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Compliance Tracker: Helping Hospitals Track Their Use of Blanket Waivers for Post-Public Health Emergency Compliance

By Nina Youngstrom

Kate Routledge, senior director of compliance support at the Hospital and Healthsystem Association of Pennsylvania, developed this tool to help hospitals keep track of the COVID-19 blanket waivers^[1] under Sec. 1135 of the Social Security Act.^[2] When the public health emergency ends, regulatory requirements will resume, and hospitals will have to restore their original policies. If hospitals don't go back to their normal processes, they will be noncompliant, Routledge said. Some may require no adjustment because "not every hospital is using every blanket waiver." Contact Routledge at kroutledge@haponline.org.

	Regulatory Flexibility Waiver	Regulation description	Waiver description	Authority granted under	Agency oversight
Hospital/CAH/ ASC Facility based	Eligible Practitioners 42 C.F.R. § 410.78(b)(2)	Specify the types of practitioners that may bill for their services when furnished as Medicare telehealth services from the distant site.	Waiver expands the types of health care professionals that can furnish distant site telehealth services to include all those that are eligible to bill Medicare for their professional services.	CARES Act	CMS
	EMTALA Section 1867(a)	Regarding the screening of patients offsite from the hospital's campus.	Allows hospitals, psychiatric hospitals and critical access hospitals (CAHs) to screen patients at a location offsite from the hospital's campus to prevent the spread, not inconsistent with state's emergency preparedness or pandemic plan.	CARES Act	CMS

	Verbal Orders 42 C.F.R. § 482.23, 482.24, 485.635(d) (3)	A hospital must have a medical record service that has administrative responsibility for medical records.	Provide flexibilities related to verbal orders where read-back verification is required, but authentication may occur later than 48 hours.	CARES Act	CMS
	Reporting Requirements 42 C.F.R. § 482.13(g)(1) (i)-(iii)	Hospitals required to report patients in an intensive care unit whose death is caused by their disease, but who required soft wrist restraints to prevent pulling tubes/IVs, no later than the close of business of the next business day.	Waiving this requirement, except for any deaths where the restraints may have contributed is still reported within the standard time limit.	Hospital Without Walls initiative	CMS
	Patient Rights 42 C.F.R. § 482.13(d) (2), 482.13(h), 482.13(e)(1)(ii)	Providing a copy of medical record, patient visitation, and regarding seclusion.	Waiver flexibility is based on number of confirmed cases as reported by Centers for Disease Control and Prevention (CDC) will be assessed accordingly with COVID-19 confirmed cases decreased.		CMS
	Sterile Compounding 42 C.F.R. § 482.25(b)(1) and 485.635(a)(3) / USP 797	"All compounding, packaging, and dispensing of drugs and biologicals must be under the supervision of a pharmacist and performed consistent with state/federal law. USP 797- compliance with standards to prevent contamination caused by unclean environment."	Allow used face masks to be removed and retained in the compounding area to be re-donned and reused during the same work shift.		CMS

	Detailed Information Sharing for Discharge Planning for Hospitals and CAHs 42 C.F.R. § 482.43(a)(8), 482.61(e) and 485.642(a)(8)	The hospital must assist patients, their families or the patient's representative in selecting a post-acute care provider.	Waiving the requirement to provide detailed information regarding discharge planning in selecting post-acute care provider. Discharging planning requirements that ensure a patient is discharged to an appropriate setting with the necessary medical information and goals is still maintained.	Hospital Without Walls initiative	CMS
	Limiting Detailed Discharge Planning for Hospitals 42 C.F.R. § 482.43(c)	Related to post-acute care services so as to expedite the safe discharge and movement of patients among care settings.	Waiving the more detailed requirement that hospitals ensure those patients discharged home and referred for home health agency services, or transferred to a skilled nursing facility (SNF) for post-hospital extended care services, or transferred to an inpatient rehabilitation facility (IRF) or long-term care hospital (LTCH) for specialized hospital services.	Hospital Without Walls initiative	CMS
	Medical Staff 42 C.F.R. § 482.22(a) (1)-(4) (Hospital)	"The medical staff must periodically conduct appraisals of its members. Medical staff must examine the credentials of all eligible candidates for medical staff membership."	Waiving the requirement for physicians whose privileges will expire to continue practicing at the hospital and for new physicians to be able to practice before full medical staff/governing body review.	CARES Act	CMS
	Medical Staff (Ambulatory Surgery Center) 42 C.F.R. § 416.45(b)	Medical staff privileges must be periodically reappraised by the ambulatory surgery center (ASC).	Waiving requirement for ASC to periodically reappraise medical staff privileges.	CARES Act	CMS

	Medical Record 42 C.F.R. § 482.24(a)-(c), 482.24(c)(4) (viii)	Hospital must have medical record service that has administrative responsibility for medical records. A medical record must be maintained for every individual evaluated or treated in the hospital.	Allow flexibility in completion of medical records within 30 days following discharge from a hospital.	Hospital Without Walls initiative	CMS
	Flexibility in Patient Self Determination Act Requirements (Advance Directives) 42 C.F.R. § 489.102	Requires hospitals and CAHs to provide information about their advance directive policies to patients.	Waiving this requirement to allow staff to more efficiently deliver care to a larger number of patients.	CARES Act	CMS
	Physical Environment 42 C.F.R. § 482.21 and 485.623	Hospital must develop, implement and maintain an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement program.	Waiver issued to non-hospital buildings/space to be used for patient care and quarantine sites.	Hospital Without Walls initiative	CMS
	Physician Services 42 C.F.R. § 482.12(c) (1)-(2) and 482.12(c)(4)	Medicare patients be under the care of a physician.	Allows hospitals to use other practitioners to the fullest extent possible, as long as it is consistent with state's emergency preparedness.	CARES Act	CMS
	Anesthesia Services 42 C.F.R. § 482.52(a) (5), 485.639(c)(2) and 416.42(b)(2)	Certified registered nurse anesthetist (CRNA) under the supervision of a physician.	Waiver allows hospitals, CAHs and ASC to allow CRNAs to function to the fullest extent of their licensure.	CARES Act	CMS

	Utilization Review 42 C.F.R. § 482.1(a) (3) and 42 C.F.R. § 482.30	Requirement that hospitals participating in Medicare and Medicaid must have a utilization review plan that meets specified requirements.	Waiving the entire utilization review condition of participation.	Hospital Without Walls initiative	CMS
	Written policies and procedures for appraisal of emergencies at off- campus hospital departments 42 C.F.R. § 482.12(f)(3)	Emergency services with surge facilities only, written policies and procedures for staff to use when evaluating emergencies are not required for surge facilities.	Removes the burden on the facility to develop additional policies and procedures at their surge facilities or surge sites related to the assessment, initial treatment, and referral of patients.	Hospital Without Walls initiative	CMS
	Emergency preparedness policies and procedures 42 C.F.R. § 482.15(b) and 485.625(b)	Requires hospitals and CAHs to develop and implement emergency preparedness policies and procedures. Emergency preparedness requires emergency preparedness communication plans for hospitals and CAHs to contain specified elements with respect to the surge site.	Removes the burden on facilities to establish these policies and procedures for their surge facilities or surge site.	Hospital Without Walls initiative	CMS
	Quality assessment and performance improvement program 42 C.F.R. § 482.21(a)–(d) and (f), 482.645(a), (b), (d)	Provides details on the scope of the program, the incorporation, and setting priorities for the program's performance improvement activities, and integrated quality assessment & performance improvement programs.	Decreases the burden associated with the development of a hospital or CAH quality assurance and performance improvement program, the requirement that hospitals and CAHs maintain an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement program will remain.	Hospital Without Walls initiative	CMS

	Nursing Services 42 C.F.R. § 482.23(b)(4) and 42 C.F.R. § 482.23(b)(7)	Requires nursing staff to develop and keep current nursing care plan, and hospital to have policies and procedures in place to establish which outpatient departments are not required to have a registered nurse present.	Waiver allows nurses to increase time to meet the clinical care needs of each patient and allow for the provision of nursing care to an increased number of patients. Relief for the provision of inpatient services and requirement to establish nursing-related policies and procedures for outpatient departments.	CARES Act	CMS
	Food and Dietetic Services 42 C.F.R. § 482.28(b)(3)	Providers to have a current therapeutic diet manual approved by the dietitian.	Removing administrative requirements.	CARES Act	CMS
	Respiratory Care Services 42 C.F.R. § 482.57(b)(1)	Requires hospital to designate in writing the personnel qualified to perform specific respiratory care procedures and amount of supervision required for personnel to carry out specific procedures.	Not required to designate these professionals in writing will allow qualified professionals to operate to the fullest extent of their licensure and training in providing patient care.	CARES Act	CMS
	CAH Personnel Qualifications 42 C.F.R. § 485.604(a)(2), 42 C.F.R. § 485.604(b)(1)-(3), and 42 C.F.R. § 485.604(c)(1)-(3)		Allow CAHs to employ individuals in these roles who meet state licensure requirements and provide maximum staffing flexibility.	CARES Act	CMS
	CAH Staff Licensure 42 C.F.R. § 485.608(d)	Requirement that staff of CAHs be licensed, certified or registered in accordance with applicable federal and state laws.	Maximum flexibility for CAHs to use all available clinicians.	CARES Act	CMS

	CAH Length of Stay 42 C.F.R. § 485.620	CAHs limited to 25 beds, and length of stay limited to 96 hours.	Waiving specific requirements.	CARES Act	CMS
	Temporary expansion locations 42 C.F.R. § 482.41 and 485.623	Hospital must be constructed, arranged and maintained to ensure the safety of the patient, and to provide facilities for diagnosis and treatment and for special hospital services appropriate to the needs of the community.	Allows hospital to change the status of their current provider- based department locations to the extent necessary to address the needs of hospital patients. Extended to any entity operating as a hospital so long as the location meets the conditions of participation.	CARES Act	CMS
	Responsibilities of Physicians in CAH 42 C.F.R. § 485.631(b)(2)	A MD or DO is present for sufficient periods of time to provide medical direction, consultation and supervision for the services provided in the CAH, and is available through direct radio or telephone communication.	Waiving a MD or DO be physically present to provide medical direction, consultation, and supervision for the services provided in the CAH.	Hospital Without Walls initiative	CMS
	Medicare and Medicaid COVID-19 testing	Medicare and Medicaid patients must receive an order from treating physician or other practitioners to receive testing.	Written practitioner's order is no longer required for the COVID-19 test for Medicare payment purposes. Pharmacist can work with physicians/other practitioners, to get tested at "parking lot" test sites.	Public Health Emergency	CMS
	Hospitals increase the number of beds		Flexibility to increase the number of beds for COVID-19 patients/rural health clinics can increase bed capacity without affecting rural health clinic payment	Hospital Without Walls initiative	CMS

	Hospital to offer LTC services ("swing beds") 42 C.F.R. § 409.31	Specific conditions for meeting level of care, requirements receiving care in a SNF or swing-bed hospital for a condition for which individual receives inpatient hospital or inpatient CAH services.	Waiving "swing bed" subsection (a)(1)-(4) eligibility to allow hospitals to establish SNF swing beds payable under SNF prospective payment system to patient who do not require acute care but meet SNF level of care.	Public Health Emergency	CMS
	Hospitals classified as Sole Community Hospital (SCH) 42 C.F.R. § 412.92(a), 412.92(a)(1)(ii)	Criteria for classification as a sole community hospital, hospital has fewer than 50 beds and Medicare administrative contractor certifies that the hospital would have met.	Waiving eligibility requirements: distance requirements, "market share" and bed requirements.	Public Health Emergency	CMS
	Hospital classified as Medicare-dependent small rural hospitals (MDH) 42 C.F.R. § 412.108(a)(1)(ii)	Hospital has 100 or fewer beds during the cost reporting period.	Waiving eligibility requirement for hospitals that have 100 or fewer beds during cost reporting and at least 60% of hospital inpatient day or discharges.	Public Health Emergency	CMS
Rehab/Psych	Inpatient Psychiatric unit patients in acute care unit of a hospital		Allowing acute care hospitals with excluded distinct part inpatient psychiatric units to relocate inpatients from the excluded distinct part psychiatric unit to an acute care bed. Hospital should continue to bill for inpatient psychiatric services under the Inpatient Psychiatric Facility Prospective Payment System.	CARES Act	CMS

	Flexibility for Inpatient Rehabilitation facilities regarding the "60 percent rule"	The 60% rule is Medicare facility criterion that requires each IRF to discharge at least 60% of its patients with one of the 13 qualifying conditions.	Allowing IRFs to exclude patients from the freestanding hospital's associated requirements to receive payment as an IRF, if IRF admits a patient solely to respond to the emergency and patient's medical record.		CMS
	Inpatient Rehab Facility - Intensity of Therapy Requirement "3-hour rule" 42 C.F.R. § 412.622(a)(3)(ii)	Provides that payment generally requires that patients of an inpatient rehabilitation facility receive at least 15 hours of therapy per week.	Waiving the time restraint.	CARES Act	CMS
	Extension for Inpatient Prospective Payment System (IPPS) wage index occupational mix survey submission	CMS collects data every 3 years on occupational mix of employees for short-term acute care hospitals participating in Medicare. Due July 1, 2020.	Waiver has extension for hospitals nationwide until August 3, 2020.		CMS
	Patients in Long-term care acute hospitals (LTCHs)	LTCH patients 25-day average length of stay	Exclude patient stays where an LTCH admits or discharges patients in order to meet demands of the emergency, still allow facilities to be paid as LTCHs.	Hospital Without Walls initiative	CMS
	Inpatient psychiatric and inpatient rehab increase the number of beds of COVID-19 patients		Can admit more patients to alleviate pressure on acute-care hospitals bed capacity without reducing teaching status payment	Hospital Without Walls initiative	CMS

	Freestanding inpatient rehab facilities accept patient from acute care hospitals		Inpatient rehab facilities can accept patients from acute care hospitals experiencing a surge that do not require rehab care.	Hospital Without Walls initiative	CMS
LTCH/SNF	LTCH and SNF 3-day prior hospitalization	Patients are required a 3-day prior hospitalization for coverage of a SNF stay.	Waiving the 3-day prior hospitalization for coverage of a SNF.	Hospital Without Walls initiative	CMS
	LTCH and SNF pre-admission screening and annual resident review (PASARR) 42 C.F.R. § 483.20(k)	Nursing homes admitting new patients must receive a Level 1 or Level 2 preadmission screening.	Waiving the requirement, Level 1 assessment may be performed post-admission. On or before the 30th day of admission, new patients admitted to nursing homes with a mental illness should be referred promptly by the nursing home to State PASARR program for Level 2.	Hospital Without Walls initiative	CMS
	Long Term Care Hospital Site Neutral Payment Rate Provisions 1886(m)(6) of the Act		Waives payment adjustment for LTCHs that do not have a discharge payment percentage for the period that is at least 50%.	CARES Act	CMS
	LTCH accepting acute-care hospital patients		Allowing LTCH to accept acute-care hospital patients.	CARES Act	CMS

Life Safety Code	Alcohol based hand rub (ABHR) dispensers 42 C.F.R. § 482.41(b) hospitals 42 C.F.R. § 485.623(c) CAH 42 C.F.R. § 483.110(d) Inpt hospice 42 C.F.R. § 483.470(i) ICF/IID 42 C.F.R. § 483.90(a) LSC 18/19.3.2.6		Waiving prescriptive requirements for the placement of ABHR for use by staff and others.	Public health emergency	CMS
	Fire drills – quarterly fire drills LSC 18/19.7.1.6		Waiving the requirement of quarterly fire drills and will permit documented orientation/training program related to current fire plan.	Public health emergency	CMS
	Temporary Construction LSC 18/19.3.3.2		Waiving requirements that would otherwise not permit temporary walls and barriers between patients.	Public health emergency	CMS
Workforce	Nurse practitioners, clinical nurse specialist, and physician assistants – expand scope of practice		Waiver allows nurse practitioners, clinical nurse specialists, and physician assistants to provide home health services: order home health services, establish and periodically review a plan of care for home health patients, certify/re-certify patient is eligible for home health services.	CARES Act	CMS
	Physical and occupational therapist – expand scope of practice		Allowing physical and occupational therapist to delegate maintenance therapy services to physical and occupational therapy assistants in outpatient settings.	CARES Act	CMS

Financial/Payment/ Billing	Medicare payment – teaching hospitals		Waiver allows teaching hospitals to shift their residents to other hospitals and will not penalize hospitals without teaching programs that accept these residents.	CARES Act	CMS
	Outpatient hospital service payment		Payment for wound care, drug administration, and behavioral health services delivered in temporary expansion locations, including parking lot tents, converted hotels, or patient’s homes.	Hospital Without Walls initiative	CMS
	Payment for partial hospitalization services		Allowing payment for certain partial hospitalization services, including individual psychotherapy, patient education, and group psychotherapy that is delivered in temporary expansion locations, including patient's home.	Hospital Without Walls initiative	CMS
	Local coverage determinations therapeutic glucose monitors		Enforcement on certain local coverage determinations to access therapeutic continuous glucose monitor. Allow clinicians to monitor their glucose and adjust insulin doses at home.	Hospital Without Walls initiative	CMS
	Provider-based hospital outpatient departments relocated off- campus lower rate of Physician Fee Schedule		Provider-based hospital outpatient departments that relocated off-campus to obtain a temporary exception and continue to be paid under outpatient prospective payment system.	CARES Act	CMS

Telemedicine	Clinical practitioners furnish Medicare telehealth services	Only doctors, nurse practitioners, physician assistants and certain others could deliver telehealth services.	Allowing physical therapists, occupational therapists, and speech language pathologists provide telehealth services.	Hospital Without Walls initiative	CMS
	Hospitals bill for services furnished remotely to Medicare patients registered as hospital outpatients		Allowing hospitals to bill for services furnished remotely by hospital-based practitioners to Medicare patients registered as hospital outpatient, including patients at home (serving as a temporary provider-based department of the hospital). Hospital will bill as originating site for telehealth services.	Hospital Without Walls initiative	CMS
	Audio Only Telehealth for Certain Services 42 C.F.R. § 410.78(a)(3)	Interactive telecommunications systems to furnish telehealth services, to the extent they require use of video technology, for certain services.	Waiver allows use of audio-only equipment to furnish services described by the codes for audio-only telephone evaluation and management services, and behavioral health counseling and educational services. Payments will be increased to match similar office and outpatient visits.	Hospital Without Walls initiative	CMS
	Services furnished via telehealth		Adding new services to the list that may be furnished via telehealth during rulemaking process. New telehealth services will be added on a sub-regulatory basis, considering request by practitioners.	Hospital Without Walls initiative	CMS
	Payment for telehealth services in rural health clinics and federally qualified health clinics.	Clinics could not be paid to provide telehealth expertise as "distant sites."	Paying for telehealth services provided by rural health clinics and federally qualified health clinics, Medicare beneficiaries will have more options to access care from their home.	CARES Act	CMS

	Audio-video technology required for Medicare services		Waiving the video requirement for certain telephone evaluation and management services.	Hospital Without Walls initiative	CMS
	Telemedicine 42 C.F.R. § 482.12(a) (8)-(9) and 485.616(c)	Ensure when telemedicine services are furnished to the hospital's patients through an agreement with a distant-site hospital, the agreement is written and specifies that it is the responsibility of the governing body.	Telemedicine services to be furnished to the hospital's patient through an agreement with an off-site hospital.	Hospital Without Walls initiative	CMS

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