

March 13, 2020

Via electronic mail: RODALDSC@cms.hhs.gov

Re: Request for Waivers under Section 1135 of the Social Security Act related to COVID-19
Emergency

To Whom it May Concern:

As you are aware, when the President declares a disaster or emergency under the Stafford Act or National Emergencies Act and the HHS Secretary declares a public health emergency under Section 319 of the Public Health Service Act, the Secretary is authorized to take certain actions in addition to his regular authorities, including temporarily waiving or modifying certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements under section 1135 of the Social Security Act to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in Social Security Act programs in the emergency area.

The conditions of requesting a Section 1135 waiver having been satisfied by President Trump's COVID-19 Emergency Declaration today and Secretary Azar's prior public health emergency declaration related to COVID-19, on behalf of all Medicare-participating hospitals in Texas, the Texas Hospital Association requests the following waivers:

1. Suspend section 1867 of the Social Security Act (the Emergency Medical Treatment and Labor Act, or EMTALA) to allow hospitals to screen or triage patients at a location offsite from the hospital's campus. THA understands that CMS has issued guidance permitting hospitals to set up alternate locations to perform medical screening examinations. In an effort to prevent the transmission of COVID-19, hospitals should be permitted to screen in off campus hospital-controlled sites to afford additional flexibility. [See current CMS guidance on EMTALA and COVID-19](#). In addition, waive EMTALA sanctions for transfer of unstable patient as necessitated by public health emergency.
 - This allows more flexibility to separate patients in order to prevent the spread of COVID-19 without risking an EMTALA violation. CMS' EMTALA guidance is very helpful, but this would be the most thorough form of protection.
2. Waivers related to conditions and requirements of participation, certification requirements and preapproval requirements.
 - This is a general waiver, but it allows a hospital that is unable to meet a condition of participation or other requirement due to COVID-19 to request a waiver from CMS.
3. Waiver of 42 C.F.R. § 482.22(a) so that physicians whose privileges will expire, and new physicians can practice before full medical staff/governing body review and approval.

- This removes some red tape to onboarding additional physicians or renewing the credentials of existing physicians.
4. Waive the requirement under Section 1812(f) of the Social Security Act for a 3-day hospital stay prior to coverage of a skilled nursing facility stay.
 - This allows hospitals to discharge patients to long term care more quickly to make room for more acute patients.
 5. Waive discharge planning requirements so that hospitals can discharge patients who no longer need acute care to post-acute providers that can accept them in an efficient manner to free beds for acutely ill patients. See 42 C.F.R. §§ 482.43(a)(8); 485.642(a)(8).
 - This allows patients to be discharged and self-quarantined more quickly.
 6. Waive 42 C.F.R. 485.620, which sets a 25-bed limit and 96-hour stay limitation for critical access hospitals.
 - This allows a critical access hospital to treat or isolate a greater number of patients if a transfer is otherwise unwarranted.
 7. Allow hospitals to treat medical/surgical patients in non-PPS hospitals (e.g. long-term care hospitals) and/or units (e.g. rehabilitation). This would ensure that psychiatric or rehab units can be utilized for acute care, and that acute care is paid as acute care.
 - This allows hospitals to flex their space to use it more efficiently, which can be important for patient isolation.
 8. Waive 42 C.F.R. § 482.41 so non-hospital buildings/space can be used for patient care, provided sufficient safety and comfort is provided for patients and staff.
 - This ensures that hospitals can designate alternate sites for patient care without running into issues.
 9. Waive sanctions under section 1877(g) of the Social Security Act (relating to limitations on physician referral).
 - In the event of an outbreak, this removes a liability concern for referring patients to the closest or most appropriate care setting.
 10. Pursuant to Section 1135(b)(7) of the Social Security Act, 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).
 - Suspending these portions of HIPAA contemplates an influx of patients and provides the flexibility needed to share information about infection and treat patients more efficiently.

11. Waive limitations under Section 1851(i) of the Social Security Act on payment for health care items and services furnished to Medicare Advantage enrollees by non-network providers.

- This removes the complication of Medicare Advantage network participation to ensure full payment to out-of-network providers while responding to COVID-19.

12. Permit home health agencies to temporarily perform initial assessments and determine patients' homebound status remotely or by record review. See 42 C.F.R. § 484.55(a).

- This prevents vulnerable patients from coming into contact with individuals with COVID-19.

Thank you for your consideration of this request. If you have any questions, please do not hesitate to contact me at 512-465-1000 or swohleb@tha.org.

Respectfully submitted,



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