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CMS Expands Blanket Waivers to Help Hospitals and Other Providers

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On March 30, 2020, CMS issued numerous additional blanket waivers to give providers greater flexibility in responding to COVID-19. (*See* https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf). Highlights include the following, but providers should review the entire list of waivers to confirm their scope and conditions. Many of the waivers only apply to the extent consistent with the state emergency preparedness or pandemic plan and/or state law.

HOSPITALS

- **EMTALA.** CMS has waived enforcement of certain EMTALA requirements, thereby allowing hospitals to screen patients at locations away from the hospital's campus to prevent the spread of COVID-19.
- **Physical Locations.** Hospitals may use non-hospital buildings and space for patient care and quarantines so long as the location is approved by the state. Hospitals may operate any location as part of the hospital, and change the status of their provider-based departments. Hospitals may house patients in distinct part units, and relocate psychiatric patients to an acute care bed. The CMS fact sheet explains:

  > "CMS is allowing healthcare systems and hospitals to provide services in locations beyond their existing walls to help address the urgent need to expand care capacity and to develop sites dedicated to COVID-19 treatment.
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  > "Under federal requirements, hospitals must provide services within their own buildings, raising concerns about capacity for treating COVID-19 patients, especially those requiring ventilator and intensive care. Under CMS's temporary new rules, hospitals will be able to transfer patients to outside facilities, such as ambulatory surgery centers, inpatient rehabilitation hospitals, hotels, and dormitories, while still receiving hospital payments under Medicare. For example, a healthcare system can use a hotel to take care of patients needing less intensive care while using its inpatient beds for COVID-19 patients.
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  > "Ambulatory surgery centers can contract with local healthcare systems to provide hospital services, or they can enroll and bill

> as hospitals during the emergency declaration as long as they are not inconsistent with their State's Emergency Preparedness or Pandemic Plan. The new flexibilities will also leverage these types of sites to decant services typically provided by hospitals such as cancer procedures, trauma surgeries, and other essential surgeries.
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> …
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> "The new CMS guidelines allows healthcare systems, hospitals, and communities to set up testing and screening sites exclusively for the purpose of identifying COVID-19 positive patients in a safe environment."

(https://www.cms.gov/newsroom/fact-sheets/additional-backgroundsweeping-regulatory-changes-help-us-healthcare-system-address-covid-19-patient)

- **Stark Law and Support for Physicians.** CMS has issued a blanket waiver for violations of the Stark Law, thereby allowing hospitals and other providers to provide support for physicians and modify existing financial arrangements to ensure coverage during the COVID-19 pandemic. The fact sheet that accompanied the new waivers confirmed that hospitals may "provide benefits and support to their medical staffs, such as multiple daily meals, laundry service for personal clothing, or child care services while the physicians and other staff are at the hospital providing patient care." (https://www.cms.gov/newsroom/fact-sheets/additional-backgroundsweeping-regulatory-changes-help-us-healthcare-system-address-covid-19-patient).
- **Medical Staff.** Physicians may practice in the hospital without full credentialing.
- **Physician Services.** Patients need not be under the care of a physician.
- **Anesthesia Services.** CRNAs need not be supervised by physicians to the extent consistent with state law.
- **Verbal Orders.** Hospitals have greater flexibility in using verbal orders.
- **Telehealth.** Hospitals may provide telehealth without credentialing agreements with off-site hospitals.
- **Patient Rights.** Hospitals impacted by a widespread outbreak of COVID-19 are not required to comply with certain patient rights, including visitation rights.
- **Medical Records.** Hospitals are not held to strict standards for staffing or medical record content.
- **Discharge Planning.** Certain rules concerning reporting and processes relating to discharge planning are relaxed.
- **Others.** Other waivers apply to CAH requirements, advance directives, reporting requirements, sterile compounding, utilization

review, written policies and procedures, quality assessments, nursing services, dietary services, respiratory care, etc.

LONG-TERM CARE FACILITIES, SKILLED NURSING FACILITIES ("SNF") AND/OR NURSING FACILITIES ("NF")

- **3-Day Prior Hospitalization.** Medicare will not require the 3-day prior hospitalization to cover the SNF service.
- **Assessments.** Assessments for new residents are suspended for 30 days.
- **Physical Locations.** Residents may be placed with others to avoid COVID-19 infections. Non-SNF buildings may be used temporarily to isolate residents with COVID-19. CMS will waive certain requirements to facilitate opening a NF to quickly permit isolation of COVID-19 residents. Non-resident rooms may be temporarily used to house residents.
- **Resident Groups.** The right to participate in resident groups may be suspended.
- **Nurse Aides.** CMS has extended the time that a nurse aide may be used without training and certification so long as they are competent to perform their duties.
- **Physician Visits.** Physician visits may be conducted via telehealth.
- **Resident Transfers and Discharges.** Facilities have greater flexibility in transferring and discharging residents to protect or isolate residents.

HOSPICES

- **Volunteers.** Hospices are not required to use volunteers.
- **Assessments.** The time for comprehensive assessments is extended.
- **Non-Core Services.** Hospices need not provide the non-core services.
- **Onsite Visits.** Nurses are not required to conduct the onsite supervisory visit every two weeks.

HOME HEALTH AGENCIES ("HHA")

- **Reporting.** CMS has extended to the timeframe for OASIS Transmissions.
- **Initial Assessment.** HHAs may perform the initial assessment remotely or by record review.
- **Onsite Nurse Visits.** Nurses are not required to conduct the onsite visit every two weeks.

PRACTITIONERS

- **Out-of-State Practitioners.** Medicare will pay for services provided by a physician or non-physician practitioner licensed in another state even if he or she is not licensed in the state where the patient is located if the practitioner: (i) is enrolled in Medicare; (ii) has a

valid license to practice in the state that relates to his or her Medicare enrollment; (iii) is furnishing services in a state in which the COVID-19 emergency exists; and (iv) is not affirmatively excluded from practicing in the state. Note that state laws are not affected by this waiver, so the practitioner must still ensure compliance with applicable state laws.

- **Enrollment.** During the pandemic, CMS has an expedited enrollment process that waives many of the requirements that would otherwise apply to practitioners.

OTHER ENTITIES. Additional waivers extend to other providers or suppliers, including:

- Dialysis facilities.
- Durable medical equipment, prosthetics, orthotics and supplies ("DMEPOS").

The CMS Fact Sheet discussing the waivers is available here.

We encourage you to visit Holland & Hart's Coronavirus Resource Site, a consolidated informational resource offering practical guidelines and proactive solutions to help companies protect their business interests and their workforce. The dynamic Resource Site is regularly refreshed with new topics and updates as the COVID-19 outbreak and the legal and regulatory responses continue to evolve. Sign up to receive updates and for upcoming webinars.

For questions regarding this update, please contact:
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