Kim Brandt's Hearing on
"Examining HHS's Public Health Preparedness for and Response to
The 2017 Hurricane Season"
E&C O&I
October 24, 2017

<u>The Honorable Gus Bilirakis</u>

1. **The "alternate/backup power" provision of the Emergency Preparedness Rule is final next month, what is the size of the pool of providers that are currently 'out of compliance' with this rule?**

    a. **Why despite having a year to comply, are these providers still out of compliance with this rule?**

Answer: Patient safety is a top priority at CMS, and we expect it to be the top priority in every single facility that participates in the Medicare and/or Medicaid program, including nursing homes. In order to become certified by CMS, a nursing home must meet basic health and safety requirements included in the Social Security Act and the Medicaid Requirements for Long Term Care Facilities. We expect facilities to meet these requirements at all times, even in emergencies. For long-term care facilities, including nursing homes, these requirements[1] incorporate requirements for infection control, quality of care, nursing services, and many others, including numerous emergency power[2] and preparedness[3] standards. For example, they are required to have emergency power systems adequate enough to supply power for lighting all entrances and exits; equipment to maintain the fire detection, alarm and extinguishing systems; and life support systems, such as ventilators, in the event that normal electrical supply is interrupted. When life support systems are used, the facility must provide emergency electrical power with an emergency generator that is located on the premises. In addition, the long-term care facility must have an emergency plan, and must implement emergency and standby power systems based on that emergency plan.

Our requirements also outline resident rights. Every resident has a right to a safe, clean, comfortable and homelike environment, including receiving treatment and supports for daily living safely. For example, all CMS-certified long-term care facilities must provide comfortable and safe temperature levels; for those initially certified after October 1990, this is specifically defined as 71 to 81 degrees Fahrenheit. Facilities are expected to meet these requirements at all times, even during emergencies.

Using lessons learned from previous natural disasters, CMS updated and improved existing emergency preparedness requirements in our Requirements for nursing homes and other providers participating in Medicare and Medicaid by issuing an Emergency Preparedness Final

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[1] 42 CFR Part 483
[2] 42 CFR §483.73(e)
[3] 42 CFR §483.73

Rule.[4] In our updates, we clarified that long-term care facilities, including nursing homes, must store emergency fuel and associated equipment and systems, and introduced additional testing requirements for their emergency and stand-by-power systems.[5] The new standards became effective on November 15, 2016. Surveys to evaluate compliance with the new requirements will begin November 15, 2017, at which time we will assess whether additional resources are needed by facilities.

Transparency is an important part of CMS's patient safety work and CMS is committed to making sure that patients, their families and policymakers have the information they need about the health care facilities we oversee. CMS's Nursing Home Compare Website[6] contains resident quality of care and staffing information for more than 15,000 Medicare and Medicaid nursing homes around the country. The website includes detailed reports on health inspections, life safety code inspections and any identified noncompliance deficiencies.

b. **How are inspections prioritized: By provider size? By season? (testing northern providers during winter; southern providers during summer) By non-compliance history?**

Answer: Certain Medicare participating facility types have statutorily-mandated survey frequencies: each individual nursing home must be surveyed at least every fifteen months; each home health agency must be surveyed at least every three years; and hospice facilities must be surveyed at least once every three years. Hospitals are also surveyed at least once every three years. In addition, surveys are conducted in response to complaints received from patients, providers, facility staff, or others who have concerns about a facility within our oversight. Complaint surveys can be performed at any time of the year, with the actual timing dependent on the severity of the allegation.

The Honorable Frank Pallone, Jr.

1. **The Centers for Medicare and Medicaid Services (CMS) have established a special open enrollment period for hurricane victims. Since Puerto Rico receives medical coverage and benefits differently from U.S. states, what efforts are being made to ensure affected people in Puerto Rico are receiving aid?**

Answer: CMS established a Federal Health Insurance Exchange special enrollment period, allowing certain individuals impacted by these hurricanes who experienced a qualifying life event to select a new 2017 Exchange plan or make changes to their existing plan at any time through December 31, 2017. In addition, individuals who reside in, or move from, areas affected by a hurricane in 2017 will be eligible for a special enrollment period that extends the 2018 Annual Open Enrollment Period through December 31, 2017. CMS also established a Medicare Part C and D special enrollment period, allowing individuals affected by the hurricanes to enroll in, dis-enroll from, or switch, Medicare health or prescription drug plans. It is available from the

[4] https://www.gpo.gov/fdsys/pkg/FR-2016-09-16/pdf/2016-21404.pdf
[5] 42 CFR §483.73(e)
[6] https://www.medicare.gov/nursinghomecompare/search.html

start of the incident period and runs through the end of the calendar year.

In addition, we are dedicated to making sure all of our program beneficiaries impacted by the hurricanes are able to access their needed treatments and supplies. This is why we are using our waiver authority to give beneficiaries, providers, suppliers, and states the flexibility they need to meet emergency health situations. For example, CMS established a hotline to assist healthcare providers in Puerto Rico, the U.S. Virgin Islands, and several affected states in receiving temporary Medicare billing privileges, making sure providers will be appropriately reimbursed for their critical services. CMS also gave Medicare providers in locations impacted by the hurricanes the flexibility to move patients between facilities, administer care in almost any location, and approve out-of-state or out-of-network providers as needed, in order to ensure continuity of care.

2. **There has been outward migration from the Island to mainland states. Those affected are still eligible for benefits. What efforts are being made to ensure that Puerto Ricans displaced by Hurricane Maria know about the enrollment period in the mainland and how to apply? Are any outreach efforts and materials being provided in Spanish?**

Answer: CMS is committed to making sure our beneficiaries have access to necessary treatment, even when they have been evacuated. CMS has released materials in Spanish[7] in order to make sure those who are still eligible for enrollment in Medicare through a Special Enrollment Period are informed. In addition, Medicare Beneficiaries and Exchange consumers can receive information about Special Enrollment Periods in English or Spanish by contacting the 1-800- MEDICARE or the Exchange Call Center. We are also working with our partners on the ground to see how we can better meet the needs of those in affected areas, including outreach efforts in Puerto Rico.

Addendum: On December 22, 2017, CMS released an FAQ addressing coverage issues for displaced Puerto Rican Medicaid, traditional Medicare, and Medicare Advantage beneficiaries in Florida.[8] In addition, a Spanish translation of the FAQ will soon be available on the CMS website.

3. **CMS extended open enrollment until December 31, 2017, for all Medicare beneficiaries and for those enrolled in plans through the Federal Health Insurance Exchange. It appears, however, that power and communications systems may continue to be severely restricted through that time period, and possibly into the first quarter of next year and beyond. What steps is CMS taking to ensure that affected individuals in Puerto Rico and the U.S. Virgin Islands will be able to obtain coverage even if electricity and/or Internet services are not restored by the end of the year?**

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[7] Examples at https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-10-30-3.html#, https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-09-12.html, https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-09-11.html, https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-09-08-2.html, https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-09-08-3.html

[8] https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/Questions-and-Answers-for-displaced-Puerto-Ricans-in-Florida-Englishpdf.pdf

Answer: CMS is committed to making sure our beneficiaries have access to necessary treatment. Working with our partners on the ground in Puerto Rico and the U.S. Virgin Islands, we will continue to assess how we can best accommodate their needs.

Addendum: On December 19, 2017, CMS announced an extension until March 31, 2018 for the Medicare Part C and Part D special enrollment period allowing individuals affected by the hurricanes to enroll in, disenroll from, or switch plans in the event they were unable to make an election during another qualifying election period.

4. **CMS has taken a number of actions to improve open enrollment in the Marketplaces and in Medicare, but to date, Medicaid has been largely absent from Administration activity. This is concerning given that, in Puerto Rico for example, more than half of the population receive their health coverage through Medicaid. Similarly, in both Florida and Texas, more than half of all births are financed by the Medicaid program, and more than I in every 3 children is covered through Medicaid. Given the volume and special needs for those with Medicaid coverage in Hurricane affected areas, what steps does CMS plan to take to provide clear guidance on disaster- related Medicaid coverage that addresses administrative burdens? For example, similar to the Administration's response during Hurricane Katrina, will this Administration take actions such as permitting a simplified Medicaid application or allowing for self-attestation for a temporary period of time for Hurricane victims in the absence of documentation?**

Answer: CMS is dedicated to making sure all of our program beneficiaries impacted by the hurricanes are able to access their needed treatments and supplies. This is why we are using our waiver authority to give beneficiaries, providers, suppliers, and states the flexibility they need to meet emergency health situations. There is considerable flexibility for states and territories to streamline and simplify enrollment in both Medicaid and CHIP in emergency situations. For example, for a limited time period:

- States and Territories have flexibility to permit enrollment of new applicants based on self-attestation of necessary information if regular verification sources and processes are not available, allowing eligibility criteria to be verified post-enrollment.
- Use of hospitals, providers and other qualified entities identified by the state to make presumptive eligibility determinations is also available to facilitate enrollment and ensure immediate coverage.
- States and territories also can extend deadlines for renewals when emergency circumstances prevent them from meeting ordinary deadlines.

States generally have flexibility to suspend premiums, enrollment fees and other cost sharing charges for beneficiaries impacted by a hurricane. CMS is available to provide states with technical assistance to ensure that needed state plan amendments or other authorities are in place.

<u>The Honorable Jan Schakowsky</u>

1. **Following up, in the aftermath of disasters like these devastating Hurricanes, government should provide relief and recovery workers with required health and safety protections**

and Personal Protective Equipment (PPEs) to ensure workers' health is not compromised during current and ongoing clean- up and future rebuilding. Unfortunately, we have heard that this is causing problems in Puerto Rico.

We know Puerto Ricans in both the private and public sector want to do the work needed to help rebuild their lives, homes, communities, and their Commonwealth. Government workers are willing and eager to help address short-term needs - even when working as assigned by the Puerto Rico government is outside their long-standing employee responsibilities and expertise. Nonetheless, workers simultaneously want to protect their own health and safety and avoid unnecessary health problems. The long-term medical problems flowing from the tragic events on September 11, 2001 and the resulting cleanup efforts at Ground Zero and on the Pile taught us the vital importance of providing appropriate health and safety equipment and training to workers in conditions that are dangerous or uncertain.

a. **What is HHS, CDC, and other federal agencies doing to ensure local Puerto Rico government employees have the necessary health and safety equipment to protect themselves during their ongoing relief and recovery work?**

b. **Have these issues been addressed in Puerto Rico?**

c. **Which federal government agencies are responsible for providing needed PPEs to recovery workers?**

Answer: CMS defers to the Centers for Disease Control and Prevention (CDC) and other HHS offices and components to respond to this question.

The Honorable Kathy Castor

1. **A number of health professionals from the University of South Florida in my Congressional District traveled to Puerto Rico recently to see how they could support the health care needs of our fellow citizens there and a few will be going back in early November. One main concern of the physicians who went to Puerto Rico was how long it took to get the Emergency Medical Assistance Compact (EMAC) into place, which would allow medical professionals from the State of Florida to go to Puerto Rico and be able to practice under their Florida license.**

   a. **Did you hear similar concerns from health professionals in other states?**
   b. **What role does the federal government play in these compacts?**
   c. **How can the federal government facilitate quick approval of these compacts to allow health professionals from other states to assist states or territories that have been impacted by a natural disaster?**

Answer: The Emergency Medical Assistance Compact (EMAC) is a state-to-state mutual aid system under which states contract with other states or territories to send personnel, equipment

and commodities to assist with response and recovery efforts in other states/territories. Although CMS does not have a role in EMAC, there are many things CMS can do to help providers continue to take care of patients following disasters. For example, the Section 1135 waiver authority enables CMS to waive or modify certain Medicare, Medicaid, CHIP, Stark Law, and EMTALA requirements, including certain deadlines, quality reporting requirements, conditions of participation, and certification requirements. Providers can now submit waiver requests to the state survey agency or the CMS regional office,[9] and they will be evaluated to ensure that they meet the requirements set out under the law. CMS has made all approved waivers and hurricane related information, such as Frequently Asked Questions and Presidential declarations, available on its website.[10]

In each of these emergency events, CMS is using our waiver authority to maintain access to care for Medicare and Medicaid beneficiaries by supporting the ability of providers, suppliers, hospitals, and other healthcare facilities that participate in those programs to provide timely care to as many people impacted by the storm as possible. For example, using our waiver authority, CMS:

- Gave Medicare providers in locations impacted by the hurricanes the flexibility to move patients between facilities, administer care in alternative locations, and approve out-of-network providers as needed to ensure continuity of care.
- Expedited Medicaid enrollment for out-of-state providers. This means providers can be reimbursed for services provided to beneficiaries who have been evacuated from locations impacted by the hurricanes, and allows reimbursement to providers who go into impacted areas to provide relief.

Though not a part of EMAC, CMS staff in Region II coordinated with the Puerto Rico Department of Health to develop and facilitate a process for credentialing of nurses and technicians from the mainland to provide relief for island healthcare personnel who were either working extended hours or were unable to get to work, especially in dialysis facilities on the island.

Addendum: On November 28, 2017, CMS approved a Medicaid waiver for the Puerto Rico Disaster Relief demonstration, which authorizes Puerto Rico to provide off-island medical coverage to Medicaid beneficiaries who are eligible for the Federal Emergency Management Agency (FEMA) Transitional Shelter Assistance Program who are temporarily relocated to New York and Florida. The effective date of the demonstration is November 13, 2017, and the waiver expires January 18, 2018.[11]

The Honorable Pete Olson

1. After tackling 3 Hurricanes in a short period of time, what strains have you seen on your current resources? Also, what additional resources do you need to provide these communities the help that they need?

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[9] https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/Requesting-an-1135-Waiver-Updated-11-16-2016.pdf
[10] https://www.cms.gov/About-CMS/Agency-Information/Emergency/Hurricanes.html
[11] https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/?entry=44731

Answer: Our approach to disaster preparedness and response has been informed by CMS's experience responding to Hurricane Katrina and other recent significant disasters. For example, the devastation of Hurricane Harvey taught us valuable lessons that allowed us to respond even more quickly for Hurricanes Irma and Maria.

HHS is working with the Administration to identify needs as they arise. To date, OMB has sent two emergency supplemental requests to Congress. The initial request included funding for organizations providing rapid emergency response, like FEMA's Disaster Relief Fund and the federal flood insurance program. We know that there are significant health care needs in the areas impacted by these hurricanes, including in Puerto Rico, and we look forward to working with Congress on how you can help us address these needs.