

KIM REYNOLDS
GOVERNOR
ADAM GREGG
LT. GOVERNOR

LARRY JOHNSON, JR., DIRECTOR

April 1, 2020

Maureen Keehnle
Senior Vice President and General Counsel
Kimberly Murphy
Vice President and Asst. General Counsel
Iowa Hospital Association
Via email to: keehnlem@ihaonline.org; murphyk@ihaonline.org.

Re: Request for Additional Waivers for Iowa Hospitals

Dear Ms. Keehnle and Ms. Murphy,

On March 17, 2020, Governor Reynolds declared a state of public health disaster emergency related to COVID-19. The Department of Inspections and Appeals (the Department) is in receipt of correspondence from the Iowa Hospital Association (IHA) dated March 24, 2020, regarding waiver requests directed to the Centers for Medicare and Medicaid Services (CMS), the Department of Human Services (DHS), and Iowa Medicaid Enterprise (IME) resulting from the COVID-19 emergency. Thank you for proactively communicating with the Department regarding the needs of your member-hospitals during this unprecedented time.

IHA's correspondence addresses waivers issued by the federal government and requests the Department recognize waivers issued by CMS and waive any similar state limitations. The Department expressly recognizes applicable waivers issued by CMS, including those issued by CMS to IHA in correspondence dated March 26, 2020, and provides the following information regarding waiver requests directed to the Department:

- *Number of Beds Approved for Critical Access Hospital (CAH)*. IHA indicated that 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 the Department. To allow hospitals to prepare for the patients and their care needs, IHA asks the Department to allow hospitals to exceed the number of beds approved by the Department.

As a general matter, the Department does not approve the number of beds a hospital may maintain; that determination is made through the certificate of need process administered by the Iowa Department of Public Health pursuant to Iowa Code 135.61, et seq. Please see Section 8 of the Governor's Proclamation of Disaster Emergency issued on March 17, 2020, regarding the suspension of regulatory provisions related to the certificate of need process. Please direct any questions regarding general bed limitations, certificate of need, or the suspension of such regulatory provisions to the Iowa Department of Public Health.

The Department's administrative rules at 481 Iowa Admin. Code r. 51.53(4) provide that critical access hospitals "shall maintain no more than 25 acute care inpatient beds." The Department **grants** a waiver of this Rule during the public health emergency caused by COVID-19.

- *Hospital Locations and Alternative Care Sites.* IHA indicated that as hospitals work to ensure that all of their patients can be safely treated, hospitals will need to utilize space differently. IHA requested the Department "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." IHA also indicated that CMS has provided guidance stating that it might provide reimbursement to a hospital for care provided in an "alternative care site;" 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 alternative care site was part of the hospital. IHA requests the Department "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."

Pursuant to 481 Iowa Admin. Code r. 51.2(3), "[a] separate license is not required for separate buildings of a hospital located on separate parcels of land, which are not adjoining but provide elements of the hospital's full range of services for the diagnosis, care, and treatment of human illness, including convalescence and rehabilitation, and which are organized under a single owner or governing board with a single designated administrator and medical staff." To the extent a hospital is providing services in response to the COVID-19 public health emergency on premises that are not adjoining the hospital, the Department acknowledges that such services would not require separate hospital licensure pursuant to Rule 51.2(3).

Hospitals that require waivers of any particular state rules in their efforts to better utilize space in response to the public health emergency, including Rule 481—51.50 regarding minimum standards of construction for hospitals, should contact the Department using the specified waiver process, attached hereto. Please also note that the Department understands certain hospitals may be contemplating use of makeshift buildings to attend to this emergency. The Department will work with the hospitals and State Fire Marshal's office to expedite such reviews and approvals. For any such requests, the hospital should include with its waiver request:

1. A preliminary architectural plan to show major life safety components of the building, such as, but not limited to: building construction type, the building layout, means of egress, fire alarm and sprinkler system locations, etc.
2. Testing paperwork for all fire safety systems (sprinkler, fire alarm, etc.) showing compliance with their applicable NFPA standards.
3. Fire Safety Plans to include evacuation locations and procedures for the new use of building.

The State Fire Marshal's Office will work with hospitals through the variance process if there are areas that fall short life safety requirements, as long as adequate safety is maintained. If a hospital has any questions about the plan submittal process for these approvals, they can call Ljerka Vasiljevic at (515) 322-2191.

- *Certified Nurse Aides.* IHA requested increased flexibility to ensure hospitals can fully utilize nurse aides who have passed criminal background checks without concern that they are running afoul of the Department's position on nurse aides. Please note that a certified nurse aide is able to work in a hospital without the requirement of being included on Iowa's Direct Care Worker Registry.

A hospital's long-term care service, as identified in 481 Iowa Admin. Code rule 51.38, is subject to the Department's administrative rules governing nursing facilities at 481 Iowa Admin. Code chapter 58. Rule 58.11(1)(k) provides that certified nurse aides "who have received training other than the Iowa state-approved program, must pass a challenge examination approved by the department of inspections and appeals." However, challenge examinations are not currently being offered due to the public health emergency.

As detailed in the recent blanket waivers issued by CMS, along with its letter to IHA dated March 26, 2020, CMS is waiving the requirements at 42 C.F.R. §483.35(d) which require that nursing facilities may not employ a certified nurse aide for longer than 4 months unless they met the training and certification requirements under that Section. CMS is waiving these requirements to assist in potential staffing shortages seen with the COVID-19 pandemic. In association therewith, the Department **grants** a waiver of Rule 58.11(1)(k) requiring that certified nurse aides who have received training other than the Iowa state-approved program must pass a challenge examination during the public health emergency caused by COVID-19.

If you have any questions or need additional information, please do not hesitate to contact Hema Lindstrom, Medicare Bureau Chief for the Department, at Hema.Lindstrom@dia.iowa.gov or (515) 281-3079. We appreciate the efforts of IHA in responding to the needs of the Iowa health care community.

Respectfully,

A handwritten signature in black ink, appearing to read "Larry Johnson, Jr.", written in a cursive style.

Larry Johnson, Jr.