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Waiver or Modification of Requirements Under Section 1135 of the Social Security Act

March 27, 2009

1. Pursuant to Section 1135(b) of the Social Security Act (the Act) (42 U.S.C. § 1320b-5), I hereby waive or modify the following requirements of titles XVIII, XIX, or XXI of the Act or regulations thereunder, and the following requirements of Title XI of the Act, and regulations thereunder, insofar as they relate to Titles XVIII, XIX, or XXI of the Act, but in each case, only to the extent necessary, as determined by the Centers for Medicare & Medicaid Services, to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare, Medicaid and CHIP programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of these requirements as a result of severe storms and flooding, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse:
 - a. Certain conditions of participation, certification requirements, program participation or similar requirements, or pre-approval requirements for individual health care providers or types of health care providers, including as applicable, a hospital or other provider of services, a physician or other health care practitioner or professional, a health care facility, or a supplier of health care items or services.
 - b. Requirements that physicians or other health care professionals hold licenses in the State in which they provide services, if they have a license from another State (and are not affirmatively barred from practice in that State or any State in the emergency area).
 - c. Sanctions under section 1867 of the Act (the Emergency Medical Treatment and Labor Act, or EMTALA) for the redirection of an individual to another location to receive a medical screening examination pursuant to a state emergency preparedness plan or transfer of an individual who has not been stabilized if the transfer arises out of severe storm and flooding-related emergency circumstances.
 - d. Sanctions under section 1877(g) (relating to limitations on physician referral) under such conditions and in such circumstances as the Centers for Medicare & Medicaid Services determines appropriate.
 - e. Limitations on payments under section 1851(i) of the Act for health care items and services furnished to individuals enrolled in a Medicare Advantage plan by health care professionals or facilities not included in the plan's network.
2. Pursuant to Section 1135(b)(7) of the Act, I hereby waive sanctions and penalties arising from noncompliance with the following provisions of the HIPAA privacy regulations: (a) the requirements to obtain a patient's agreement to speak with family members or friends or to honor a patient's request to opt out of the facility directory (as set forth in 45 C.F.R. § 164.510); (b) the requirement to distribute a notice of privacy practices (as set forth in 45 C.F.R. § 164.520); and (c) the patient's right to request privacy restrictions or confidential communications (as set forth in 45 C.F.R. § 164.522); but in each case, only with respect to hospitals in the designated

geographic area that have hospital disaster protocols in operation during the time the waiver is in effect.

3. Pursuant to Section 1135(b)(5), I also hereby modify deadlines and timetables and for the performance of required activities, but only to the extent necessary, as determined by the Centers for Medicare & Medicaid Services, to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare, Medicaid and CHIP programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of these requirements as a result of severe storms and flooding, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

These waivers and modifications will become effective at 3:00 P.M. Eastern Standard Time on March 29, 2009, but will have retroactive effect to March 16, 2009, in the State of Minnesota, and continue through the period described in Section 1135(e). Notwithstanding the foregoing, the waivers described in paragraphs 1(c) and 2 above are in effect for a period of time not to exceed 72 hours from implementation of a hospital disaster protocol but not beyond the period described in Section 1135(e), and such waivers are not effective with respect to any action taken thereunder that discriminates among individuals on the basis of their source of payment or their ability to pay.

The waivers and modifications described herein apply in the geographic area covered by the President's declaration, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, on March 26, 2009, of an emergency in the State of Minnesota as a result of severe storms and flooding; and my March 27, 2009, determination, pursuant to section 319 of the Public Health Service Act, that a public health emergency exists and has existed since March 16, 2009, in the State of Minnesota as a result of a severe storms and flooding.

Date:

Charles E. Johnson
Acting Secretary
Department of Health and Human
Services