

NEW YORK

state department of

HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

November 11, 2012

DAL# NH-12-08
SUBJECT: Hurricane Sandy CMS Waivers/FAQs

Dear Administrator:

The purpose of this letter is to provide guidance to skilled nursing facilities (SNFs) that have been impacted by the effects of Hurricane Sandy. Significant numbers of residents have been evacuated from nursing homes as a result of significant flooding and power outages creating a public health emergency in Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester counties. The Department has received approval from the Centers for Medicare and Medicaid Services (CMS) to allow some flexibility for specific federal regulations to facilitate provision of safe and appropriate care during this emergency period.

The waivers approved by CMS apply **only** to those providers that deliver care and services to residents/evacuees located in the areas noted above and declared as a public health emergency. Providers outside of the affected areas must continue to operate under the existing rules and regulations. The waivers are time limited and dependent on the duration of the emergency situation. All provider types have approval to exceed bed capacity. Information on the Section 1135 Waiver is posted on the CMS website at: <https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/1135-Blanket-Waivers-Approved-for-NY-NJ.pdf>

In response to the numerous questions from providers related to operational concerns post Hurricane Sandy, the Department has created a Frequently Asked Questions (FAQ) document which is attached to this letter. CMS Section 1135 waivers approved for New York have been incorporated into the FAQ document.

The Department anticipates CMS approval of additional flexibility to support appropriate care to nursing home residents. We will communicate any additional waiver approvals as well as when the waivers are no longer in effect. Thank you for your efforts and dedicated assistance in providing resident care during this emergency period. If you have any questions or requests for additional waivers, please contact the Division of Nursing Home and ICF/DD Surveillance at (518)-408-1267.

Sincerely,



Keith W. Servis, Director
Center for Health Care Quality & Surveillance

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Hurricane Sandy Frequently Asked Questions: Nursing Homes

- Q. If a provider needs assistance with HERDS/NUHSUR surveys who should they contact?**
- A. *Those questions can be referred to the Health Commerce Trainer at (518) 473- 1809.*
- Q. If a facility has a supply or power concern who should they contact?**
- A. *Please contact your local Office of Emergency Management (OEM) using the numbers listed in your facility emergency response plan.*
- Q. How should a provider address a concern with interruption in communication (telephone, internet, etc)?**
- A. *The facility must contact their vendor.*
- Q. If a facility has a water supply concern (lack of, contamination) who should be contacted?**
- A. *Between 8:45am to 5:00pm, please contact the NYSDOH Center for Environmental Health at (518) 402-7650 and ask for John Helmeset. If calling after 5:00 p.m. please leave a detailed message and your call will be returned.*
- Q. What are your responsibilities as a “Receiving Facility”?**
- A. *Article 28 nursing homes have existing authority to exceed the capacity stated on their operating certificates in emergency situations pursuant to 10 NYCRR § 401.2 (a) and may increase to 125% of licensed capacity if the facility is not impacted, is fully operational and operating on normal power. Nursing homes exceeding capacity must maintain sufficient staffing levels and supplies to ensure resident health and safety.*
- Q. If I agree to accept nursing home evacuees on a short term basis, do I need a new PRI and SCREEN?**
- A. *Facilities are not required to complete a new PRI and SCREEN for evacuees. To ensure the most appropriate care and services, receiving facilities should request and obtain medical record information that includes a current assessment of the resident’s clinical condition and subsequent medical needs.*
- Q. What Medical Records should the receiving facility obtain?**
- A. *At a minimum, the receiving facility should obtain records that provide sufficient medical and clinical information to safely and appropriately care for each resident. Examples of those records include:*
- a) *Resident demographic information (ie., face sheet)*
 - b) *The most recent history and physical and advance directives*
 - c) *The most recent monthly physician’s orders and progress notes*
 - d) *Comprehensive Care Plans, medication and Treatment Administration Records.*

Q. What services must a receiving facility provide?

A. *The receiving facility is responsible to maintain the health and safety of the transferred residents and to provide services, without additional charge in accordance with those baseline services and needs as outlined in the Medicare and Medicaid payment. Those services include, but are not limited to:*

- a) Nursing and specialized rehabilitation services*
- b) Dietary services*
- c) Room/bed maintenance services*
- d) Routine personal hygiene items and services (includes linens & laundry)*
- e) Medications as per the physician's orders*
- f) Interim physician's services as necessary.*

Q. How can a provider access decertified beds?

A. *New York State has been authorized to process certified bed increases for hospitals and nursing homes, per the request from the facility. All requests will be carefully reviewed on a case-by-case basis with approvals granted by DOH as deemed safe and appropriate.*

Q. Will my impacted facility be subject to an annual survey since we are at the 12 month mark?

A. *CMS, through the 1135 waiver process has allowed for the suspension of onsite survey activities (except for investigations of immediate jeopardy allegations) in the areas impacted by the storm.*

Q. A receiving facility has a patient evacuated from a sending facility that is now appropriate for discharge to home. There is a safe discharge plan that could be effectuated. The sending facility consents to discharge to home. Is a discharge to home permitted now under these circumstances?

A. *The receiving facility is able to discharge the resident to home with a safe and appropriate discharge plan in place. The receiving facility should communicate the discharge readiness, plan, and actual date with the sending facility.*

Q. A receiving facility has several residents from an evacuated facility that is not expected to be operational for an extended period of time. The receiving facility would like to complete official admissions for these residents with consent of the sending facility. Is this permissible at this time?

A. *The evacuating facility should determine by day 15 whether or not residents will be able to return to the evacuating facility within 30 days from the date of the evacuation. When the evacuating facility determines that the residents will not return to the facility within the 30-day time frame, the facility should discharge the resident by completing a discharge assessment whenever possible. The receiving facility will admit the resident (if the actual emergency has resolved, they may also offer alternative choices of other available facilities).*

Q. How should a receiving facility handle patients who are in cots?

A. *Facilities should take every effort to accommodate the special needs of the resident. Operators must utilize sound clinical judgment and take the necessary steps to ensure that the resident's special medical needs are met. At a minimum, this includes providing extra pillows, lifts, overlays, etc.*

Q. How can providers that accept residents evacuated from a skilled nursing facility obtain MDS information?

A. *Skilled nursing facility residents in the public health emergency area may be evacuated to other nursing homes without their medical history. The Minimum Data Set (MDS) may be the primary source of medical record information for many of these residents. Providers accepting such residents may submit requests for consideration to obtain information available on the residents' MDS record by contacting the Quality Improvement Evaluation System (QIES) Help Desk at 1-(888)-477-7876.*

Q. If a displaced resident desires to be admitted to the receiving nursing home because it is more accommodating to the resident and their family (closer to family's home) and that facility has an available bed for admission, can they do this at this time?

A. *Yes, with resident/family consent the resident can be admitted.*

Q. If the evacuated resident is out of medication, what should the receiving nursing home do?

A. *For non-controlled substances: (1.) Retail pharmacies may provide a limited supply of medication, based upon pharmacist discretion, if they are provided with a prescription vial or record. (2.) Pharmacies are allowed to transfer prescription records to another pharmacy. For controlled substances: Providers should contact the resident's physician who can orally prescribe up to a 5-day supply.*

Q. If a nursing home resident was evacuated, how can families locate the resident?

A. *Patient tracking information is being assembled and information regarding resident evacuees will be available in the near future.*

Q. A receiving facility has several patients from an evacuated facility that is not expected to become operational for an extended period of time. The receiving facility would like to formally admit the residents for ongoing care, and the sending facility consents to this. Is this permissible?

A. *Yes, in this situation, admission is permissible as both parties are agreeable and the evacuating facility will be unable to re-occupy their nursing home for an extended period of time.*

- Q. A receiving nursing home is caring for evacuated residents and is seeking to augment its staff to meet resident care needs. A hospital has the ability to assign several credentialed, experienced Patient Care Associates (PCAs) to assist with the care of residents at the nursing home. Is this permissible?**
- A. No, only a certified nursing assistant or licensed professional can provide care to the nursing home resident within the skilled nursing facility.*
- Q. How does the facility track and report costs associated with Sandy?**
- A. A collection tool is being developed to collect damage estimates and other storm related expenses. We anticipate release within the next few weeks. In the interim, if you have questions about completing or submitting the "Costs for Hurricane Sandy" spreadsheets, please contact Mercy Dugan-White either by email (mad22) or telephone (518) 474-8648.*
- Q. Will CMS waive the 3-day prior hospitalization for coverage of a skilled nursing facility stay?**
- A. CMS has approved the waiver of the 1812(f) requirement for the 3-day qualifying hospital stay for skilled nursing facility admission.*
- Q. My facility was significantly impacted by the storm and has pending federal enforcements such as Civil Money Penalty and Denial of Payment for New Admissions. Is there any relief from these enforcement sanctions?**
- A. Yes, there is relief. Under the approved Section 1135 waiver, CMS will suspend Collection of Civil Monetary Penalties (CMP) and terminations that are awaiting a revisit. Nursing Homes under Denial of Payment for New Admissions (DoPNA) need to submit a specific request to the CMS Regional Office requesting relief from this penalty. This is to ensure the circumstances that led to the imposition of the penalty will not be exacerbated by additional admissions to the facility.*
- Q. Our nursing home has a plan of correction (POC) due to DOH in the next few days, can the deadline on submission of the POC be extended?**
- A. Providers required to submit a plan of correction for a CMS enforcement action can have those timeframes extended, and should request an extension through the CMS regional office.*
- Q. Will CMS allow for waivers of certain Life Safety Code (LSC) requirements?**
- A. While CMS will not consider waiving life safety code requirements in general, and not on a blanket basis, it will evaluate individual requests for flexibility in light of their impact on patient health and safety.*
- Q. Can I admit someone to my facility if the PASRR has not yet been completed?**
- A. To the extent that a PASRR screen or assessment has been requested and the appropriate agency has notified the nursing facility of inability to timely perform such action, pursuant to section 1135, CMS authorizes delay in the deadline for completion of the PASRR screen or assessment as long as the PASRR screening*

for assessment is completed as soon as practicable, and no later than the end of the emergency period. When completed, the PASRR screening or assessment must be given the same effect as if timely completed to the extent of determining whether continued nursing facility placement is allowable.