COVID-19 CORONAVIRUS

Coding Updates

UPDATED 4/2/20

CARES Act Waivers

Background

New waivers released by CMS on March 30, 2020 introduce new flexibilities and further expansion of previous waivers. These waivers are **retroactive back to March 1, 2020**.

1

A summary of these provisions can be found at: https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf

Additional links related to Coronavirus waivers and flexibilities can be found at: https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers

Following are some of the key issues.

Hospital Services

Temporary Expansion Sites. As part of the CMS Hospital Without Walls initiative, hospitals can provide hospital services in other healthcare facilities and sites not currently considered to be part of a healthcare facility or set up temporary expansion sites to help address the urgent need to increase capacity to care for patients. Previously, hospitals were required to provide services to patients within their hospital departments and have shared concerns about capacity for treating patients during the COVID-19 Public Health Emergency, especially those requiring ventilator and intensive care services.

CMS is providing additional flexibilities for hospitals to create surge capacity by allowing them to provide room and board, nursing, and other hospital services at remote locations or sites not considered part of a healthcare facility such as hotels or community facilities. CMS is allowing hospitals to screen patients at offsite locations, furnish inpatient and outpatient services at temporary expansion sites. Hospitals would still be expected to control and oversee the services provided at an alternative location.

Written policies and procedures for appraisal of emergencies at off campus hospital departments specify that CMS is waiving 482.12(f)(3) related to Emergency services, with respect to the surge facility(ies) only, such that written policies and procedures for staff to use when evaluating emergencies are not required for surge facilities. This removes the burden on facilities to develop and establish additional policies and procedures at their surge facilities or surge sites related to the assessment, initial treatment and referral of patients. These flexibilities should be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.

Emergency preparedness policies and procedures specify that CMS is waiving 482.15(b) and 485.625(b), which requires the hospital and CAH to develop and implement emergency preparedness policies and procedures, and 482.15(c) (1)-(5) and 485.625(c)(1)-(5) which requires that the emergency preparedness communication plans for hospitals and CAHs to contain specified elements with respect to the surge site. The requirement under the communication plan requires hospitals and CAHs to have specific contact information for staff, entities providing services under arrangement, patients' physicians, other hospitals and CAHs, and volunteers. This would not be an expectation for temporary expansion site.

Pharmacy Sterile Compounding. CMS is waiving requirements in order to allow used face masks to be removed and retained in the compounding area to be redonned and reused during the same work shift in the compounding area only. This will conserve scarce face mask supplies. CMS will not review the use and storage of face masks under these requirements.

Medical Staff. CMS is waiving requirements which requires that Medicare patients be under the care of a physician. This waiver may be implemented so long as it is not inconsistent with a state's emergency preparedness or pandemic plan. This allows hospitals to use other practitioners to the extent possible.

For services requiring direct supervision by the physician or other practitioner, that physician supervision can be provided virtually using real-time audio/video technology.

CMS is waiving requirements to allow for physicians whose privileges will expire to continue practicing at the hospital and for new physicians to be able to practice before full medical staff/governing body review and approval to address workforce concerns related to COVID-19. CMS is waiving §482.22(a) (1)-(4) regarding details of the credentialing and privileging process.

CMS is temporarily waiving requirements that out-of-state practitioners be licensed in the state where they are providing services when they are licensed in another state. CMS will waive the physician or non-physician practitioner licensing requirements when the following five conditions are met:

1. Must be enrolled as such in the Medicare program.
2. Must possess a valid license to practice in the state which relates to his or her Medicare enrollment.
3. Is furnishing services – whether in person or via telehealth – in a state in which the emergency is occurring to contribute to relief efforts in his or her professional capacity.
4. Is not affirmatively excluded from practice in the state or any other state that is part of the 1135 emergency area.
5. For the physician or non-physician practitioner to avail him- or herself of the 1135 waiver under the conditions described above, the state also would have to waive its licensure requirements, either individually or categorically, for the type of practice for which the physician or non-physician practitioner is licensed in his or her home state.

Anesthesia Services. CMS is waiving requirements that a certified registered nurse anesthetist (CRNA) is under the supervision of a physician. CRNA supervision will be at the discretion of the hospital and state law. This waiver applies to hospitals, CAHs, and Ambulatory Surgical Centers (ASCs). These waivers will allow CRNAs to fully function to the extent of their licensure and may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.

Nursing Services. CMS is waiving the requirements which require the following.

- ✓ The nursing staff to develop and keep current a nursing care plan for each patient.
- ✓ The hospital to have policies and procedures in place establishing which outpatient departments are not required to have a registered nurse present.
- ✓ Hospitals will need relief for the provision of inpatient services and as a result, the requirement to establish nursing-related policies and procedures for outpatient departments is likely of lower priority. These flexibilities apply to both hospitals and CAHs and may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.

Organ Procurement. Ensuring that individuals have continued access to life-saving organs is critical. CMS understands that hospitals are preparing for a surge in COVID-19 patients and makes the following statement: "we would ask that donor hospitals continue with normal operations regarding allowing organ procurement coordinators into hospitals to discuss organ donation with families wherever possible. Hospital and Organ Procurement Organization (OPO) leadership should communicate on risk assessments in their communities and any potential impacts for organ recovery operations."[1]

Respiratory care services. CMS is waiving the requirement that requires hospitals to designate in writing the personnel qualified to perform specific respiratory care procedures and the amount of supervision required for personnel to carry out specific procedures.

These flexibilities should be implemented so long as they are not inconsistent with a State or pandemic/ emergency plan. Not being required to designate these professionals in writing will allow qualified professionals to fully operate to the extent of their licensure and training in providing patient care for respiratory illnesses.

National Coverage Determinations (NCDs) and Local Coverage Determinations (LCDs) on Respiratory Related Devices, Oxygen and Oxygen Equipment, Home Infusion Pumps and Home Anticoagulation Therapy now allow clinicians to have maximum flexibility in determining patient needs for respiratory related devices and equipment and the flexibility for more patients to manage their treatments at the home. The current NCDs and LCDs that restrict coverage of these devices and services to patients with certain clinical characteristics do not apply during the public health emergency. For example, Medicare will cover non-invasive ventilators, respiratory assist devices and continuous positive airway pressure devices based on the clinician's assessment of the patient.

Medical Records. CMS is waiving requirements which cover the following subjects and these flexibilities may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.

- ✓ Organization and staffing of the medical records department.
- ✓ Requirements for the form and content of the medical record.
- ✓ Record retention requirements.
- ✓ Flexibility with completion of medical records within 30 days following discharge from a hospital.

Critical Access Hospitals. CMS is waiving specific personnel qualifications and staff licensure requirements.

- ✓ **Personnel qualifications**. CMS is waiving the minimum personnel qualifications for clinical nurse specialist, nurse practitioners, and physician assistants described in federal guidelines. Clinical Nurse Specialists, Nurse Practitioners, and Physician Assistants will still have to meet state requirements for licensure and scope of practice, but not additional Federal requirements that may exceed State requirements. This will give States and facilities more flexibility in using clinicians in these roles to meet increased demand. These flexibilities should be implemented so long as they are not inconsistent with a State or pandemic/emergency plan.
- ✓ **Staff licensure**: CMS is deferring to staff licensure, certification, or registration to State law by waiving the requirement that staff of the CAH be licensed, certified, or registered in accordance with applicable Federal, State, and local laws and regulations. The CAH and its staff must still follow applicable Federal, State and Local laws and regulations, and all patient care must be furnished in compliance with State and local laws and regulations. This waiver would defer all licensure, certification, and registration requirements for CAH staff to the state, which would add flexibility where Federal requirements are more stringent. These flexibilities should be implemented so long as they are not inconsistent with a State or pandemic/emergency plan.

RHCs and FQHCs

RHCs and FQHCs can provide visiting nursing services to a beneficiary's home with fewer requirements, making it easier for beneficiaries to get care from their home.

- ✓ Any area typically served by the RHC, and any area that is included in the FQHCs service area plan, is determined to have a shortage of home health agencies, and no request for this determination is required.
- ✓ Any RHC/FQHC visiting nurse service solely to obtain a nasal or throat culture would not be considered a nursing service because it would not require the skills of a nurse to obtain the culture as the specimen could be obtained by an appropriately-trained medical assistant or laboratory technician.[2]
- ✓ The revised definition of "homebound" will apply to RHCs and FQHCs.

Home Health

A variety of waivers addressing assessments, oversight, signatures, etc. have been issued and further details can be found at: https://www.cms.gov/files/document/covid-home-health-agencies.pdf.

- ✓ Medicaid home health regulations now allow non-physician practitioners to order medical equipment, supplies and appliances, home health nursing and aide services, and physical therapy, occupational therapy or speech pathology and audiology services, in accordance with state scope of practice laws.
- ✓ CMS is waiving the requirements which require a nurse to conduct an onsite visit every two weeks. This would include waiving the requirements for a nurse or other professional to conduct an onsite visit every two weeks to evaluate if aides are providing care consistent with the care plan, as this may not be physically possible for a period. This waiver is temporarily suspending the 2-week aide supervision requirement by a registered nurse for home health agencies, but virtual supervision is encouraged during the period of the waiver.

Hospice

Like Home Health several waivers have been issued related to hospice volunteers and oversight. These waivers may be viewed at: https://www.cms.gov/files/document/covid-hospices.pdf.

Guidance

- ✓ Review guidance related to alternative/surge sites and ensure all criteria is adhered to.
- ✓ Utilize waiver to conserve masks in Pharmacy sterile compounding area.
- ✓ Review medical staff waivers with the Medical Executive Committee/Chief of Staff and determine elements to be implemented. Convey strategies to all applicable staff.
- ✓ Compare CMS waiver for CRNA supervision to state requirements and implement as appropriate.
- ✓ Determine if the hospital will suspend nursing care plans and if so, educate all applicable staff.
- ✓ Review waivers for Respiratory Therapy and compare to state requirements before implementing any change in staffing.
- ✓ Review medical waivers with the Director of Medical Records and implement accordingly.
- ✓ Review waivers for non-acute care settings that are part of the Health System and implement as appropriate.

Sources

1. https://www.cms.gov/files/document/qso-20-13-hospitals-cahs-revised.pdf
2. https://www.cms.gov/files/document/covid-rural-health-clinics.pdf ■