

March 29, 2020

TO: Hospital CEO, Emergency Preparedness Director, Government Relations Officer, Compliance Officer

FROM: Mike Vicario, Vice President of Regulatory Affairs (919-677-4233, mvicario@ncha.org)

SUBJECT: COVID-19 related waiver update

Waivers approved under Section 1135 of the Social Security Act

On Jan. 31, US Health and Humans Services (HHS) declared a public health emergency in the U.S. for COVID-19. The public health emergency, together with the President's national emergency declaration on March 13, enabled HHS Secretary Azar to make several waivers consistent with Section 1135 of the Social Security Act. HHS issued a March 13, 2020 [CMS waiver](#) to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare, Medicaid and CHIP programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of these requirements as a result of the consequences of the 2019 Novel Coronavirus." The waiver allowed for exemptions related to the Pandemic for:

1. Some of the Medicare Conditions of Participation, Certification and Program participation requirements.
2. Requirements that health care professionals work only in the state where they hold a license.
3. Emergency Medical Treatment and Labor Act (EMTALA) regarding re-direction of individuals for medical screening evaluation or transfer of an unstable patient if necessitated by circumstances of the pandemic.
4. Physician referral limitations (as determined by CMS).
5. Payment limitations for services provided to Medicare Advantage plan beneficiaries by out of network providers.
6. HIPAA waiver of permission requirements to speak with family, notifications of privacy practices and patient's right to request privacy restrictions.
7. Deadline modifications for activity requirements to enable reimbursement.

CMS also released a fact sheet on March 13 that identified [current blanket waivers](#) of:

1. The 3-day qualifying hospital stay and MDS assessment timeframes for Skilled Nursing Facility coverage.
2. The Critical Access Hospital (CAH) 25 bed and 96-hour average stay limitations.
3. The use of Distinct Part Units (DPU) to house acute care patients (and vice-versa) when appropriately set up and billed for.

4. Certain requirements for replacement of Durable Medical Equipment Prosthetics, Orthotics, and Supplies (DMEPOS).
5. The inpatient rehabilitation requirement that 60% of an IRF's patients meet certain thresholds for payments.
6. The 25-day average stay requirement for Long Term Acute Care Hospitals (LTCH) and
7. The timeframe requirements for Home Health Agencies OASIS transmission.

Additional Approved Waivers

On March 17 the NC DHHS requested waivers on behalf of NC providers and state government, including additional requests beyond the current blanket waiver. On March 23 the Centers for Medicare & Medicaid Services (CMS) partially approved the NC DHHS request, granting the following additional flexibilities for the duration of the public health emergency:

1. To provisionally enroll providers who are enrolled with another SMA or Medicare for the duration of the public health emergency. (*Criteria included in the partial approval letter*)
2. To allow nursing facilities and HBNFs, ICF/IDDs, and PRTFs to be fully reimbursed for services rendered to an unlicensed facility (such as due to a re-location) with a reasonable assessment that minimum standards are met.
3. Suspension of Pre-Admission Screening and Annual Resident Review (PASRR) Level I and Level II Assessments for 30 days.
4. Permits enrollees to have more than 90 days, up to an additional 120 days (state determined) for an eligibility or fee for service appeal to request a fair hearing.
5. State authorization to modify the timeframe for managed care entities to resolve appeals.
6. Temporarily suspend Medicaid fee-for-service prior authorization requirements.

Outstanding Waiver Requests

On March 23 NCHA requested additional blanket waivers on behalf of its members affecting: psychiatric crisis care and transfers, HIPAA requirements, telehealth services and payment, alternate site (beyond DPU) and temporary location billing, certain Medicare contractor requirements, the IRF three hour therapy rule, the Medicare Outpatient Observation Notice, certain PACE, Hospice, Home Health and Infusion and Durable Medical Equipment Prosthetic Orthotic Supplier requirements.

The AHA submitted requests on March 16 and on March 25 for additional waivers for hospitals including:

1. A waiver of the CAH 96-hour condition of payment requirement (in addition to the blanket waiver of the 96-hour average stay requirement)
2. A waiver of the requirement for a 3 day stay in ICU to qualify for full payment in an LTCH.
3. A waiver of the requirement that IRF patients receive at least three hours of therapy per day.
4. Clarification request that no further action required for the EMTALA waiver.
5. Request that CMS and Office of Civil Rights extend the HIPAA waivers from 72 hours to the duration of the emergency.

Waiver requests are routinely requested as “blanket waivers” by State agencies and Associations, but individual facilities and systems can also submit requests. To request a facility specific 1135 Waiver request see a communication from CMS at <https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/Requesting-an-1135-Waiver-Updated-11-16-2016.pdf>.

NCHA requests that you share your waiver requests so that we can support your request and/or file on behalf of others with similar needs.