.

Other State and Federal Waiver Requests

State and federal waiver requests not listed above or in the [CMS FAQ document](#) will be considered on a case-by-case basis.

- If you need a waiver of a state long-term care regulatory requirement not listed above, please contact the Director for Regulatory Policy, Rule and Curriculum Development at calvin.green@hhsc.state.tx.us.
- If you have a request for a waiver of federal requirements not listed above, please email the CMS Dallas Region VI office at RODALDSC@cms.hhs.gov and cc Calvin Green at calvin.green@hhsc.state.tx.us with the following information:
 - Full provider address (including county/city/town/state)
 - CCN (Medicare provider number)
 - Contact person and his or her contact information for follow-up questions should the Region need additional clarification
 - Brief summary of why the waiver is needed
 - Consideration – type of relief you are seeking or regulatory requirements or regulatory reference that the requestor is seeking to have waived.
 - No specific form or format is required to submit the information, but it is helpful to clearly state the scope of the issue and the impact.