

April 22, 2020

Via electronic submission

Ms. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8016
Baltimore, MD 21244-8016

Re: Guidance for Licensed Independent Freestanding Emergency Departments (EDs) to Participate in Medicare and Medicaid during the COVID-19 Public Health Emergency: QSO-20-27-Hospital

Dear Administrator Verma:

Yesterday, the Centers for Medicare & Medicaid Services issued a notice to State Survey Directors indicating that CMS is creating additional flexibilities to allow licensed independent freestanding emergency centers to participate in Medicare and Medicaid to help address the urgent need to increase hospital capacity to provide care to patients during the COVID-19 Public Health Emergency. CMS listed three avenues to Medicaid and Medicare participation: becoming affiliated with a Medicare/Medicaid-certified hospital under the temporary expansion 1135 emergency waiver; participating in Medicaid under the clinic benefit if permitted by the state; or enrolling temporarily as a Medicare/Medicaid-certified hospital to provide hospital services. Once the Secretary of the Department of Health and Human Services determines there is no longer a Public Health Emergency due to COVID-19, the CMS Regional Location will deactivate hospital billing privileges.

The Texas Hospital Association has grave concerns about the ability of independent freestanding emergency centers to be independently recognized as hospitals. For the safety of all patients, both a demonstrated shortage of patient beds in a city or county and hospital affiliation should be a requirement for any freestanding emergency center seeking to participate in Medicare or Medicaid.

Texas hospitals are at the front lines of this Public Health Emergency. The State of Texas and its counties and cities have implemented aggressive policies to prevent the spread of COVID-19. To preserve hospital capacity and personal protective equipment, our governor issued an executive order suspending elective procedures and surgeries. As a result, many Texas hospitals—especially rural hospitals—have experienced drastic reductions in patient volume and the resulting revenue necessary to cover the cost of keeping their doors open. The Texas Hospital Association recognizes that independent freestanding emergency centers could play an important role in areas *with demonstrated bed shortages*. However, widespread recognition of freestanding emergency centers throughout the state as hospitals would only threaten patient safety, deplete the state's inventory of personal protective equipment and present additional staffing challenges.

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Texas is one of four states that licenses independent freestanding emergency centers—with about 215 facilities statewide. Although these facilities are equipped with many resources to care for patients in an outpatient setting, these facilities do not have the necessary resources to treat critical patients requiring inpatient care or isolation rooms and other infrastructure to treat patients with infectious diseases. Permitting these facilities to provide inpatient care without full integration with a hospital would present a significant risk to the health and safety of patients who would either require a transfer to a higher level of care or receive a substandard level of treatment due to both the physical environment and caregivers available at the facility. THA is particularly troubled at the lack of oversight of independent freestanding emergency centers seeking temporary recognition as a hospital. For licensed independent freestanding emergency centers seeking to enroll as a temporary hospital, an onsite survey is not required for approval. Put simply, this is not safe.

For the safety of all patients, both a documented shortage of patient beds in a city or county certified by the Texas Department of State Health Services and hospital affiliation should be a requirement for any freestanding emergency center seeking to participate in Medicare or Medicaid. These factors would ensure that freestanding emergency centers are truly assisting with patient surges overwhelming licensed hospitals and that patients can receive the level of care they need that is only available in licensed hospitals.

Thank you for your consideration of these comments. Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,



John Hawkins
Senior Vice President, Advocacy & Public Policy
Texas Hospital Association