



April 10, 2020

Cate Kortzeborn
Regional Administrator
Centers for Medicare & Medicaid Services
90 – 7th Street, Suite 5-300
San Francisco, CA 94103-6706

Via email with copies to:

ROSFOSO@cms.hhs.gov; Cross-Regional-Waiver-Validation-Team@cms.hhs.gov

RE: Arizona Section 1135 Waiver Request for All Arizona Hospitals and Health Systems

Dear Regional Administrator Kortzeborn:

This letter serves as Arizona hospitals' first independent request for waivers under Section 1135 for all affected similarly situated hospitals in Arizona due to the COVID-19 pandemic.

Arizona Governor Doug Ducey declared a State of Emergency on March 11, 2020, and, in leading Arizona's response to this pandemic, has issued no less than twelve Executive Orders since that date. On March 26, 2020, the Arizona Department of Health Services updated the community transmission level of COVID-19 in Arizona to widespread. Executive Order No. 2020-16 has instructed Arizona hospitals to increase their bed capacity by 50% by April 24, 2020, with the first 25% implemented by today, April 10, 2020. And Executive Order No. 2020-18 has instructed Arizonans to stay home unless participating in essential activities/functions. As of today, Arizona has seen at least 3,112 cases of COVID-19 and 97 deaths have been reported.

Arizona's hospitals and healthcare systems are acutely aware of the need to prepare for a surge of COVID-19 cases. Our aim is to ensure that patients have continued access to hospitalization and treatment in order to prevent deaths from COVID-19. There is also a critical need to ensure the continued ability to care for patients in a safe manner. To assist Arizona's hospitals and healthcare systems with these efforts, we respectfully request approval to implement the waivers listed on Exhibit A retroactively from March 1 through the duration of the public health emergency, unless otherwise specified.

Thank you for considering this request and for all you are doing to support hospitals, healthcare systems, and providers in responding to this pandemic and protecting the public health. Your work and assistance are greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann-Marie Alameddin". The signature is fluid and cursive, with the first name "Ann" being the most prominent.

Ann-Marie Alameddin
President and Chief Executive Officer
Arizona Hospital and Healthcare Association

/enclosures

Exhibit A: List of Waiver Requests

- 1. Critical Access Hospitals.** Arizona hospitals and healthcare facilities respectfully request a waiver of Medicare’s 96-hour physician-certification requirement for inpatient critical access hospital services (*see* § 1814(a)(8) of the Act). Additionally, in order to maximize Arizona’s acute care capacity and increase the availability of beds in hospitals with specialized capabilities for the most acutely ill patients, we request a waiver of the requirements of 42 C.F.R. § 485.645 to allow all Critical Access Hospitals to accept and be reimbursed for swing bed patients from other facilities, whether those beds are used for inpatient or Skilled Nursing Facility level care.
- 2. Teaching Hospitals.** Arizona hospitals and healthcare facilities respectfully request a waiver of the requirement that a teaching physician be physically present in the room or the area with the patient and a medical resident. (*See* 42 C.F.R §§ 415.170, 172; Medicare Claims Processing Manual § 100.1.) We request to allow physicians to bill as the teaching physician when real-time audio or video or access through a window is provided in order to limit the number of providers with direct patient contact.
- 3. Scope of Practice.** Arizona hospitals and healthcare facilities respectfully request waivers to allow nurse practitioners and physician assistants to prescribe, without direct oversight by a physician when necessary due to the public health emergency, nonemergency medical transportation (42 C.F.R. § 440.170), prosthetics (42 C.F.R. §440.120), and physical, occupational and speech therapies (42 C.F.R. §440.110) .
- 4. Interpreter and Translation Services.** Arizona hospitals and healthcare facilities respectfully request a clarification that providers may rely on family members or friends if a professional interpreter or translator (even remote) is not reasonably available. (*See* 45 C.F.R. §§ 902.202, 204.)
- 5. Medicare Requirements.** Arizona hospitals respectfully request that CMS require Medicare Advantage plans to suspend prior authorization requirements (*see* § 1852(c)(G) of the Act) to allow out-of-network providers to be reimbursed for medically necessary acute care and post-acute care without prior authorization. We also request waivers of the following Medicare laws and regulations:

 - a. 42 C.F.R. § 482.23(b) to allow staffing levels that do not comply with established limits due to the public health emergency.
 - b. 42 C.F.R. §§ 482.23(b)(2) and (c) to consider valid any licenses and training certificates required for hospital nursing staff for at least 180 days following termination of the public health emergency, regardless of their usual expiration date.
 - c. Timeliness requirements related to triaging complaints and investigation of complaints in CMS-certified facilities unless it involves an immediate jeopardy or infection control, in which personal protective equipment must be available for

use by the surveyor/investigator. (See Medicare State Operations Manual Chapter 5 (Complaint Procedures) § 5075.9.)

- d. Requirement to submit a form 855A to the Medicare Administrative Contractor if an alternate/new screening or patient care site is set up which is remote from the facility's campus (see 42 C.F.R. § 424.516).
- e. Grievance requirements at 42 C.F.R. § 482.13(a)(2).
- f. Clarification that an emergency is deemed to exist in all cases for purposes of the requirement within the Medicare Conditions of Participation (see 42 C.F.R. §482.51(b)(2)) that requires a properly executed informed consent form for the operation to be in the patient's chart before surgery, except in emergencies.
- g. Medicare Outpatient Observation Notice requirements, the 23-hour limitation on observation, and patient cost-sharing for observation services (see, e.g., 42 U.S.C. § 1395(cc)(a)(1)(y)). We respectfully request permission to bill for observation services rendered via remote monitoring methods.
- h. All federal healthcare program transfer-related payment reductions for transfers that are driven by the pandemic and are needed to free up acute care beds for the highest acuity patients.
- i. Requirement to provide patients the Important Message from Medicare, which allows them to appeal (and effectively delay) discharge. (See <https://www.cms.gov/Medicare/Medicare-General-Information/BNH/HospitalDischargeAppealNotices>.)
- j. Penalty of 7-10% on payments for using computed radiography technology at Section 1848(b)(9) of the Act. This waiver would increase the capacity to perform portable x-rays.
- k. Payment limitations under Section 1851(i) of the Act for health care items and services furnished to individuals enrolled in a Medicare Advantage plan by health care professionals or facilities not included in the plan's network.

6. Health Insurance Portability and Accountability Act of 1996 (HIPAA). Arizona hospitals respectfully request the following with respect to HIPAA requirements:

- a. A suspension of HIPAA breach notification timeframes at 45 C.F.R. § 164.408 until at least 180 days after termination of the COVID-19 emergency.
- b. Waiver of electronic data interchange code set requirements. This would provide flexibility to define and implement code sets not currently available in a standard federal code set and to provide additional specificity to a code set definition to allow state to track and set rates for services specific to COVID-19.

7. Stark Law. Arizona hospitals respectfully request that CMS waive the sanctions under section 1877(g) of the Act and regulations thereunder for referrals and claims related to the following to ensure: (1) sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare, Medicaid, and CHIP programs; and (2) health care providers (as defined in section 1135(g) of the Act) that furnish such items and services in good faith, but are unable to comply with one or more of the

specified requirements of section 1877 of the Act and regulations thereunder as a result of the consequences of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance:

- a. To the extent the exceptions to the referral prohibition related to compensation arrangements require that the duration of the arrangement be at least one (1) year and set in advance, waive such requirement so that providers can enter into relationships designed to meet immediate COVID-19 needs that may not be necessary for a full year period and so that providers have the flexibility to restructure existing arrangements to meet COVID-19 needs and restructure again once the public health emergency has ended for a period of March 1, 2020, through 90 days following the end of the public health emergency (to allow providers time to restructure arrangements to again conform to the pre-waiver requirements).
 - b. To the extent the exceptions to the referral prohibition related to compensation arrangements require that the compensation be set in advance, waive such requirement so that providers can immediately engage necessary services.
 - c. Waive the requirements that no additional transactions may occur between parties that make use of the isolated transaction exception within 6 months after the isolated transactions.
- 8. Behavioral Health.** Allow patients to remain eligible for partial hospitalization and intensive outpatient programs despite potential disruptions to their care due to social distancing or suspension of services. Allow therapy hours to be provided via telehealth or a blend of in-person and telehealth care for both reimbursement purposes and compliance with program requirements. Waive the time, distance and attendance standards for reimbursement purposes.
- 9. Alternative Locations.** Allow non-licensed facilities to take patients who do not need acute care but are in the hospital for other reasons: single bed certification for involuntary mental health holds held in non-psychiatric units, awaiting a guardian, awaiting Medicaid approval so they can be discharged, etc.
- 10. Relocation Costs.** Provide the option to reimburse providers for patient relocation costs if relocation is necessary due to the public health emergency, including providing full reimbursement to nursing facilities, ICF/IDDs, psychiatric residential treatment facilities, and hospitals for services rendered during an emergency evacuation to an unlicensed facility.