



Our hospitals in California and Washington are being asked to undertake unprecedented changes in the way we deliver health care, and the waivers granted so far at the federal level, while appreciated, are not sufficient to address the needs of our systems on the ground.

Section 1135 waivers are intended to ensure health care items and services remain available during emergencies and that the providers who furnish the items and services in good faith are reimbursed even if the provider cannot comply with all statutory and regulatory requirements during the disaster/emergency. In this spirit, we again thank you for the initial waivers and ask that you: (1) grant our outstanding waiver requests, and (2) provide additional waivers as described below.

**Discharge.** Suspend requirements relating to the notice of discharge appeal rights under 42 CFR §422.620 and the right to immediate QIO review of a decision to discharge an inpatient under 42 CFR §422.622. These waivers are desperately needed so that hospitals can discharge patients who no longer need acute care to more appropriate settings in a timely manner, making room for patients who need acute hospital care.

**Staffing.** Allow hospitals, SNFs, ICF/IIDs, home health agencies, hospices and primary care clinics to use health care professionals licensed in foreign countries but not yet licensed in the U.S. to fully act within their discipline. This will allow facilities to expand their capacity to treat patients.

**Subacute space.** To allow expanded bed capacity, waive the subacute room size requirement to allow the use of rooms that meet all non-waived requirements except those regarding square footage.

**Space flexibility.** Allow SNFs to relocate residents to other rooms, locations or SNFs to create isolation areas or to cohort patients by infectious disease status by waiving resident rights in 42 CFR § 483.10(e) regarding right to roommate of choice, right to refuse transfer to another room, and right to receive written notice of the change in room or roommate and the reason for the change.

**SNF notice to ombudsman.** Suspend the requirement to send a notice to the ombudsman program for skilled nursing facility-initiated discharges of residents, allowing staff to focus on providing patient care services rather than administrative tasks. 42 CFR § 483.15(c)(3).

**Hospital and SNF visitor policy.** Waive 42 CFR § 482.13(h) and 42 CFR § 483.10(f) to the extent necessary to allow hospitals to implement policies that restrict, deny or place conditions upon visitors into the facility to maintain patient safety. Suspend the requirement to inform each patient of his or her right to “receive the visitors whom he or she designates,” as long as no visitor is excluded on the basis race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (except infectious disease status).

**Telehealth.** Expand the definition of distant providers to include pharmacists who conduct medication management consults and registered nurses who provide specialty education (such as for diabetes), thereby allowing pharmacists and nurses to bill as professional providers. This action will facilitate social distancing and protect health care providers as well as patients. It would also encourage patients who

are hesitant to come to health care facilities to get the care they need, conserve personal protective equipment, and minimize exposure to COVID-19 for all parties.

**Outdated products.** Waive 42 CFR § 482.25(b)(3) to allow the pharmacist-in-chief to authorize the use of outdated products to the extent no acceptable alternative can be procured. Also allow personal protective equipment to be used beyond its shelf date to the extent that no acceptable alternative can be procured.

**Alternative office space.** Allow practitioners to use their vehicle as their office for billing purposes. Practitioners are driving to patients' homes or other locations to provide services, eliminating the need for an infectious patient to come to a facility and potentially expose other providers and patients to COVID-19, or to prevent an immunocompromised or otherwise high-risk patient from being exposed to infectious patients in the facility.

**Observation services.** Waive the requirement to provide a notice of observation services (MOON) under 42 CFR §489.20(y).

**Emergency Medical Treatment & Labor Act (EMTALA).** Waive the enforcement of section 1867(c) of the Act to allow hospitals, psychiatric hospitals, and critical access hospitals (CAHs) to transfer an unstabilized individual, so long as it is not inconsistent with a state's emergency preparedness or pandemic plan. This will allow communities to cohort patients in different facilities depending on the patient's infectious disease status.

**HIPAA.** Clarify that the current HIPAA waiver is in force for the duration of the emergency, not only for the first 72 hours following the hospital's activation of its emergency preparedness plan. The Washington and California hospital associations urge you to confirm the interpretation of the HIPAA waiver authority in accordance with the March 25, 2020 letter submitted to Secretary Azar by the American Hospital Association. In addition, announce general enforcement discretion with respect to unauthorized disclosures that may occur in spaces and locations that were not designed primarily for the purpose of patient care.

**Fire and Life Safety.** Health care organizations are working to prevent non-essential persons from entering health facilities to help protect staff and patients and prevent the further spread of COVID-19. Because we often rely on outside companies to perform inspection, testing, and maintenance work within health care facilities, we are requesting waivers to allow us flexibility in scheduling the work of outside companies. In other situations, our staff are relied upon for inspection, testing and maintenance and certain drills and exercises such as fire drills. It is crucial at this time that our staff be able to focus on providing direct patient care and are not distracted performing this routine work. Waivers will help to limit non-essential persons from entering health facilities and risking exposure.

**Hospitals.** This request includes waivers of certain Conditions of Participation as [documented in the attached](#), which also outline an anticipated schedule to ensure that all necessary inspections, testing and maintenance are performed promptly after the current situation subsides.

**Long-Term Care.** Needed waivers include:

- a. Provide temporary relief from the following Life Safety Code® requirements involving specific quantities:
  - i. Soiled linen and trash receptacles [LSC 19.7.5.7.1] – temporary increase for the capacity open to the corridor from a maximum of 32 gallons to 96 gallons due to the tremendous increase in biohazard items for disposal.
  - ii. Alcohol-based hand-rubs (ABHRs) [LSC 19.3.2.6(5) and/or (7)] – allow higher aggregate quantities to be stored in a smoke compartment from a maximum of 10 gallons to 30 gallons. In addition, increase the capacity of individual containers from a maximum of 1.2 liters to 3 liters.
- b. Delay or extend the compliance for the requirements requiring inspection, testing and maintenance (ITM) by outside vendors as they may not be permitted in facilities during this crisis.
  - i. Fire Alarm ITM [NFPA 72] – there would be a 60-day hiatus on fire alarm system ITM.
  - ii. Water-Based Fire Suppression ITM [9.7.5, 9.7.7, 9.7.8, and NFPA 25] - there would be a 60-day hiatus on automatic sprinkler, standpipe and hose, fire hydrant, and fire pump ITM.
  - iii. A 60-day hiatus for ITM of kitchen fire suppression systems, fire doors, fire and smoke dampers, portable fire extinguishers, emergency/standby generators, and elevators.
- b. In recognition of the additional burden and workload for facilities, and of delays in surveys and the performance of other administrative duties and responsibilities by authorities, permit the following extensions:
  - i. A 90-day extension on all expiring NFPA 101A Fire Safety Evaluation System (FSES) based waivers. FSES worksheets are typically handled by outside consultants such as licensed architects or professional engineers.
  - ii. A 120-day extension on all active Time Limited Waivers that will be expiring in the near term.

Thank you for considering our requests and thank you for all you and others in the federal government are doing to support our response to the COVID-19 pandemic. Your assistance is desperately needed for us to collectively succeed in protecting the public health.

Sincerely,

/s/

Taya Briley, RN, MN, JD  
Executive Vice President & General Counsel  
Washington State Hospital Association  
999 Third Avenue, Suite 1400  
Seattle, WA 98104  
206-605-7437 (mobile)  
[tayab@wsha.org](mailto:tayab@wsha.org)

/s/

Lois Richardson, JD  
Vice President & Legal Counsel  
California Hospital Association  
1215 K Street, Suite 800  
Sacramento, CA 95814  
916-834-7611 (mobile)  
[lrichardson@calhospital.org](mailto:lrichardson@calhospital.org)