DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
CMS Dallas - Survey & Operations Group
1301 Young Street, Room 106-900
Dallas, Texas 75202

March 20, 2020

Stephen G. Wohleb
Texas Hospital Association
1108 Lavaca Street
Suite 700
Austin, Texas 78701

Dear Mr. Wohleb:

This is in response to your inquiry to the Centers for Medicare & Medicaid Services (CMS). You submitted a request for Waivers under Section 1135 of the Social Security Act related to the COVID-19 Emergency on behalf of all Medicare-participating hospitals in Texas.

As you may be aware on March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Social Security Act (Act). On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services waived or modified certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the 2019 Novel Coronavirus (previously referred to as 2019-nCoV, now as COVID-19) pandemic. These waivers and modifications take effect as of 6PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The following link will list the applicable blanket 1135 waivers approved as part of the March 13, 2020, National Declaration of Emergency, pursuant to section 1135 of the Social Security Act, to address the challenges posed by COVID-19: https://www.cms.gov/files/document/covid19-emergency-declaration-health-care-providers-fact-sheet.pdf.

In response to the Texas Hospital Association requests not addressed as part of the blanket authorization, CMS' responses are as follows:

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.

CMS Response: This question is being forwarded to the Office of Administrator's (OA) Committee for review.

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.

CMS Response: This question is being forwarded to the Office of Administrator's (OA) Committee for review.

3. Waiver of 42 C.F.R. § 482.22(a) so that physicians whose privileges will expire, and new physicians can be full medical staff/governing body review and approval.

    - This removes some red tape to onboarding additional physicians or renewing the credentials of existing physicians.

CMS Response: As long as physicians are licensed to practice medicine, this waiver request is approved.

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.

CMS Response: Waiver request approved.

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.

CMS Response: This question is being forwarded to the Office of Administrator's (OA) Committee for review.

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.

CMS Response: Waiver request approved. Please also reference Blanket Waivers for COVID-19 at https://www.cms.gov/files/document/covid19-emergency-declaration-health-care-providers-fact-sheet.pdf

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.

CMS Response: Waiver request approved. Please also reference Blanket Waivers for COVID-19 at https://www.cms.gov/files/document/covid19-emergency-declaration-health-care-providers-fact-sheet.pdf

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.

CMS Response: Waiver request approved.

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.

CMS Response: Waiver request approved.

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.

CMS Response: This will be referred to the Office of Civil Rights.

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.

    CMS Response: This will be referred to the Dallas/Denver Drug and Health Plan Operations Group. Forwarded on March 19, 2020.

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.

    CMS Response: This question is being forwarded to the Office of Administrator's (OA) Committee for review.

If you have questions or concerns regarding this correspondence, please send inquiries to our corporate mailbox, RODALDSC@cms.hhs.gov, or contact Gerardo Ortiz, Division Director, at (214) 767-6341 or by e-mail at gerardo.ortiz@cms.hhs.gov.

Sincerely,

Gerardo Ortiz
Division Director, CMS – Dallas
Survey & Operations Group (SOG)

Cc: Jean Moody Williams, CCSQ
Sandra Pace, CCSQ