IOWA HOSPITAL ASSOCIATION

We care about Iowa's health

March 24, 2020

Via Email Only
CMS Regional Office
601 East 12th Street
Kansas City, MO 64106
Midwest Consortium
ROCHISC@cms.hhs.gov

RE: Request for Waivers Pursuant to Section 1135 for All Iowa Hospitals

To Whom It May Concern:

On behalf of all 118 member hospitals of the Iowa Hospital Association (IHA), I am writing to request that the Centers for Medicare and Medicaid (CMS) provide the following waivers to all of Iowa's 118 hospitals in light of the COVID-19 national public health emergency.

Copied on this email are the following individuals: Hon. Kelly Garcia, Director of the Iowa Department of Human Services; Hon. Michael Randol, Director of Iowa Medicaid Enterprise; and Hon. Larry Johnson, Director of the Iowa Department of Inspections and Appeals.

We appreciate CMS' willingness to issue several blanket waivers last week. However, we believe the Iowa's hospitals still require more flexibility during these trying times. We understand that CMS is receiving several of these letters per day. We appreciate your willingness to work with our nation's hospitals to ensure they have the flexibility to treat their communities in light of the COVID-19 pandemic. We also understand that some of the requests below may be covered by a waiver CMS has issued since this letter was written.

Included with this letter is the Section 1135 Waiver COVID-19 State/Territory Request Template (the "Template"), which IHA has filled out for your review. As you can see, IHA is requesting every waiver listed in the Template.

In addition to the waivers requested in the Template, on behalf of all Iowa hospitals, IHA requests the following waivers. We ask that all waivers granted be in effect for the same length of time that CMS' March 13, 2020 blanket waiver is in effect.

Prior Authorizations for Medicaid. Several states, including Florida and Washington, have received waivers from CMS to allow their state departments that manage Medicaid to waive prior authorization requirements. We ask that CMS waive the same requirements for Iowa Medicaid fee-for-service and managed care members for any Medicaid-related service. IHA also request that all pre-existing authorizations through which a Medicare and Medicaid member has previously received prior authorization through the termination the emergency declaration be extended.

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Time Limits for Filings Claims. IHA requests a modification to the time limits for filing Medicare and fee-for-service and managed care Medicaid claims such that claims must be filed no later than the close of the period ending one calendar year after the end of the COVID-19 public health emergency. As our hospitals take steps to bolster our workforce (including potentially through newly enrolled Medicare and Medicaid fee-for-service and managed care providers or providers who are not licensed in the state), and adapt to other 1135 waivers and modifications, this additional time will ensure hospitals can correctly code and integrate necessary changes into our billing systems. This also will be critical to ensuring claims are not inappropriately denied, allowing providers to prioritize mitigating the COVID-19 outbreak.

Quality Reporting and Value Based Purchasing Program. IHA requests a blanket waiver be issued for the exceptions under certain Medicare quality reporting and value-based purchasing programs to acute care hospitals, PPS-exempt cancer hospitals, inpatient psychiatric facilities, skilled nursing facilities, home health agencies, hospices, inpatient rehabilitation facilities, Renal Dialysis Facilities, long-term care hospitals, and ambulatory surgical centers.

Off-Site Screening. IHA requests that CMS waive sections 1867 and 1395dd and accompanying regulations 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. IHA 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. In addition, IHA request that CMS 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 hospitals risking an EMTALA violation. CMS' EMTALA guidance is very helpful, but this would be the most thorough form of protection.

Conditions of Participation and Certification Requirements. IHA requests that CMS waive all requirements related to Conditions of Participation (CoP) for both Medicare and Medicaid, as well as any certification requirements. A general waiver such as this will allow hospitals that are unable to meet CoP or certification requirements right now due to the COVID-19 outbreak avoid sanctions during the public health emergency. The CoPs IHA would like CMS to waive include, but are not limited to:

- 42 C.F.R. § 482.13, which relates patient rights. This will provide hospitals the needed flexibility to seclude patients who may have been exposed to COVID-19.
- 42 C.F.R. § 482.43, which relates to transfers of post-acute care. This will allow hospitals to efficiently discharge patients to post-acute care to free up needed bed space for incoming patients. The CoPs includes numerous data sharing requirements that may impede the ability to move patients into the next care setting. Allowing expeditious patient transfers for the duration of the emergency will ensure

patients who need acute care have access. Allowing for discharges in an efficient manner will free beds for acute patients.

- 42 C.F.R. § 482.22(a), which relates to physician privileges and credentialing. This will allow physicians whose privileges will expire, and new physicians, can be full medical staff upon the approval of a hospital's governing body. This will allow hospitals to ensure that its physicians are on-boarded as quickly as possible be approved to work in the hospital without needing to go through the credentialing process. This will allow hospitals to ensure that its physicians are on-boarded as quickly as possible be approved to work in the hospital without needing to go through the credentialing process. This will also allow physicians to engage in telemedicine without engaging in the credentialing process.
- 42 C.F.R. § 489.24, which discusses texting of patient orders and verbal orders. This will allow providers to act as quickly as possible in giving patient orders and give them the flexibility to record such orders past the deadlines set forth in the regulations. Waiver of this rule will allow providers to complete their medical record review outside the 30-day window, allowing them more time to treat patients.
- 42 C.F.R. § 482.25(b)(1) and United States Pharmacopeia (USP) Chapter 797, which relate to the PPE required when providers are engaging in sterile compounding. This will allow providers to preserve PPE by allowing them to re-use PPE when compounding pharmaceutical medications.

3-Day Skilled Nursing Facility Stay. IHA request that CMS waive the requirement under section 1812(f) of the Social Security Act for a 3-day hospital stay prior to receiving coverage for skilled nursing. Waiver of this requirement will allow hospitals to discharge patients to long-term care more quickly to ensure that hospital has more room for acute patients.

Hospital Space. IHA requests a waiver of 42 C.F.R. § 482.41 so non-hospital buildings and space can be used for patient care, provided sufficient safety and comfort is provided for patients and staff. Waiver of this rule will allow hospitals to designate alternate sites for patient care without violating regulations. We ask that this waiver also apply to Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC).

Limitations on Physician Referral. IHA requests CMS waive sanctions under section 1877(g) of the Social Security Act (relating to limitations on physician referral), which will remove the liability concern for referring patients to the closest or most appropriate care setting.

Health Care Items and Services Furnished to Medicare Advantage Enrollees by Non-Network Providers. IHA requests CMS 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, which will assist Medicare Advantage network providers by ensuring full payment for out-of-network items and services they provide when serving patients who may be exposed to COVID-19.

Waiver of 42 C.F.R. §§ 484.54 and .55 Regarding Home Health Agencies. IHA requests that CMS waive these regulations. Waiver of these regulations will allow 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). The waiver will ensure that providers are not penalized for failing to meet applicable timeframes, and will prevent vulnerable patients from coming into contact with individuals who may have been exposed to or have COVID-19.

Waiver of 42 C.F.R. § 410.40(f) Related to Ambulance Transportation. IHA requests this waiver to allow necessary transportation to alternative approved sites of care and to reduce paperwork required of providers during the public health emergency.

Waiver of 42 C.F.R. § 410.78(b) Related to Telehealth. IHA asks that HHS OIG confirm that telemedicine screenings without co-pays and deductibles do not violate the CMP law or anti-kickback statute. This waiver will eliminate the requirement that in order to bill for a telehealth service a provider must have billed that Medicare enrollee for a service within the previous three years. These waivers will allow providers to screen and treat significantly more patients, reduce risk to front line health care providers, and assist in resolving the shortage of providers. Finally, IHA requests that CMS provide a waiver recognizing RHCs a distant site effective March 6, 2020. Allowing such a waiver will allow our hospitals to access more Iowans in their homes or in their long-term care facilities and be reimbursed at the same rate as if the visit was being done in-person.

Waiver for Teaching Hospitals. IHA asks that CMS allow flexibility in how the teaching physician is present with the patient and resident. Medicare and Medicaid generally require that the physician be physically present in the room or general area to bill as the teaching physician. With hospitals running low on supplies they are limiting the number of providers with direct patient contact. If providers allow real-time audio video or access to a teaching physician, or other distance medical service, such interaction should be covered.

Waiver of 42 C.F.R. § 489.102 Related to the Patient Self Determination Act. Hospitals are required to provide information about policies to patients "upon admission." This is usually accomplished by the bedside nurse. IHA requests a waiver of such requirements. Allowing flexibility in how a provider meets these requirements will allow hospital staff to more efficiently deliver care to a larger number of patients. IHA does not ask for this waiver to apply to the requirement that hospitals inquire about the existence of an advanced directive.

Medicaid/CHIP Waiver Requirements Related to Titles XIX and XX. IHA asks that CMS waive the requirements that providers submit and receive CMS approval of Title XIX and XX state plan amendments in order to temporarily waive any patient cost sharing associated with COVID-19 screening, testing, and treatment.

Waiver of Certain aspects of 45 C.F.R. Part 164 related to HIPAA Privacy and Security Requirements. The HIPAA privacy rule requires that all electronic transmissions of protected health information be encrypted. HHS and HHS' OCR have issued advisories against transmitting

protected health information (PHI) through text or unencrypted email channels. However, those tools serve as valuable means of rapid communication between providers, and between health care workers and patients. Additionally, hospital staff may need to communicate with a patient's family, friends or other contacts to satisfy urgent public health epidemiological needs absent clear approval of the patient. Finally, due to anticipated patient surge situations, IHA requests a waiver from the requirement to provide each patient a Notice of Privacy Practices on the date of first service delivery or as soon as practicable thereafter, as many patients may be rapidly discharged to other care settings.

Additional Emergency Department Waivers. IHA is requesting several waivers related to emergency departments (ED) that may be separate from the EMTALA waivers CMS has already issued.

First, IHA requests a waiver to allow hospitals to move emergency patients to another location in the hospital and continue to bill for Type A ED charges. IHA also requests a waiver from EMTALA to allow hospitals to set up temporary Alternative Care Sites (ACS) at off-campus locations to provide medical screening examinations, without needing to meet CoPs. IHA also requests a waiver from EMTALA's patient stabilization requirements, to allow hospitals to transfer patients to appropriate care facilities as soon possible.

IHA is also requesting waivers from certain inpatient prospective payment system (IPPS) requirements related to emergency care. First, IHA asks that CMS allow hospitals with IPPS units use IPPS unit beds that are appropriate for acute care inpatients to house acute care inpatients. IHA requests that CMS allow hospital IPPS units to bill for the services and note in records that the patient is being housed in the IPPS unit because of capacity issues related to the emergency. Second, IHA requests CMS to allow hospitals with IPPS units to transfer psychiatric IPPS patients to acute care units and provide the necessary care while continuing to bill at the IPPS excluded rate where the acute care beds are appropriate for psychiatric care and the staff and environment are conducive to safe care.

Hospice Visits. IHA requests CMS waive any requirements related to in-person hospice visits and allow telephone or video visits by providers.

Home Infusions. IHA requests a waiver of requirements to allow the delivery of medications and supplies without patient signature but with visual or verbal communication documented in the record instead.

Home Durable Medical Equipment Prosthetic Orthotic Suppliers (DMEPOS). IHA requests that CMS waive any requirements that providers have in-person communication with patients who are being prescribed home equipment, such as oxygen or other supplies, and instead allow providers to conduct such communication using telehealth or phone.

Waiver of CMS-9115-F Related to Interoperability and Patient Access. The "Interoperability and Patient Access (CMS-9115- F)" rule published March 9, 2020 significantly

impacts hospital infrastructure and imposes additional administrative requirements by creating a new mandate on ADT data sharing (page 280 onward). The implementation of this rule should be delayed until July 1, 2021 due to the lack of resources that can be dedicated to this implementation during the public health emergency.

Please note that have submitted separate correspondence to our state Directors Garcia, Randol, and Johnson requesting relief from state laws in light of the COVID-19 public health emergency. Should we need any additional relief from CMS, we will contact you. Finally, please do not hesitate to contact me to discuss this letter.

As always, thank you for your continued service to Iowa's hospitals. We appreciate your time. I look forward to hearing from you. Please feel free to contact me directly on my cell phone at (515) 250-4785 or by email at keehnlem@ihaonline.org.

Sincerely,

Maureen Keehnle

Maureen Keehnle
Senior Vice President and General Counsel
Iowa Hospital Association

Cc (via email only):

Hon. Kelly Garcia
Director
Iowa Department of Human Services

Hon. Michael Randol
Director
Iowa Medicaid Enterprise

Hon. Larry Johnson
Director
Iowa Department of Inspections and Appeals

Paige Thorson
Deputy Chief of Staff
Office of Iowa Governor Kim Reynolds

Section 1135 Waiver COVID-19
State/Territory Request Template

Introduction

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 the same day, pursuant to section 1135 of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act to mitigate the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective 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 such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Daylight Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and waivers will no longer be available, upon termination of the public health emergency, including any extensions.

States/territories can request approval that certain statutes and implementing regulations be waived by CMS, pursuant to section 1135 of the Act. The following list includes some of the temporary flexibilities available to CMS under section 1135 of the Act. Please check the box on the flexibilities that the state/territory is requesting. Please include any additional flexibilities that the state/territory is requesting under the section 1135 waiver authority under "Number 6 – Other Section 1135 Waiver Flexibilities".

Please complete the following fields:

State/Territory Name:	Iowa Hospital Association on behalf of all Iowa hospitals
Contact Name:	Maureen Keehnle
Contact Title and Agency:	SVP and General Counsel, Iowa Hospital Association
Email:	keehnlem@ihaonline.org
Phone:	(515) 250-4785 (Cell)
Date Submitted:	March 23, 2020

1) Medicaid Authorizations:

☒ Suspend Medicaid fee-for-service prior authorization requirements.
Section 1135(b)(1)(C) allows for a waiver or modification of pre-approval requirements if prior authorization processes are outlined in detail in the State Plan for particular benefits

☒ Require fee-for-service providers to extend pre-existing authorizations through which a beneficiary has previously received prior authorization through the termination of the emergency declaration

2) Long Term Services and Supports

☒ Suspend pre-admission screening and annual resident review (PASRR) Level I and Level II Assessments for 30 days

☒ Extend minimum data set authorizations for nursing facility and skilled nursing facility (SNF) residents

3) Fair Hearings

☒ Allow managed care enrollees to proceed almost immediately to a state fair hearing without having a managed care plan resolve the appeal first by permitting the state to modify the timeline for managed care plans to resolve appeals to one day so the impacted appeals satisfy the exhaustion requirements

☒ Give enrollees more than 120 days (if a managed care appeal) or more than 90 days (if an eligibility for fee-for-service appeal) to request a state fair hearing by permitting extensions of the deadline for filing those appeals by a set number of days (e.g., an additional 120 days)

4) Provider Enrollment

☒ Waive payment of application fee to temporarily enroll a provider

☒ Waive criminal background checks associated with temporarily enrolling providers

☒ Waive site visits to temporarily enroll a provider

☒ Permit providers located out-of-state/territory to provide care to an emergency State's Medicaid enrollee and be reimbursed for that service

☒ Streamline provider enrollment requirements when enrolling providers

☒ Postpone deadlines for revalidation of providers who are located in the state or otherwise directly impacted by the emergency

☒ Waive requirements that physicians and other health care professionals be licensed in the state in which they are providing services, so long as they have equivalent licensing in another state

☒ Waive conditions of participation or conditions for coverage for existing providers for facilities for providing services in alternative settings, including using an unlicensed facility, if the provider's licensed facility has been evacuated

5) Reporting and Oversight

☒ Modify deadlines for OASIS and Minimum Data Set (MDS) assessments and transmission

☒ Suspend 2-week aide supervision requirement by a registered nurse for home health agencies

☒ Suspend supervision of hospice aides by a registered nurse every 14 days' requirement for hospice agencies

6) **Other Section 1135 Waiver Flexibilities.** Please include any additional flexibilities that the state/territory is requesting under the Section 1135 waiver authority:

Please see correspondence sent with this document. Thank you.