# Appendix B.13.11

# Organization Level Continuity Planning Resources

The following standards provide organizations frameworks for establishing a process and standards-based continuity and recovery program. The standards are applicable to any type of organization.

* [ASIS SPC.1-2009 Organizational Resilience: Security, Preparedness, and Continuity Management Systems-Requirements with Guidance for Use](https://www.ndsu.edu/fileadmin/emgt/ASIS_SPC.1-2009_Item_No._1842.pdf)
* [NFPA 1600: Standard on Disaster/Emergency Management and Business Continuity Programs](https://www.nfpa.org/codes-and-standards/nfpa-1600-standard-development/1600)

## Community Level Continuity Planning Resources for Pandemics

The following resources provide communities frameworks for understanding essential services during an event that will affect the community’s ability to maintain healthcare system services and for establishing pandemic continuity plans for the healthcare system.

* [Centers for Disease Control and Prevention - Influenza (Flu)](http://www.flu.gov/planning-preparedness/community/index.html)
* [Ready.gov - Pandemics](https://www.ready.gov/pandemic)

## Fiscal Considerations

### Disaster Declaration the Robert T. Stafford Disaster Relief and Emergency Assistance Act

At the request of the Governor of an affected State, or a Chief Executive of an affected Indian Tribe, the President may declare a major disaster or emergency if an event is beyond the combined response capabilities of the State, Tribal, and jurisdictional governments. Among other things, this declaration allows Federal assistance to be mobilized and directed in support of State, Tribal, and jurisdictional response efforts. Under the Stafford Act (42 USC Chapter 68), the President can also declare an emergency without a Gubernatorial request if primary responsibility for response rests with the Federal Government because the emergency involves a subject area for which the United States exercises exclusive responsibility and authority.

In addition, in the absence of a specific request, the President may provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, and notify the State of that activity.

FEMA administers disaster relief funding allowed under the Stafford Act. Reimbursement eligibility rules apply for certain aspects of emergency medical care including:

* Treatment and monitoring of disaster victims requiring medical care.
* Vaccinations for disaster victims, emergency workers and medical staff.
* Only private nonprofit healthcare facilities may directly apply for FEMA assistance grants.
* For-Profit entities may be indirectly eligible through established mutual aid agreements, EOP, or memorandums of understanding with other nonprofit entities.
* FEMA’s role as “payer of last resort” requires individuals, as well as entities like hospitals and other medical facilities, to exhaust all other forms of insurance and reimbursement before seeking assistance FEMA
* Access to the FEMA forms: <https://www.fema.gov/forms>

### Medicare Claims Submission

Healthcare organizations may experience operational circumstances that may impede their ability to meet many of the Medicare requirements, including conditions of participation, certification, and proper claims submission procedures. Activities that will assist healthcare organizations in meeting federal and state requirements include developing and implementing processes to:

* Monitor and report staffing issues that may affect claims submission
* Alert local, state, and federal authorities on medical surge conditions that may overwhelm the healthcare system and create a backlog of claims submissions for both Medicaid/Medicare and private payer submissions. The WCMHPC HMAC will work with the MDH to assist in this process.
* Monitor and document volunteer and out-of-state personnel who are working with the healthcare organization and assess if they will affect the organization’s ability to be reimbursed by Medicare.
* Monitor the impact of any declaration emergency/disaster or implementation of Crisis Standards of Care as it relates to claims submission and reimbursement.
* Monitor and report issues relating to the healthcare organization’s ability to maintain records, submit electronic claims and process checks to pay employees, contractors, and vendors.
* Sign up for CMS updates via the CMS website. <https://www.cms.gov/>

### Accelerated/Advanced Payment from Medicare

The Medicare accelerated payment provisions allows Part A healthcare providers to receive payment for services after the services have been provided but before the healthcare provider submits a claim to CMS.

Three situations that may justify accelerated payment are:

1. A delay in payment from the Fiscal Intermediary (FI) for covered services rendered to beneficiaries whereby the delay had caused financial difficulties for the healthcare provider,
2. Highly exceptional situations where a healthcare provider has incurred a temporary delay in its bill processing beyond the healthcare providers normal billing cycle, or
3. Highly exceptional situations where CHS deems an accelerated payment is appropriate.

### Federal Regulation Waivers

#### **Section 1135 Waiver**

The Social Security Act authorizes Medicare, Medicaid, the Children’s Health Insurance Program (CHIP), and social services programs of the Department. It authorizes the Secretary, among other things, to temporarily modify or waive certain Medicare, Medicaid, CHIP, and HIPAA requirements when the Secretary has declared a public health emergency and the President has declared an emergency or a major disaster under the Stafford Act or a national emergency under the National Emergencies Act.

The 1135 waiver authority applies only to Federal requirements and does not apply to State requirements for licensure or conditions of participation.

Sanctions may be waived under Section 1135 for the following requirements:

* Conditions of Participation
* Licensure Requirements
* EMTALA
* Physician Self-referrals
* HIPAA Regulations
* Out-of-network payments

Examples of requirements waived/modified under section 1135 waivers:

* Hospitals- recordkeeping requirements, certification for organ transplants
* Inpatient beds- modifications to expand the number of beds
* Critical Access Hospitals- waiver of classification requirements for critical access hospitals, inpatient rehabilitation facilities, long term care facilities, psychiatric units
* EMTALA - waiving EMTALA sanctions for transferring patients to other facilities for assessment, if the original facility is in the area where a public health emergency has been declared. (other provisions of EMTALA remain in full effect)
* HIPAA - waiving certain HIPAA privacy requirements so that healthcare providers can talk to family members (other provisions of HIPAA remain in full effect)

Waivers for EMTALA (for public health emergencies that do not involve a pandemic disease) and HIPAA requirements are limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. Waiver of EMTALA requirements for emergencies that involve a pandemic disease last until the termination of the pandemic-related public health emergency.

#### [Section 1115 Medicaid Waivers](https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/index.html)

Section 1115 the HHS Secretary to conduct demonstration projects that further the goals of Medicaid, Medicare, and CHIP. This waiver has been used to ease some of the statutory requirements during a disaster for persons eligible for Medicaid, Medicare, and CHIP.

#### **Social Security Act, Section 1812(f) Medicaid Waivers**

The Act authorizes the Secretary to provide for skilled nursing facility (SNF) coverage in the absence of a qualifying hospital stay, as long as this action does not increase overall program payments and does not alter the SNF benefit’s “acute care nature” (that is, its orientation toward relatively short-term and intensive care).

### Insurance Strategies

Insurance is one strategy for healthcare organizations to transfer risk and better assure organizational sustainability and continuity of operations. Healthcare organizations should maintain relevant insurance products to protect against losses from a disaster. Options might include:

* **Accounts Receivable Insurance –** protects healthcare organizations against their inability to collect their accounts receivable because of the loss of supporting records that have been destroyed by a covered cost cause of loss. This type of insurance also covers “the extra collection expenses that are incurred because of such loss or damage and other reasonable expenses incurred to re-establish records of accounts receivable after loss or damage.
* **Business Interruption Insurance** - compensates the healthcare organization for lost income if the HCO has to vacate the premises due to disaster related damage that is covered under its property insurance policy. Policies typically cover profits the HCO would have earned based on financial records, had the disaster not occurred. The policy will cover operating expenses that are continuous through the disaster event.
* **Civil Authority Insurance –** is an extension of business interruption coverage, compensates an healthcare organization for lost income and additional expenses arising out of suspension of the insured’s operations necessitated by an order of civil authority (“closure order”) which prevents access to the insured’s property.
* **Contingent or Dependent Business Interruption Insurance –** protects the earnings of the insured following physical loss or damage to the property of the insured’s suppliers or customers, as opposed to its own property. Dependent property is frequently defined as “property operated by others upon whom you depend to:
  + Deliver materials or services to you or to others for your account (not including utilities).
  + Accept your products or services.
  + Manufacture products for delivery to your customers under contact for sale.
  + Attracts customers to your business.
* **Cyber Insurance -** An insurance product used to protect businesses and individual users from Internet-based risks, and more generally from risks relating to information technology infrastructure and activities.
* **Ingress/Egress Insurance -** similar to CAI coverage except that closure order from a civil authority is not necessary. To trigger coverage, many ingress/egress polices require, because of the damage to the property, that the property be completely inaccessible.
* **Pandemic Disease Business Interruption Insurance** - compensates the healthcare organization for lost income if the HCO has to vacate the premises due to disaster related damage that is covered under its property insurance policy. Policies typically cover profits the HCO would have earned based on financial records, had the disaster not occurred. The policy will cover operating expenses that are continuous through the disaster event.

### Pandemic Disaster Assistance Policy

In March, 2020, as a result of the COVID-19 Pandemic funding opportunities were made available through both State and Federal governments to support activities during the response. In March 2007, FEMA issued a new Disaster Assistance Policy (DAP) that establishes the types of “emergency protective measures that are eligible under the Public Assistance Program during a Federal response to an outbreak of human influenza pandemic in the U.S. and its territories.” The Pandemic DAP *may* cover additional reimbursement costs related to the management, control, and reduction of immediate threats to public health and safety. Specific health and social service expenditures that may be reimbursable include:

* Purchase and distribution of food, water, ice, medicine, and other consumable supplies.
* The movement of supplies and personnel.
* Emergency medical care in a shelter or temporary medical facility.
* **Temporary medical facilities when existing facilities are overloaded.**
* Sheltering for safe refuge of patients when existing facilities are overloaded.
* Communicating health and safety information to the public.
* Storage and internment of unidentified human remains.
* Mass mortuary services.

Payment for care at Hospital ACSs: <https://www.cms.gov/files/document/covid-state-local-government-fact-sheet-hospital-alternate-care-sites.pdf>

### Federal Recovery Support Functions

#### **Overview**

The Recovery Support Functions were created within the National Disaster Recovery Framework (NDRF) to bring together the core recovery capabilities of Federal departments and agencies and other supporting organizations- including those not active in emergency response-to focus on community recovery needs.

The Recovery Support Functions (RSF’s) comprise the NDRF coordinating structure for key functional areas of assistance. Their purpose is to support local governments by facilitating problem solving, improving access to resources and by fostering coordination among State and Federal Agencies, nongovernmental partners, and stakeholders.

The objective of RSFs is to facilitate the identification, coordination, and delivery of Federal assistance needed to supplement recovery resources and efforts by local, State and Tribal governments, as well as private and nonprofit sectors. The RSFs also encourages and complements investments and contributions by the business community, individuals, and voluntary, faith-based and community organizations. These RSF activities assist communities with accelerating the process of recovery, redevelopment, and revitalization.

#### **Health & Social Services Recovery Support Function**

The Health and Social Services RSF mission is for the Federal Government to assist locally led recovery efforts in the restoration of the public health, healthcare and social services networks to promote the resilience, health and well-being of affected individuals and communities. When the Health & Social Services RSF is activated, both primary agencies and supporting organizations are expected to be responsive to the function related communication and coordination needs.

Activation is generally considered when one or more of the following factors apply:

* When the President declares a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and Federal assistance is requested by the appropriate state authorities to assist with their health and social services recovery efforts.
* When there is a Public Health Emergency declaration by the HHS Secretary.
* When there is an activation of ESF #6 (Mass Care) and /or ESF #8 (Health & Medical).
* When a jurisdiction is designated for both FEMA Public Assistance and Individual Assistance.
* When recovery activities involve more than one H&SS RSF primary agency.

Outcomes for the Health and Social Services Recovery Support Function include:

* Restore the capacity and resilience of essential health and social services to meet ongoing and emerging post-disaster community needs.
* Encourage mental/behavioral health systems to meet the mental/behavioral health needs of affected individuals, response and recovery workers, and the community.
* Promote self-sufficiency and continuity of the health and well-being of affected individuals; particularly the needs of children, seniors, people living with disabilities whose members may have additional functional needs, people from diverse origins, people with limited English proficiency, and underserved populations.
* Assist in the continuity of essential health and social services, including schools.
* Reconnect displaced populations with essential health and social services.
* Protect the health of the population and response and recovery from the long-term effects of a post-disaster environment.
* Promote clear communications and public health messaging to provide accurate, appropriate, and accessible information; ensure information is developed and disseminated in multiple mediums, multi-lingual formats, and alternate formats, is age-appropriate and user-friendly and is accessible to underserved populations.

### Supporting Reference Documents

* [EMTALA Requirements and Options for Hospitals in a Disaster](https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/downloads/SCLetter09_52.pdf)
* [FEMA Reimbursement Quick Guide for Acute Care Hospitals](https://www.semndhc.org/wp-content/uploads/2014/01/FEMA-ACH_ReimbursementGuide.pdf)
* [CMS Information on Section 1135 Waivers](https://www.cms.gov/files/document/cms-waivers-and-covid-19-response.pdf)
* [CMS Medicare Financial Management Manual Chapter 3 - Overpayments](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/fin106c03.pdf)
* [FEMA Human Influenza Pandemic Disaster Assistance Policy (DAP)](https://www.hsdl.org/c/view?docid=13921)
* [1135 Waiver at a Glance (cms.gov)](https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertemergprep/downloads/1135-waivers-at-a-glance.pdf)