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COVID-19 Waivers: Some SNFs Refuse Hospital Patients Anyway; MA Coverage Is Better

By Nina Youngstrom

The uneasiness some skilled nursing facilities (SNFs) feel about accepting patients is reportedly slowing transfers from hospitals during the coronavirus pandemic, despite CMS's blanket waiver of its requirement that patients spend three days as hospital inpatients before the SNF admission. Because some SNFs don't think the waiver is triggered until the referring hospital is in the throes of the emergency, they're refusing patients without a qualifying three-day stay, and the "confusion" may persist until CMS clarifies "exactly" what the waiver means, according to an attorney who represents long-term care facilities.

"If you take the interpretation there has to be an actual crisis for beds, some SNFs are afraid to take those patients who don't have a qualifying three-day stay," said attorney Paula Sanders, with Post & Schell in Harrisburg, Pennsylvania. "I don't believe that was the intent of the waiver."

The blanket waiver "provides temporary emergency coverage of SNF services without a qualifying hospital stay, for those people who are evacuated, transferred, or otherwise dislocated as a result of the effect of disaster or emergency," CMS said March 18 in *MLN Matters* SE20011 Revised.^[1] With the perceived ambiguity of the language, Sanders said some of her SNF clients won't take the risk of accepting patients without a three-day stay, because they're worried Medicare auditors will determine the admission wasn't valid and try to recoup the money after the crisis abates. SNFs are not alone; some hospital case managers say their compliance departments won't let them use the waiver until they have CMS's authorization, said Ronald Hirsch, M.D., vice president of R1 RCM. "It's important to point out that this waiver applies to every nursing facility and critical access hospital and hospital across the nation. Nothing needs to be done to use this waiver for Medicare patients," he said.

Sanders and others are looking to CMS for elaboration on this and other waivers that were rolled out in mid-March. Sec. 1135 of the Social Security Act allows HHS to waive certain provisions of Medicare, Medicaid and the Children's Health Insurance Program when the HHS secretary declares a public health emergency and the president declares a national emergency.^[2] The blanket waivers are broad in scope, but limited in time, said attorney Mark Polston, with King & Spalding in Washington, D.C., at a March 19 webinar held by the firm.

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