



Date: April 6, 2020

DQA Memo 20-002

To: All Wisconsin Hospitals

From: Ann Hansen, Director
Bureau of Health Services

Via: Otis Woods, Administrator
Division of Quality Assurance

CMS 1135 Waiver Provisions – Wisconsin Hospitals

Purpose

The purpose of this memorandum is to provide clarification and guidance to Wisconsin hospitals (including critical access hospitals as well as temporary expansion sites that are licensed as hospitals during the public emergency, collectively referred to herein as "hospitals") regarding the Centers for Medicare and Medicaid Services (CMS) issuance of blanket waivers of Medicare regulations under Section 1135 of the Social Security Act.

On March 13, 2020 United States President Donald Trump declared a national emergency due to the impact of the COVID-19 virus. Prior to this date, the Secretary of the federal Department of Health and Human Services declared a Public Health Emergency retroactive to January 27, 2020. In response to these declarations, and as permitted under Section 1135 of the Social Security Act, CMS issued a number of blanket waivers relieving certain regulatory burdens for many Medicare-certified providers, including hospitals, for the duration of the COVID-19 national emergency.

Wisconsin has adopted the Medicare Conditions of Participation as licensing standards. Accordingly, currently-approved hospitals operating in a manner that is consistent with these CMS waivers are in compliance with Wisconsin licensing standards, to the extent there is no conflict with Wisconsin law, as identified in the chart below. If hospitals are in compliance with the Medicare CoPs as temporarily modified by the waivers and with any conflicting Wisconsin law identified below, no additional action is necessary for Wisconsin hospitals to achieve compliance with Wisconsin's minimum standards for hospitals, and Wisconsin hospitals will not face sanctions from the state for violations of minimum licensing standards if the hospital is acting in reliance on the CMS waivers.

All inpatient hospital locations in Wisconsin are required to maintain a Certificate of Approval (CoA). This applies to hospitals operating as a provider-based Medicare location of another hospital. Hospitals seeking to expand their inpatient locations temporarily during the COVID-19 public health emergency should refer to [DQA Memo 20-001](#) which provides guidance on the licensure application requirements and Physical Environment/Life Safety Code requirements.

The table below outlines the issued CMS blanket waivers and any potential conflict with state of Wisconsin statutes.

1135 CMS Waiver	Conflict with State Statutory Requirement
Anesthesia services	No conflict
CAH Personnel qualifications	No conflict
CAH staff licensure	No conflict
CAH Status and location	No conflict
Care for Excluded Inpatient Psych Unit Patients in Acute Care	No conflict
Care for Excluded Inpatient Rehab Unit Patients in Acute Care	No conflict
Critical Access Hospital Length of Stay	No conflict
Critical Access Hospitals Patients Excluded Distinct Part	No conflict
Emergency preparedness policies and procedures	No conflict
Flexibility in Self Determination Act Requirements (Advanced Directives)	No conflict
Food and Dietetic Services	No conflict
Hospitals Able to Provide Inpatient Care_ (Temporary Expansion Sites, including medical tents/canopies)	Offsite and off campus facilities shall be licensed under s. 50.35, Wis. Stat. On campus structures do not require a separate license. Addressed in DQA Memo 20-001
Limit Discharge Planning for Hospitals and CAHs	No conflict
Medical Records	No conflict
Medical Staff Requirements	No conflict
Modify Discharge Planning for Hospitals	No conflict
Nursing Services	No conflict
Off Site Patient Screening	No conflict
Paperwork Requirements	No conflict
Physical Environment	No conflict for on-site and on-campus expansion. Addressed in DQA Memo 20-001
Physician services	No conflict
Quality Assessment and Performance Improvement	No conflict
Reporting Requirements	No conflict
Respiratory care services	No conflict
Sterile Compounding	No conflict
Telemedicine	No conflict
Temporary Expansion Sites	Offsite and off campus expansion sites must be licensed. Addressed in DQA Memo 20-001
Utilization Review	No conflict
Verbal Orders	No conflict
Written policies and procedures for appraisal of emergencies off campus hospital departments	No conflict

Resources

CMS Blanket Waivers:

<https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>

CMS Hospital Waivers: <https://www.cms.gov/files/document/covid-hospitals.pdf>

DQA Memo 20-001 State Licensure Application for Temporary Expansion Locations during Public Health Emergency related to COVID-19: <https://www.dhs.wisconsin.gov/dqa/memos/20-001.pdf>

Wisconsin Hospital Licensure and Certification: <https://www.dhs.wisconsin.gov/regulations/hospital/medicare-cert.htm>

Wisconsin Hospital Regulations: <https://www.dhs.wisconsin.gov/regulations/hospital/regulations.htm>

Wisconsin DHS COVID-19 Webpage: <https://www.dhs.wisconsin.gov/covid-19/index.htm>

State of Wisconsin Statutory Requirements:

***50.35 Application and approval.** Application for approval to maintain a hospital shall be made to the department on forms provided by the department. On receipt of an application, the department shall, except as provided in s. [50.498](#), issue a certificate of approval if the applicant and hospital facilities meet the requirements for hospitals... Except as provided in s. [50.498](#), this approval shall be in effect until, for just cause and in the manner herein prescribed, it is suspended or revoked. The certificate of approval may be issued only for the premises and persons or governmental unit named in the application and is not transferable or assignable. The department shall withhold, suspend, or revoke approval for a failure to comply with s. [165.40 \(6\) \(a\) 1.](#) or [2.](#), but, except as provided in s. [50.498](#), otherwise may not withhold, suspend, or revoke approval unless for a substantial failure to comply with the requirements for hospitals after giving a reasonable notice, a fair hearing, and a reasonable opportunity to comply. Failure by a hospital to comply with s. [50.36 \(3m\)](#) shall be considered to be a substantial failure to comply under this section.*

Questions

For questions related to licensure or the CoA application process, please contact Thomas Rylander at 608.266.7297 or Thomas.Rylander@wi.gov and Angela Mack at 608.216.3065 or Angela.Mack@wi.gov

For question related to Physical Environment or Life Safety Code, please contact David Soens at 608.220.0521 or David.Soens@wi.gov

For general questions regarding the information in this memo, please contact Ann Hansen at 608.264.9887 or Ann.Hansen@wi.gov