

CMS “Hospitals Without Walls” Waiver: Looking To ASCs to Provide Relief

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On March 30, 2020, CMS through its blanket 1135 waiver authority^[1] implemented a [“Hospital without Walls”](#) policy to allow hospitals to provide and bill for hospital services in other healthcare facilities and sites, such as ambulatory surgery centers (“ASCs”). The waiver is intended to ensure that local hospitals and health systems have the capacity to handle the anticipated surge of COVID-19 patients through the duration of the public health emergency (“PHE”). See, [“CMS Issues Temporary Waivers in Broad Coronavirus Response,”](#) as posted on April 2, 2020 on this blog for general information regarding the March 30, 2020 1135 waiver.

For the duration of the PHE related to COVID-19, CMS is allowing hospitals to establish and operate as part of the hospital any location meeting the conditions of participation for hospitals during the PHE. Due to their facility standards, personnel, equipment and usual proximity to hospitals, ASCs pose a most likely candidate to serve as an alternate location for hospital services. CMS’ blanket waiver relaxes a number of significant Medicare requirements – including certain Conditions of Participation and provider-based rules applicable to hospitals, which would allow hospitals to more easily use ASCs as expansion sites. For a hospital to use an ASC as a temporary hospital expansion site under the Hospitals Without Walls Waiver, the hospital would still be expected to control and oversee the services provided at the ASC. Consistent with the federal waivers, some states (e.g., New York and Connecticut) are also issuing waivers of state Certificate of Need and related requirements to allow hospitals to quickly establish temporary hospital expansion sites.

CMS has specially identified ASCs “as a critical resource to assist in expanding capacity for inpatient and outpatient services for patients requiring a higher level of care.” As a result, “[c]onsistent with the Hospitals Without Walls strategy,” CMS expects “ASCs to “coordinate” with local healthcare systems and state departments of health to “help meet surge needs in their community;” and, as part of the CMS Blanket Waivers, Medicare-enrolled ASCs can now “enroll as hospitals and provide inpatient and outpatient services to address the urgent need to increase hospital capacity to take care of patients.” As an alternative to entering into an alternate location arrangement with a local hospital, ASCs that wish to enroll to receive temporary billing privileges as a hospital during the PHE

should call the COVID-19 Provider Enrollment Hotline to reach the contractor that serves their jurisdiction, and then will complete and sign an attestation form specific to the COVID-19 PHE. See [here](#) for additional information.

Aside from expanding hospital capacity, we expect these actions by CMS could have a positive financial impact on hospitals by providing an additional source of revenue. ASCs will benefit by having some of their monthly fixed costs covered during COVID-19 PHE.

FOOTNOTES

[1] Under Section 1135 of the Social Security Act, the Secretary of the U.S. Department of Health and Human Services may temporarily waive or modify certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in Social Security Act programs in the emergency area and time periods and that providers who provide such services in good faith can be reimbursed and exempted from sanctions (absent any determination of fraud or abuse).

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