



March 17, 2020

Stephen G. Wohleb
Senior Vice President and General Counsel
Texas Hospital Association
1108 Lavaca, Suite 700
Austin, Texas 78701

Re: COVID-19 Waiver Requests

Dear Mr. Wohleb:

We received your inquiry or request regarding CMS 1135 waiver authority. Below you will find applicable blanket 1135 waiver approved as part of the March 13, 2020, National Declaration of Emergency. Hospitals can operate under these guidelines without having to seek approval from CMS. We will follow up separately to the specific requests that go beyond these guidelines, as they will require additional research.

Critical Access Hospitals: CMS is waiving the requirements that Critical Access Hospitals limit the number of beds to 25, and that the length of stay be limited to 96 hours.

EMTALA: Sanctions under section 1867 of the Act (the Emergency Medical Treatment and Labor Act, or EMTALA) for the direction or relocation of an individual to another location to receive medical screening pursuant to an appropriate state emergency preparedness plan or for the transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the declared Federal public health emergency for the COVID-19 pandemic.

Housing Acute Care Patients in Excluded Distinct Part Units: CMS is waiving requirements to allow acute care hospitals to house acute care inpatients in excluded distinct part units, where the distinct part unit's beds are appropriate for acute care inpatient. The Inpatient Prospective Payment System (IPPS) hospital should bill for the care and annotate the patient's medical record to indicate the patient is an acute care inpatient being housed in the excluded unit because of capacity issues related to the disaster or emergency.

Care for Excluded Inpatient Psychiatric Unit Patients in the Acute Care Unit of a Hospital: CMS is waiving to allow acute care hospitals with excluded distinct part inpatient psychiatric

units that, as a result of a disaster or emergency, need to relocate inpatients from the excluded distinct part psychiatric unit to an acute care bed and unit. The hospital should continue to bill for inpatient psychiatric services under the Inpatient Psychiatric Facility Prospective Payment System for such patients and annotate the medical record to indicate the patient is a psychiatric inpatient being cared for in an acute care bed because of capacity or other exigent circumstances related to the hurricane. This waiver may be utilized where the hospital's acute care beds are appropriate for psychiatric patients and the staff and environment are conducive to safe care. For psychiatric patients, this includes assessment of the acute care bed and unit location to ensure those patients at risk of harm to self and others are safely cared for.

Care for Excluded Inpatient 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 Rehabilitation units that, as a result of a disaster or emergency, need to relocate inpatients from the excluded distinct part rehabilitation unit to an acute care bed and unit. The hospital should continue to bill for inpatient rehabilitation services under the inpatient rehabilitation facility prospective payment system for such patients and annotate the medical record to indicate the patient is a rehabilitation inpatient being cared for in an acute care bed because of capacity or other exigent circumstances related to the disaster or emergency. This waiver may be utilized where the hospital's acute care beds are appropriate for providing care to rehabilitation patients and such patients continue to receive intensive rehabilitation services.

CMS is waiving requirements to allow IRFs to exclude patients from the hospital's or unit's inpatient population for purposes of calculating the applicable thresholds associated with the requirements to receive payment as an IRF (commonly referred to as the "60 percent rule") if an IRF admits a patient solely to respond to the emergency and the patient's medical record properly identifies the patient as such. In addition, during the applicable waiver time period, we would also apply the exception to facilities not yet classified as IRFs, but that are attempting to obtain classification as an IRF.

Supporting Care for Patients in Long-Term Care Acute Hospitals (LTCH)s:

Allows a long-term care hospital (LTCH) to exclude patient stays where an LTCH admits or discharges patients in order to meet the demands of the emergency from the 25-day average length of stay requirement which allows these facilities to be paid as LTCHs.

For more information, please visit:

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/Requesting-an-1135-Waiver-101.pdf>

and

<https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page>

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We acknowledge the difficulty providers are currently experiencing, however we hope these waiver provisions will provide the relief requested so provider personnel can focus on the health and safety of those impacted by the public health emergency.

If you, or your members have questions or concerns regarding this correspondence, please send inquiries to our corporate mailbox, RODALDSC@cms.hhs.gov, or contact us at 214-767-6301.

Sincerely,

/s/

Gerardo Ortiz
Director, Survey & Operations Group

cc: Richard Schirmer