



SONIA Y. ANGELL, MD, MPH
State Public Health Officer & Director

State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

March 24, 2020

Mr. Steven Chickering
Associate Regional Administrator
Western Division of Survey and Certification
Centers for Medicare and Medicaid Services
90 7th Street, Suite 5-300
San Francisco, CA 94103

RE: Section 1135 Waiver during California's COVID-19 Public Health Emergency

Dear Mr. Chickering:

The California Department of Public Health (CDPH) is requesting approval for flexibility of conditions of participation for health care facilities pursuant to the emergency authority provided in the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020), and the Waiver or Modification of Requirements Under Section 1135 of the Social Security Act (March 13, 2020). In addition, Governor Newsom declared a public health emergency on March 4, 2020 (Executive Order N-27-20) related to COVID-19. This Executive Order directs state departments that regulate health care providers to suspend all enforcement related activities and to redeploy state resources to providing technical assistance to address the risks of COVID-19. Staff are directed to focus enforcement activities only where there are allegations of the most serious violations impacting health and safety.

Section 1135 of the Social Security Act [42 USC §1320b-5] permits the Secretary of Health and Human Services to waive certain requirements for healthcare facilities and providers in response to emergencies. CDPH is requesting retroactive approval of this request to March 13, 2020. This request is for the entirety of California, as all of the geographic areas in the State are expected to be directly affected by the emergency, if not already seeing an increased demand for access to care. CDPH requests the blanket waiver includes the following:

1. Staffing:
 - a. Allow all health facilities to utilize the services of other trained professionals to provide care and services to other lower level positions with training suitable for the

situation.

- b. Allow General Acute Care Hospitals (GACHs,) Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IIDs) to hire student nurses to be employed in Certified Nurse Assistant positions.
- c. Allow GACHs, SNFs, ICF/IIDs, Home Health Agencies (HHAs), hospices and primary care clinics (PCCs) to use health care professionals licensed in foreign countries but not yet licensed in California to fully act within their discipline.
- d. Suspend/defer Tuberculous test on health care professionals in order to facilitate the availability of additional health care professionals.
- e. Allow physicians whose privileges will expire during the emergency period and new physicians, to practice at GAHCs before full medical staff/governing body review and approval.

2. Space:

- a. Allow the GACH, SNFs, Ambulatory Surgery Centers (ASCs), End-Stage Renal Dialysis (ESRDs), ICI/IIDs, Adult Day Health Care (ADHCs) and PCCs facilities to use additional space, including surge tents set up in parking lots, to set up triage area for patients, while maintaining the designated 6-foot distance, to allow additional patients access to care in these facilities.
- b. Allow non-hospital building/space to be used for patient care, provided sufficient safety and comfort are provided for patients and staff.
- c. Waive the room size requirement for all sub-acute beds to allow the use of rooms that meet all other regulations except square footage requirements to expand bed capacity in facilities.
- d. Waive the room size requirements for SNF resident rooms to allow more residents per room.
- e. Allow SNFs to relocate residents to other rooms or locations, either within the SNF or transfer to another SNF, in order to create isolation areas where COVID-19 patients could be cohorted.

3. Program:

- a. Waive the ICF/IID requirement of day program as the participants in these programs are usually considered in the high-risk categories for COVID-19.
- b. Permit HHAs, hospices, and ADHCS to make telephonic outreach to clients to assess wellness, detect developing needs, deliver meals and supplies, and initiate face-to-face visits by appropriately credentialed professionals when agreed upon by the member and the provider.
- c. Reduce the requirement of the 30-day notice prior to discharge of a resident in a SNF facility to 10-days in order to facilitate access to care for additional patients. Suspend notice to Ombudsman Program for facility initiated discharges.

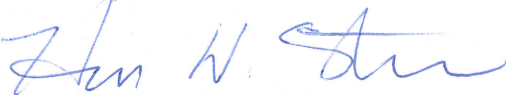
- d. Allow GACHs, SNFs, ICF/IIDs, and ADHCs facilities to develop written policies that may restrict, deny or place conditions upon visitors into the facility to maintain patient safety.
- e. The requirement that renal dialysis services be performed in an ESRD unit at a GACH facility. ESRD services should be allowed to be performed at the patient's bedside in order to maintain patient safety.
- f. Allow HHAs to perform certifications and initial assessments, and to determ.
- g. Suspend pre-admission and annual resident review (PASRR) level I and II for 30 days.

4. Other:

- a. Allow any facility to maintain certification if they temporarily shut down due to COVID-19.
- b. Extend certificate renewal dates for advanced cardiovascular life support (ACLS), cardiopulmonary resuscitation, pediatric advanced life support and similar skills for at least 90 days for those renewals coming due during the emergency.
- c. Allow non-certified personnel to take vital signs upon basic training.
- d. Maintain federal eligibility and allow GACHs, SNFs, HHAs, hospice funding for treatment of patients that receive care in or from neighboring states, in the event the local area neighboring state borders are impacted and the transfer of patients across state lines allows timely access to care.
- e. Suspend background checks for all health care personnel until the State determines live scan operations have resumed at which time individuals will be required to submit and undergo background checks.

Thank you in advance for your consideration. Please do not hesitate to contact me with any questions.

Sincerely,



Heidi Steinecker
Deputy Director
Center for Health Care Quality, Licensing and Certification Program