



By Electronic Mail

March 23, 2020

Douglas O'Brien
Regional Director of Health and Human Services
Centers for Medicare and Medicaid Services
233 N. Michigan Avenue Suite 1300
Chicago, IL 60601

Mr. O'Brien:

On behalf of Iowa's nursing facilities and skilled nursing facilities (collectively "facilities"), the Iowa Health Care Association and LeadingAge Iowa, which together represent most of the facilities in the state, respectfully request that the Centers for Medicare and Medicaid Services (CMS) approve the flexibilities identified below, under authority of the Section 1135 (42 U.S.C. S 1320b-5) waiver issued March 13, 2020, by Secretary Azar in response to the nationwide COVID-19 Public Health Emergency.

We understand that your office assesses the need for relief based in part on information you receive from providers and their partner associations. In that context, we provide this request on behalf of all facilities in Iowa.

We request the following regulatory relief be granted to all Iowa facilities to ensure sufficient health care services are available to meet the needs of individuals receiving or seeking care in Iowa facilities during the duration of this public health emergency:

Staffing

1. Suspend the 120-day limitation on nurse aides who have not been able to take a test to become certified or who are seeking to re-test.
2. Allow prospective CNA's to receive credit for past experience to serve as a CNA in the certification process.
3. Authorize a blanket waiver to allow facilities to conduct on-line CNA training and alternative arrangements for nursing assistant students to complete clinicals including extended skills lab experiences or simulation labs (similar to what colleges and universities are doing for nursing program clinicals), alternatives held completely offsite,

or allowing a ‘field experience’ of hired staff working supervised on the floor in lieu of a clinical experience.

4. Authorize individuals who were CNAs previously but whose certifications have lapsed to serve as nurse aides in facilities and temporarily waive the requirement that aides work eight consecutive hours of paid employment providing nursing or nursing related services every twenty-four months.
5. Waive the CNA training lockout on facilities with CMPs, extended surveys, partial extended surveys, or DDPNAs prohibiting these facilities from serving as CNA training, testing and clinical sites for two years.
6. Modify existing feeding requirements to authorize facilities to use any individual as a paid feeding assistant so long as the facility provides the individual with training in feeding techniques and assistance with feeding and hydration and deems the individual competent to provide assistance with feeding and hydration.
7. Temporarily waive §483.35(b)(1), §483.35(b)(2) and §483.35(b)(3) regarding the requirement that skilled nursing facilities have an RN for at least 8 consecutive hours a day, 7 days a week. *In the event of an emergency, there may not be a registered nurse available for all these times to comply with this requirement, particularly for rural facilities with a limited number of RNs in the area.*
8. Waive the requirements for annual training and annual performance reviews, except those directly relevant to infection control/COVID-19 management.
9. Waive any hands-on training requirements for facilities, home health and hospice and permit the use of mannequins in the alternative.
10. Temporarily modify provider qualifications by:
 - a. Allowing the utilization of professionals with inactive licenses (*if their licenses were in good standing upon inactivation*) to provide care and services with training suitable for the situation or to lower levels of care.
 - b. Permit student nurses to automatically qualify to provide CNA services.
 - c. Allow foreign nursing school graduates who are otherwise qualified but not yet fully licensed to provide lower levels of care.

Fees and Background Requests

11. Waive payment of the application fee (*42 CFR §455.460*)
12. Waive criminal background check associated with fingerprint-based criminal background checks (*42 CFR §455.434*)

Non-Staffing Related Requests

13. Temporarily waive the notice requirements, including the required notice to the Ombudsman, for resident discharges to allow facilities to discharge residents who themselves or their family members refuse to abide by facility requirements to prevent the spread of COVID-19 (*e.g., want to leave the facility for extended period of time to mingle with family in large gatherings thereby increasing the possibility of their acquiring the virus and bringing it back into the facility*).
14. Suspend the imposition and collection of CMP and DDPNA penalties, including the CMS Chicago policy to impose DDPNAs within 15 days of issuance of the SOD, except for IJ violations.

15. Waive the preadmission screening (PASRR) of applicants for admissions to nursing facilities along with resident review. *Temporary suspension of pre-admission screening and annual resident review which will allow a nursing home to continue admission of an individual who has not had assessment completed if there is a workforce disruption or hospitals reduce or limit outside contact in their facilities.*
16. Modify the timing requirements between meals to give maximum flexibility for dining times to allow dining to occur in settings that reflect the need for appropriate social distancing and ensure resident safety.
17. Waive non-emergency Life Safety Code requirements that require outside vendors visit a facility including federally mandated annual, monthly and weekly system checks for life safety code and National Fire Protection Association compliance under 42 CFR §483.90(a)(6)(ii) and 42 CFR §483.90(a)(5)(ii).
18. Waive requirements relating to conducting fire drills in nursing facilities for the duration of the disaster declaration. *Social distancing cannot be maintained during drills and staff time is incredibly limited.*
19. Authorize the use of telehealth for all in-person visits required related to certification and recertification in facilities, home health, and hospice, including the 30/60/90 day schedule requirement for nursing home residents, and waive the requirement entirely where telehealth is not feasible or possible
20. Waive or modify regulations as needed to allow contracted pharmacists, dietitians, social services consultants to work remotely and to use telehealth.
21. Waive the time frames in 42 CFR § 482.21 for therapy services as therapy services is not an authorized telehealth provider.
22. Authorize use of physician extenders in place of Medical Directors and attending physicians, consistent with state scope of practice laws, and via telehealth options.
23. Waive requirements that physicians or other health care professionals hold licenses in the State in which they provide services if they have an equivalent license in another State (and are not affirmatively barred from practice in that State or any State a part of which is included in the emergency area).
24. Temporarily waive §483.90(e)(1)(i) and §483.90(e)(1)(ii) regarding the number of residents accommodated in resident rooms and the allowed square footage per resident in multiple resident rooms. If a provider needs to quarantine or isolate a certain number of residents for a limited period of time, this creates flexibility for limited space within the facility.

Our facilities are respectfully requesting these flexibilities to ensure:

- They have adequate workforce to care for their patients due to severe staffing pressures resulting from illness or need to self-isolate related to COVID-19 and absenteeism related to lack of childcare because of school and daycare closures; and
- Available facility staff can spend time providing quality care to patients and focus on critical areas such as infection control.

Contact Person(s) for this waiver request:

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We would further respectfully suggest that some or all these flexibilities would be appropriate for a nationwide blanket waiver. Thank you for your time and consideration. We are available to provide any additional information that may be helpful in your consideration of our request.
Respectfully,



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Electronic copy to:

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Senator Charles Grassley
Senator Joni Ernst
Members of Congress: Cindy Axne, Abby Finkenauer, Steve King, and Dave Loebsack