

# Insights

## CMS Emergency Preparedness Final Rule Nears Implementation Date

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Hurricanes Harvey and Irma have devastated our nation in recent weeks and significantly impacted health care facilities in the affected areas. To better address preparedness for disasters such as Hurricanes Harvey and Irma, the Centers for Medicare and Medicaid Services (“CMS”) issued the Emergency Preparedness Final Rule<sup>[1]</sup> (the “Final Rule”) for health care facilities on September 8, 2016 that became effective November 16, 2016. However, health care facilities have not been required to fully implement the requirements until November 16, 2017. While CMS has given significant attention to the Final Rule in light of the many major disasters that have occurred in the last ten years, and addressed the need for continuing access and quality of health care during such emergencies, Hurricanes Harvey and Irma are the latest examples of how essential adequate emergency plans are for health care facilities.

While hospitals and other facilities have long been subject to emergency preparedness requirements through accreditation standards, the Final Rule is now included in the CMS Conditions of Participation. As a result, all health care facilities that participate in Medicare and Medicaid must ensure full compliance with the Final Rule, regardless of accreditation standards, by November 16, 2017. On June 2, 2017, CMS issued a memorandum with advanced guidance on Appendix Z of the State Operations Manual, which contains the interpretative guidelines and survey procedures for the Final Rule. Importantly, the memorandum highlights that the Final Rule applies to seventeen (17) different types of health care facilities, including:

- Religious Nonmedical Health Care Institutions
- Ambulatory Surgical Centers
- Psychiatric Residential Treatment Facilities
- Programs of All-Inclusive Care for the Elderly
- Hospitals
- Transplant Centers
- Long Term Care Facilities
- Hospices
- Home Health Agencies
- Comprehensive Outpatient Rehabilitation Facilities
- Critical Access Hospitals

- Clinics, Rehabilitation Agencies or Public Health Agencies as Providers of Outpatient Physical Therapy and Speech-Language Pathology Services
- Community Mental Health Centers
- Organ Procurement Organizations
- Rural Health Clinics and Federally Qualified Health Clinics
- End Stage Renal Disease Facilities
- Intermediate Care Facilities for Individuals with Intellectual Disabilities

The Final Rule is designed to address three key concepts that CMS considers essential to maintaining access to health care during a disaster, including (1) safeguarding human resources; (2) maintaining business continuity; and (3) protecting physical resources. While the specific requirements for each type of facility may vary, these three concepts are achieved through four common core elements of each program. The general requirements of each element include:

- **Risk Assessment and Emergency Planning** – Facilities are required to develop and implement an emergency preparedness plan using an “all hazards approach.” Plans developed under this approach address the risks of all types of hazards, as well as hazards and disasters specific to the location and type of provider.
- **Policies and Procedures** – Facilities must create necessary policies and procedures to implement the plan created from the Risk Assessment and Emergency Planning element, while ensuring that the policies and procedures are compliant with state and federal laws.
- **Communication Plan** – Facilities are required to develop a communication plan with a system for contacting appropriate staff, patients’ treating physicians, and other necessary persons that complies with federal and state law.
- **Training and Testing** – Facilities must conduct initial and annual refresher training on the emergency plan and procedures for new and existing staff, as well as annual testing of the policies and procedure with staff. The training must be updated at least annually.

As November 16, 2017 rapidly approaches, facilities affected by the Final Rule should ensure they can demonstrate compliance with the requirements to avoid being cited for deficiencies on their next survey. While all seventeen types of facilities listed above are affected by the Final Rule, the specific requirements may vary by facility, therefore facilities should carefully review the Conditions of Participation applicable to them for the requirements specific to their facility. The Final Rule may be accessed [here](#).

If you have any questions or require additional information regarding the Final Rule or related compliance efforts, please contact Susan E. Ziel.

[1] “Medicare and Medicaid Programs: Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers,” 81 Fed. Reg. 63860 (Sept. 16, 2016).