



March 26, 2020

Wayne A. Smith
President & CEO

Stephen Groff *****VIA ELECTRONIC SUBMISSION*****
Director,
Division of Medicaid and Medical Assistance
Delaware Health and Human Services
Medical Assistance Programs
DHSS Herman Holloway Campus, Lewis Building
1901 N. DuPont Highway
New Castle, DE 19720

With copy to
Michelle Baldi, CMS
Special Assistant,
Medicaid and CHIP
Operations Group

*****VIA ELECTRONIC
TRANSMISSION*****

Alfred I. duPont Hospital
for Children
Jay Greenspan, MD,
Interim Chief Executive
of Nemours Delaware
Valley Operations

Dear Director Groff,

Bayhealth
Terry Murphy,
President & CEO

On January 31, 2020, the United States Secretary of the U.S. Department of Health and Human Services (HHS) declared a public health emergency for the entire United States to aid in responding to the 2019 novel coronavirus (COVID-19) outbreak. On March 13, 2020 the President issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency under the Stafford Act. Pursuant to those declarations and the subsequent waiver of provisions of Title XIX of the Social Security Act (“Act”) by HHS, the Delaware health care facilities and providers are requesting that the State of Delaware avail itself of certain waivers of certification, licensure, and Medicaid requirements under Section 1135 of the Act. These waivers are requested for the entire State of Delaware and are requested to remain in effect until the end of the emergency. The spread of COVID 19 remains fluid, but it is clear that the count of infected individuals continues to rise at an alarmingly quick rate. Since preparation is key to maximizing surge capacity and minimizing direct exposure of patients and healthcare workers to the virus, we urge the Administration to take quick and decisive action on the following requests. Specifically, we request that the Administration seek a Section 1135 waiver from CMS regarding the below, and simultaneously issue a corresponding State waiver, where a State requirement is implicated.

Beebe Healthcare
David A. Tam, MD, MBA,
FACHE
President & CEO

ChristianaCare
Janice E. Nevin,
M.D. MPH
President & CEO

Licensure, Accreditation, and Enrollment

Accreditation and Survey Activities: The Delaware hospitals request suspension of accreditation surveys such as CMS surveys, State agency surveys, and surveys provided under deemed status.

Nanticoke Health Services
Penny Short, RN, BSN
President & CEO

Saint Francis Healthcare
Daniel Sinnott
President & CEO

Waiver of Provider Enrollment Requirements

The Delaware hospitals request a waiver to allow the State of Delaware to rely on other States’ enrollment in their State Medicaid programs for all providers seeking to render care to Delaware Medicaid beneficiaries, without any enrollment with Delaware. Additionally, for providers who are not enrolled in any State Medicaid program, we request that Delaware seek the waiver of the following requirements when expeditiously enrolling providers:

1. Payment of the application fee - 42 C.F.R. §455.460
2. Criminal background checks associated with Fingerprint-based Criminal Background Checks - 42 C.F.R. §455.434
3. Site visits - 42 C.F.R. §455.432

Delaware Healthcare
Association
Wayne A. Smith
President & CEO

4. In-state/territory licensure requirements - 42 C.F.R. §455.412

The Delaware hospitals also request waiver of all requirements necessary to allow for the postponement of all revalidation actions.

Waiver of Licensure Requirements

The Delaware hospitals also ask that the State waive all licensure requirements for all agencies within the State government (including Medicaid) that require that practitioners treating patients in the State be licensed by the applicable licensing body.

Site of Service Requirements

The Delaware hospitals seek permission to be able to treat patients in unlicensed facilities or at facilities that are licensed for a different purpose, provided that the State makes a reasonable assessment that the facility meets minimum standards, consistent with reasonable expectations in the context of the current public health emergency, to ensure the health, safety and comfort of beneficiaries and staff. The placing facility would be responsible for determining how to reimburse the unlicensed facility. This arrangement would only be effective for the duration of the section 1135 waiver. The hospitals should be fully reimbursed for services rendered in an alternative setting, where the hospital facilities themselves are either over capacity or are otherwise unusable for treating patients.

Children's Hospital Requirements

The Delaware hospitals request a waiver of the requirement that children's hospitals within the State be required to serve an inpatient population that is predominantly individuals under the age of 18, to the extent that the State in its unilateral discretion decides it is warranted.

Conditions of Participation

Discharge Planning:

The Delaware hospital request a waiver of all Federal and State regulations concerning providing data and honoring preferences related to the placement of a patient when discharge is appropriate and necessary to create capacity to care for new patients.

Verbal Orders:

We request that verbal orders may be used more than 'infrequently' (read-back verification is done) and authentication may occur later than 48 hours. This will allow for more efficient treatment of patients in a surge situation.

Medical Records Timing

We request that medical records may be fully completed later than 30 days following discharge but no later than 60 days following the termination of the emergency period. This flexibility will allow clinicians to focus on the care needs at hand and complete full documentation later.

MOON Requirement

The Delaware hospitals request a waiver pertaining to the Medicare outpatient observation notice (MOON).

Suicidal Patients

The Delaware hospitals request that the one-to-one observation standard for suicidal patients be temporarily lifted. 42 C.F.R. § 482.13(c)(2). This is a significant staffing burden which will not be feasible under surge conditions. We recommend allowing video monitoring and cohorting of patients, where possible, and having just one staff member physically present in the room with the cohort.

Medicaid Payment

Prior Authorization Requirements

Pursuant to the authority set forth in CMS's March 13 Healthcare Providers Fact Sheet (the "CMS Fact Sheet"), the Delaware hospitals seek relief from the Medicaid State agency and from CMS for any Medicaid prior authorizations, whether contained in the State plan or otherwise.

Timely Claims Filing Rules

Pursuant to the CMS Fact Sheet, the Delaware hospitals seek relief from the the Medicaid State agency and from CMS for any Medicaid claims submission deadlines, whether contained in the State plan or otherwise.

Prepayment Review and Audits

The Delaware hospitals seek an immediate cessation of any and all prepayment reviews, audits, recoupment actions, payment suspensions, and any other actions that could interfere with the flow of desperately needed funds to pay for ongoing healthcare delivery operations. We also request that the Delaware State agency instruct its Medicaid managed care organizations to adhere to the same waiver.

Discharge and Stepdown Requirements

The Delaware hospitals seek a reprieve from any Federal or State rules pertaining to the timely discharge of patients. Patients may need to remain at a hospital longer than is medically necessary because there are no beds available at local skilled nursing facilities, long term care facilities, or other appropriate setting. The home as well may not be an appropriate setting, due to a lack of availability of home nursing. The lack of a discharge setting should not result in any reductions in payment.

Alternatively, if a patient needs to be transferred to a lower acuity inpatient acute care facility, there should be no reduction in payment associated with that transfer.

Physician Self-Referral Laws.

The Delaware hospitals request a waiver of the Stark Law (Section 1877 of the Act) and all State correlates to allow for flexibility in compensation of physicians. This could mean that physicians could get hazard pay for treating COVID 19 patients, as one potential example.

HIPAA

The Delaware hospitals request a waiver to temporarily suspend the application of Federal and State sanctions and penalties arising from non-compliance with HIPAA requirements related to the following (as authorized in Secretary Azar's March 13, 2020 declaration):

- Obtaining a patient's agreement to speak with family members or friends (as authorized in Secretary Azar's March 13, 2020 declaration);
- Honoring a request to opt out of the facility directory (as authorized in Secretary Azar's March 13, 2020 declaration);
- Distributing a notice (as authorized in Secretary Azar's March 13, 2020 declaration);
- The patient's right to request privacy restrictions (as authorized in Secretary Azar's March 13, 2020 declaration);
- The patient's right to request confidential communications (as authorized in Secretary Azar's March 13, 2020 declaration); and
- Enabling the State to temporarily allow the use of non-HIPAA compliant telehealth technologies.

Nondiscrimination Requirements

The Delaware hospitals request relief from the requirement to provide “qualified interpreters,” as that term is defined in 45 C.F.R. § 92.4. Interpreters may be needed who do not meet the criteria for status as “qualified.”

Waiver for Pre-Admission Screening and Annual Resident Review (PASSR Level 1, Level II Assessments for 30 Days)

The Delaware hospitals requests waivers, as applicable¹, of the PASSR requirements to enable greater transitions of care and ensure the ability of acute care facilities to create the necessary bed capacity to care for a patients with acute care needs.

State Implementation of Federal Blanket Waivers

The Delaware hospitals request that the State Medicaid agency waive any and all requirements that are necessary to allow the Delaware hospitals to benefit from the blanket waivers announced in the CMS Fact Sheet, including:

- The waiver of the 3-day prior hospitalization requirement for skilled nursing facilities;
- The critical access hospital bed count and average length of stay requirement;
- Requirements pertaining to housing acute care patients in excluded distinct part units;
- Replacement of durable medical equipment;
- Care for excluded inpatient rehabilitation patients and excluded inpatient psychiatric patients in the acute care part of the hospital; and
- Provider Medicare enrollment requirements.

Additionally, we request that all data reporting requirements waived under Medicare on a blanket basis be waived under Medicaid, as well as the waiver of all PASSR Level 1 and Level 2 assessments.

Sincerely,



Wayne Smith
President & CEO

