

March 16, 2020

ROCHISC@cms.hhs.gov
Centers for Medicare & Medicaid Services
Midwest Consortium
Chicago, IL

RE: Missouri Section 1135 Waiver Request
Provider Name/Type — All Missouri Hospitals and Health Systems

Dear Sir/Madam:

The State of Missouri has confirmed the presence of COVID-19, with several positive or presumptively positive cases and numerous Persons Under Investigation (PUIs). Based on the experience of other states, we anticipate the number of cases to steadily increase with the potential to overwhelm the health care system, especially hospitals. The Missouri Hospital Association appreciates the leadership of the Centers for Medicare & Medicaid Services in providing a number of blanket waivers to the Medicare Conditions of Participation, among other federal requirements. Waiving the 25-bed limit and the 96-hour length-of-stay requirement for critical access hospitals is key for our members and will ensure necessary care is delivered in rural areas of the state.

To ensure that Missouri is poised to rapidly and adequately respond to any surge of COVID-19 cases in the state, and to avoid inundating CMS with individual waiver requests, we request CMS grant the following blanket waivers to the state. These requests, based on communication with Missouri hospitals, are targeted to meeting the most critical of our members' needs.

1. **Suspend the EMTALA requirements for a medical screening examination** (42 U.S.C. § 1395dd(a) and accompanying regulations). Due to capacity issues, Missouri hospitals request the ability to triage individuals who come to the emergency department and divert individuals without an obvious emergency medical condition to alternative COVID-19 screening sites. **We also request CMS expand the definition of appropriate transfer** (42 U.S.C. § 1395dd(c)(2)) to allow for the transfer of patients to a facility offering a lower level of care, so long as the accepting facility has the capacity and capability to treat the patient. Similarly, we request hospitals be allowed to deny transfers unless the accepting facility offers a level of care needed by the patient that cannot be provided by the transferring hospital.
2. **Suspend the CoP Physical Environment requirements for alternate screening or patient care sites** (42 C.F.R. § 482.41). Missouri hospitals are in the process of standing up on- and off-campus COVID-19 screening and testing sites. Due to the temporary nature of these facilities, it will be unfeasible to meet the exacting standards for physical environment found

in the CoPs. Additionally, if and when hospitals experience patient surge beyond their licensed capacity, they may need to convert areas not currently used for patient care to treatment areas. Authorizing alternate but safe care areas for less acute patients will ensure adequate acute and intensive care beds for those in need of higher levels of care. Encompassed within this request is the ability for hospitals to provide care to patients in their vehicles at drive-through testing sites and non-PPS hospitals to treat medical/surgical patients.

3. **Allow Federally Qualified Health Centers and Rural Health Clinics to bill for their Prospective Payment System (PPS) rate**, or other permissible reimbursement, when providing services from alternative physical settings. This will allow flexibility in site of clinics to promote appropriate infection control.
4. **Allow hospitals to disregard provisions in their medical staff bylaws relating to expiration of and granting of privileges** (42 C.F.R. § 482.22). Granting hospitals flexibility to grant extensions to existing privileges and/or granting new privileges to new physicians absent full review and approval of the medical staff or governing body will ensure consistent staffing levels throughout the duration of this emergency.
5. **Relax documentation requirements for transfers to post-acute care** (42 C.F.R. § 482.43). Hospitals will need to efficiently discharge patients to post-acute care to free up needed bed space for incoming patients. The CoP includes numerous data sharing requirements that 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.
6. **Waive certain HIPAA privacy and security requirements to better facilitate care** (45 C.F.R. Part 164). The HIPAA security rule requires that all electronic transmissions of protected health information be encrypted. The Department of Health and Human Services, through both CMS and the Office for Civil Rights, have issued advisories against transmitting PHI via 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, we request 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.

7. **Relax certain standards relating to protective equipment during sterile compounding** (42 C.F.R. § 482.25). To conserve face masks, which likely are to be in short supply, we request that personnel engaged in sterile compounding be allowed to remove and retain face masks in the compounding area to be re-donned and used throughout a single work shift.
8. **Allow regular use of verbal orders** (42 C.F.R. § 482.24). Allowing the use of verbal orders during a surge will allow facilities to triage, screen, stabilize and treat patients more efficiently and effectively. We request that verbal orders be permitted with read-back verification and with authentication to follow within a reasonable time. Similarly, **allowing hospitals to complete medical records outside the 30-day requirement** will allow health care providers to focus on immediate care needs as opposed to paperwork.
9. **Suspend certain requirements relating to patient rights** (42 C.F.R. § 482.13). In emergency situations, especially those involving patient surge, it is impractical to require hospitals to provide each patient an individual notice of rights. Hospitals also must be allowed to temporarily suspend their grievance process to focus on urgent care needs and patient safety. Additionally, the need to care for patients outside typical care settings may infringe on personal privacy rights. Finally, the nature of the COVID-19 virus may require visitor limitations and seclusion against a patient's express desires.
10. **Suspend requirements for face-to-face consultation by physicians prior to transfer to home health agencies** (42 C.F.R. 484.55). Expediting transfer to home health agencies can relieve stress on inpatient settings and long-term care. Home health agency staff may perform the necessary certifications and initial assessments remotely or by record review, allowing physicians and advanced practice clinicians to focus on patients who require acute care.
11. **Waive sanctions under section 1877(g) of the Social Security Act** (Stark Law restrictions on physician referral). This will allow hospitals to enter into temporary compensation arrangements that may otherwise violate Stark, engage in recruitment activities to ensure adequate coverage and allow for more efficient transition of patients to post-acute care.
12. **Suspension of the three-day rule for acute and critical access hospitals** (42 C.F.R. § 409.30). The need to quickly transition patients to post-acute care is critical during a pandemic. Waiving the requirement for a three-day inpatient stay prior to transfer of a patient to long-term care or a critical access hospital swing bed will free up needed beds for incoming patients with acute care needs.

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The expected duration of the waiver is March 1, 2020 (the effective date of the President's declaration under the National Emergencies Act) until the COVID-19 national public health emergency terminates.

Thank you for considering these requests so that Missouri hospitals can manage and mitigate the potentially devastating effects of the COVID-19 outbreak. Our members already are facing overburdened emergency departments, staffing shortages, supply chain pressures and significant uncertainties and unknowns for the duration of this public health emergency. Blanket waivers of the foregoing requirements will help the health care delivery system meet the needs of the state's citizens and help flatten the curve of the pandemic.

Sincerely,

A handwritten signature in black ink, appearing to read "Herb B. Kuhn", with a long horizontal flourish extending to the right.

Herb B. Kuhn

President and CEO

c Randall W. Williams, M.D., FACOG