April 7, 2020

CMS Flexibilities to Fight COVID-19:
Physicians and Other Clinicians; Teaching Hospitals, Teaching Physicians and Medical Residents

A summary of some of the regulatory waivers and new rules to equip the American healthcare system with maximum flexibility to respond to the 2019 Novel Coronavirus (COVID-19) pandemic.

The goals of these actions are to:
1. Ensure that local hospitals and health systems have the capacity to handle a potential surge of COVID-19 patients through temporary expansion sites (also known as CMS Hospital Without Walls);
2. Remove barriers for physicians, nurses, and other clinicians to be readily hired from the community or from other states so the healthcare system can rapidly expand its workforce;
3. Increase access to telehealth in Medicare to ensure patients have access to physicians and other clinicians while keeping patients safe at home;
4. Expand in-place testing to allow for more testing at home or in community-based settings;
5. Put Patients Over Paperwork to give temporary relief from many paperwork, reporting and audit requirements so providers, health care facilities, Medicare Advantage and Part D plans, and States can focus on providing needed care to Medicare and Medicaid beneficiaries affected by COVID-19.

Additional Guidance

CMS has released guidance to describe standards of practice and flexibilities within the current regulations for hospitals (including critical access hospitals and psychiatric hospitals).

Download the Guidelines Here »

CMS guidance also addresses hospital flexibilities under the Emergency Medical Treatment and Labor Act (EMTALA) to establish alternate testing and triage sites to address the pandemic.

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**Medical Staff Requirements:** CMS is waiving the Medical Staff requirements to allow for physicians whose privileges will expire to continue practicing at the hospital and for new physicians to be able to practice in the hospital before full medical staff/governing body review and approval to address workforce concerns related to COVID-19.

**Physician services:** CMS is waiving the requirement that Medicare patients be under the care of a physician, and that a physician be on call at all times. This allows hospitals to use other practitioners, such as physician’s assistant and nurse practitioners, to the fullest extent possible.

**“Stark Law” Waivers:** CMS will permit certain referrals and the submission of related claims that would otherwise violate the Stark Law. They include: Hospitals and other health care providers can pay above or below fair market value to rent equipment or receive services from physicians (or vice versa); Health care providers can support each other financially to ensure continuity of health care operations; Hospitals can provide benefits to their medical staffs, such as multiple daily meals, laundry service to launder soiled personal clothing, or child care services while the physicians are at the hospital and engaging in activities that benefit the hospital and its patients; Allowing the provision of certain items and services that are solely related to COVID-19 Purposes (as defined in the waivers), even when the provision of the items or services would exceed the annual non-monetary compensation cap; Physician-owned hospitals can temporarily increase the number of their licensed beds, operating rooms, and procedure rooms, even though such expansion would otherwise be prohibited under the Stark Law; Loosen some of the restrictions when a group practice can furnish medically necessary designated health services (DHS) in a patient’s home; Group practices can furnish medically necessary MRIs, CT scans or clinical laboratory services from locations like mobile vans in parking lots that the group practice rents on a part-time basis.

**Telemedicine:** CMS is waiving the provisions related to telemedicine for hospitals and making it easier for telemedicine services to be furnished to the hospital’s patients through an agreement with an off-site hospital. This allows for increased access to necessary care for hospital and CAH patients, including access to specialty care.

**Verbal Orders:** CMS is waiving requirements to allow for additional flexibilities related to verbal orders where read-back verification is still required but authentication may occur later than 48 hours. This will allow for more efficient treatment of patients in a surge situation.

**Application of Teaching Physician Regulations:** Teaching physicians can provide services with medical residents virtually through audio/video real-time communications technology. This does not apply in the case of surgical, high risk, interventional, or other complex procedures,
services performed through an endoscope, and anesthesia services. This allows teaching hospitals to maximize their workforce to safely take care of patients.

**Counting of Resident Time at Alternate Locations:**
A hospital that is paying the resident’s salary and fringe benefits for the time that the resident is at home or in a patient’s home, but performing duties within the scope of the approved residency program and meets appropriate physician supervision requirements can claim that resident for IME and DGME purposes. This allows medical residents to perform their duties in alternate locations, including their home or a patient’s home so long as it meets appropriate physician supervision requirements.

**Anesthesia Services:** CMS is waiving the requirement that a certified registered nurse anesthetist (CRNA) is under the supervision of a physician. CRNA supervision will be at the discretion of the hospital or Ambulatory Surgical Center (ASC), and state law.

**Respiratory Care Services:** CMS is waiving the requirement that hospitals designate in writing the personnel qualified to perform specific respiratory care procedures and the amount of supervision required for personnel to carry out specific procedures. These flexibilities should be implemented so long as they are not inconsistent with a State or pandemic/emergency plan.

**CMS Hospital Without Walls (Temporary Expansion Sites):** As part of the CMS Hospital Without Walls initiative, hospitals can provide hospital services in other healthcare facilities and sites not currently considered to be part of a healthcare facility or set up temporary expansion sites to help address the urgent need to increase capacity to care for patients.

**Off Site Patient Screening:** CMS is waiving the enforcement of EMTALA. This will allow hospitals, psychiatric hospitals, and critical access hospitals (CAHs) to screen patients at a location offsite from the hospital’s campus to prevent the spread of COVID-19, so long as it is not inconsistent with the state emergency preparedness or pandemic plan.

**Paperwork Requirements:** CMS is waiving certain specific paperwork requirements only for hospitals which are impacted by a widespread outbreak of COVID-19. This allows hospitals to establish COVID-19 specific areas.

**Critical Access Hospital Length of Stay:** CMS is waiving the Medicare requirements that Critical Access Hospitals (CAHs) limit the number of beds to 25, and that the length of stay be limited to 96.

**Care for Excluded Inpatient Psychiatric Unit Patients and Rehabilitation Unit Patients in the Acute Care Unit of a Hospital:** CMS is waiving requirements to allow acute care hospitals with excluded distinct part inpatient psychiatric and rehabilitation units that, as a result of a disaster or emergency, need to relocate inpatients from the excluded distinct unit to an acute care bed...
and unit. The facility is required to annotate the medical record to indicate the patient is a psychiatric or rehab inpatient being cared for in an acute care bed because of capacity or other exigent circumstances related to the COVID-19 Public Health emergency.

Reporting Requirements: CMS is waiving reporting requirements which require hospitals to report patients in an intensive care unit whose death is caused by their disease process but who required soft wrist restraints to prevent pulling tubes/IVs may be reported later than close of business next business day, provided any death where the restraint may have contributed is continued to be reported within standard time limits.

Limit Discharge Planning for Hospital and CAHs: To allow hospitals and CAHs more time to focus on increasing care demands, discharge planning will focus on ensuring that patients are discharged to an appropriate setting with the necessary medical information and goals of care. CMS is waiving detailed regulatory requirements to provide information regarding discharge planning.

Modify Discharge Planning for Hospitals: Patients must continue to be discharged to an appropriate setting with the necessary medical information and goals of care. To address the COVID-19 pandemic, CMS is waiving certain requirements related to hospital discharge planning for post-acute care services to expedite the safe discharge and movement of patients among care settings, and to be responsive to fluid situations in various areas of the country. CMS is waiving certain requirements for those patients discharged home and referred for HHA services, or for those patients transferred to a SNF for post-hospital extended care services, or transferred to an IRF or LTCH for specialized hospital services.

Medical Records: CMS is waiving requirements for the form and content of the medical record, record retention requirements, and to allow flexibility in completion of medical records within 30 days following discharge and for CAHs that all medical records must be promptly completed. This flexibility will allow clinicians to focus on the patient care at the bedside during the pandemic.

Nursing services: CMS is waiving requirements which requires the nursing staff to develop and keep current a nursing care plan for each patient. These waivers allow nurses increased time to meeting the clinical care needs of each patient and allows for the provision of nursing care to an increased number of patients.

Food and dietetic service: CMS is waiving the requirement to have a current therapeutic diet manual approved by the dietitian and medical staff readily available to all medical, nursing, and food service personnel.