



THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C. 20201

WAIVER UNDER SECTION 1135 OF THE SOCIAL SECURITY ACT

September 7, 2005

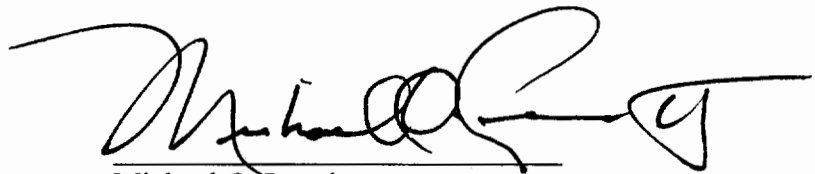
Pursuant to Section 1135(b) of the Social Security Act (the Act) (42 U.S.C. § 1320b-5), I hereby waive the following requirements of titles XVIII, XIX, or XXI of the Act or regulations thereunder, and the following requirements of Title XI of the Act, and regulations thereunder, insofar as they relate to Titles XVIII, XIX, or XXI of the Act, but in each case, only to the extent necessary to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare, Medicaid and SCHIP 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 the effects of Hurricane Katrina, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud and abuse:

1. 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.
2. The requirement that physicians and 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).
3. 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 redirection or transfer arises out of hurricane related emergency circumstances.
4. Limitations on payments under section 1851(i) of the Act to permit Medicare Advantage enrollees to use out-of-network providers in an emergency situation.
5. 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); or (c) the patient's right to request privacy restrictions or confidential communications (as set forth in 45 C.F.R. § 164.522).

Pursuant to Section 1135(b)(5), the Secretary also hereby modifies deadlines and timetables and for the performance of required activities, but only to the extent necessary to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare, Medicaid and SCHIP 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, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud and abuse.

These waivers and modifications will become effective at 5:00 p.m. Eastern Standard Time on September 9, 2005, but will have retroactive effect to August 29, 2005 in Arkansas, Colorado, Georgia, North Carolina, Oklahoma, Tennessee, West Virginia, and Utah and continue through the period described in Section 1135(e)(1), unless extended by notice as provided in Sections 1135(e)(2). Notwithstanding the foregoing, the waivers described in paragraphs 3 and 5 above are in effect for a period of time not to exceed 72 hours from implementation of a hospital disaster protocol, 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 declarations, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, on September 2, 2005 of an emergency in Arkansas, on September 5, 2005 of an emergency in Colorado, Georgia, North Carolina, Oklahoma, Tennessee, West Virginia, and Utah, all due to Hurricane Katrina; my September 7, 2005 determination, pursuant to section 319 of the Public Health Service Act, that a public health emergency exists and has existed since August 29, 2005 in Arkansas, Colorado, Georgia, North Carolina, Oklahoma, Tennessee, West Virginia, and Utah.

A handwritten signature in black ink, appearing to read "Michael O. Leavitt", with a long horizontal line extending to the right from the end of the signature.

Michael O. Leavitt  
Secretary  
Department of Health and Human Services