



We care about Iowa's health

March 24, 2020

Via Email Only

Hon. Kelly Garcia
Director
Iowa Department of Human Services
1305 E Walnut St.
Des Moines, IA 50319
kgarcia@dhs.state.ia.us

Hon. Larry Johnson
Director
Iowa Department of Inspections and Appeals
321 E 12th St.
Des Moines, IA 50319
larry.johnson@dia.iowa.gov

Hon. Michael Randol
Director
Iowa Medicaid Enterprise
611 5th Ave.
Des Moines, IA 50309
mrandol@dhs.state.ia.us

Re: Request for Additional Waivers for Iowa Hospitals

Dear Directors Garcia, Randol, and Johnson:

First, let me thank you for your service during these trying times. We appreciate your willingness to work with Iowa's health care stakeholders to ensure that Iowans are provided with adequate testing and treatment for COVID-19. We look forward to our continued cooperation while navigating this public health emergency.

On behalf of the Iowa Hospital Association (IHA), We are writing to request that the Iowa Department of Human Services (DHS), Iowa Medicaid Enterprise (IME), and the Iowa Department of Inspection and Appeals (DIA) provide additional state regulatory relief through any available authority during this public health emergency. IHA understands that DHS, IME, and DIA have all issued various waivers to date. Additionally, we are aware that DHS requested certain waivers from the Centers for Medicare and Medicaid Services (CMS) pursuant to sections 1115, 1915(c), and 1135 on March 17, 2020. This letter is to request additional waivers in light of the rapidly developing situations that Iowa's hospitals are facing.

The following is a summary of the additional flexibility we are requesting on behalf of Iowa's hospitals.

CMS Blanket and Other Waivers

The U.S. Department of Health and Human Services (HHS), CMS, U.S. Occupational Health and Safety Administration (OSHA), Substance Abuse and Mental Health Services Administration (SAMHSA), the Centers for Disease Control (CDC) have issued numerous blanket



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waivers and guidance. As a general matter, Iowa hospitals intend to function under those blanket waivers and guidance, as well as any future waivers and guidance issued by the federal government. IHA is particularly supportive of the following waivers. While this list is not exhaustive, we provide it for context of the federal waivers that have been granted thus far. We hereby request that DHS, IME, and DIA explicitly recognize these and the other waivers issued by the federal government, and waive any similar state limitations, and request that DHS, IME, and DIA will use its agency discretion and refrain from issuing any sanctions to hospitals during the public health emergency.

- *Critical Access Hospitals (CAHs) bed limit.* CMS is waiving the requirement that CAHs limit the number of beds to 25 and waiving the requirement for the 96-hour limit for length of stays.
- *Medicare Conditions of Participation as State Standard.* CMS is waiving, to the extent necessary, the Medicare Conditions of Participation (CoP). We ask DHS to adopt explicitly the CMS CoP waivers and any guidance, assuring hospitals that actions they take to ensure access to services to which CMS does not object would not be subject to sanctions by DHS.
- *EMTALA.* CMS has stated that EMTALA sanctions will not apply for the direction or relocation of an individual to another location to receive a medical screening pursuant to a state emergency preparedness plan or to transfer an individual who has not been stabilized if the transfer is necessitated by circumstances of the declared emergency.
- *HIPAA.* HHS has issued a limited waiver of HIPAA sanctions and penalties. Effective March 15, hospitals that have instituted a disaster protocol need not comply with limited aspects of HIPAA's privacy rules. Under the waiver, covered entities will not be sanctioned for failure to follow the following aspects of the privacy rule.
- *Licensure.* HHS has waived requirements that physicians and other health care professionals hold licenses in the State in which they provide services, if they have an equivalent license from another state (and are not affirmatively barred from practice in that state or any state a part of which is included in the emergency area).

State Facility Approval

There are a number of state requirements, standards, policies, and limitations that, like federal standards, could limit an Iowa hospital's ability to respond to the COVID-19 emergency. We ask DHS to waive for all Iowa hospitals the following:

- *Number of Approved Beds for CAHs and Other Hospitals.* Hospitals expect a surge of patients that will have a wide range of care needs that could exceed the number of beds for which the hospital is approved by DIA. To allow hospitals to prepare as soon as possible for the patients and their care needs, we ask DIA to allow hospitals to exceed the number of beds approved by DIA.
- *Hospital Locations.* The patients affected by the outbreak require isolation and may require specialized rooms and equipment. Hospitals are working to ensure that all of their patients can be safely treated, which will require hospitals to utilize space differently. To provide Iowa hospitals with needed flexibility to move patients as necessary and establish



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additional units, we ask DIA to recognize, upon request, as part of the Iowa approved hospital, all off-site outpatient and inpatient locations of the hospitals that Medicare recognizes as part of the Medicare certified hospital.

- *Alternative Care Sites.* CMS has provided guidance stating that it might provide reimbursement to a hospital for care provided in an “alternative care site,” or ACS, if a Medicare participating hospital located in an emergency area provides necessary acute care consistent with an 1135 waiver, Medicare will pay for the services as if the ACS was part of the hospital. To allow care to be provided in an ACS as part of a hospital, we ask DIA to recognize locations of hospitals operating as an ACS under an 1135 waiver. This flexibility also might require waivers under the state building codes under DHS’s or another department’s jurisdiction.
- *Nurse Aides.* DIA and CMS require certain assistants in hospitals to meet the nurse aide training and registration requirements. Although it is not always clear which tasks cannot be performed by assistants who are not nurse aides, we ask DIA for increased flexibility to ensure hospitals can fully utilize their staff who have passed criminal background checks without concern that they are running afoul of DIA’s position on nurse aides.

Additional Waivers Needed Pursuant to Section 1135

We have also asked CMS to waive certain standards pursuant to section 1135. We have copied you on correspondence to CMS requesting those additional waivers. In addition to the waivers we have requested in that letter, we request that DHS and IME request from CMS a waiver of all prior authorization requirements for Medicaid fee-for-service and managed care services provided for in the State Plan for the duration of the national public health emergency. It is our understanding that this waiver request must come from state authorities. Please contact us if you have any questions about those requests.

Again, we thank you for your continued service to the state during this public health emergency. We look forward continuing our work together to ensure Iowa’s hospitals can serve their communities in light of the COVID-19 outbreak. Should you have any questions about our requests, please contact us at your convenience at murphyk@ihaonline.org and keehnlem@ihaonline.org.

Sincerely,

A handwritten signature in black ink that reads 'K. M. Murphy'.

Kimberly Murphy
Vice President and Asst. General Counsel
Iowa Hospital Association

A handwritten signature in black ink that reads 'Maureen Keehnle'.

Maureen Keehnle
Senior Vice President and General Counsel
Iowa Hospital Association

Cc (via email): Paige Thorson, Deputy Chief of Staff, Office of Iowa Governor Kim Reynolds