Vermont Association of Hospitals and Health Systems

Issue Brief: COVID-19 Emergency Powers at Federal and State Level- March 15, 2020

Federal State of Emergency

Status: IN EFFECT retroactive to March 1, 2020. A federal state of emergency was declared on March 13, 2020. Waivers that pertain to all hospitals, called blanket waivers under Section 1135(b) address the following:

REGULATORY FLEXIBILITY

Critical Access Hospitals: waives requirement that number of beds be limited to 25 and he length of stay be limited to 96 hours
Skilled Nursing Facilities: waives 3-day prior hospitalization requirement
DME: contractors can waive face-to-face requirement, new physician's order, and/or new medical necessity documentation
Housing Acute Care Patients in Excluded Distinct Parts Unit: PPS hospital should bill for care and indicate that they are in another unit because of capacity issues related to COVID-19
Care for Inpatient Psych Patients: inpatient psych patients can be relocated to acute care. Hospital should bill for inpatient psych services and indicate patient is in another unit because of capacity issues related to COVID-19
Care for Inpatient Rehab Patients: inpatient rehab patients can be relocated to acute care. Hospital should bill for inpatient rehab services and indicate patient is in another unit because of capacity issues related to COVID-19
EMTALA: for relocation of an individual to another location for medical screening pursuant to a state emergency preparedness plan
EMTALA: Transfer of an individual who has not been stabilized if necessary under COVID-19 pandemic
Stark law/physician self-referral
Medicare Advantage plan networks
HIPAA: for hospitals with disaster protocols in effect:

- Requirement to obtain patient consent to speak with family members or friends
- Patients right to request privacy restrictions or confidential communications

Medicare Appeals: CMS will utilize all flexibilities
Certain COPs

WORKFORCE FLEXIBILITY

Out-of-State Providers: providers licensed in other states and in good standing can practice in Vermont
Provider Enrollment Flexibility:

- Hotline for temporary Medicare billing privileges
- Waive application fee, criminal background check, and site visits
- Expedite new or pending applications

INDIVIDUAL WAIVERS

Individual hospitals can obtain further flexibility by applying for an 1135 waiver. Instructions can be found here.

Vermont State of Emergency

Status: IN EFFECT. Governor Scott declared a state of emergency on March 13th. This includes:

Limiting visitors to patients: hospitals shall develop policies limiting people visiting patients. Nursing homes, Vermont Psychiatric Care Hospital, and the Middlesex Therapeutic Community Residence will prohibit visitor access except for those receiving end of life care.

Limit on large non-essential mass gatherings: 250 people or more in a single room/space for social or recreational activities is prohibited.

State personnel and equipment shall be deployed for the State Emergency Management Plan through direction of VDH and Department of Public Safety/Vermont Emergency Management.

National Guard may be activated

Rules governing medical and nursing services shall be suspended as necessary to provide medical care, including:

- Paramedicine
- Transportation to hospitals and other health care facilities
- Telemedicine for patients in place
- Administration of medicine
- Prescribing of medication

State Legislation

Status: Passed House, NOT IN EFFECT. COVID-19 Response, H.742, passed the House, but it still needs to pass the Senate in order to go to the governor's desk. It includes the following:

FINANCIAL ASSISTANCE

- Modify or postpone hospital provider tax
- Payment to health care providers in absence of claims or utilization due to COVID-19
- Advance payments to health care providers needing financial assistance due to COVID-19
- Potential advantageous change in payment methodology to FQHCs and Rural Health Clinics, if necessary
- Medicaid-funded facilities providing 24-hour per day services, such as long-term care facilities may be reimbursed by AHS for bed-hold days.

REGULATORY FLEXIBILITY

- Variance in state regulatory standards, including:

  - Hospital licensing
  - Hospital reporting
  - Nursing home licensing and operations
  - Home health licensing and operations
  - Child care licensing regulations
  - Public assistance program regulations
  - Other rules and standards under AHS
- To the extent permitted under federal law, documentation or reporting requirements for involuntary treatment is waived
- Quarantine is not considered involuntary seclusion or restraint if the patient has been exposed to COVID-19 or

WORKFORCE FLEXIBILITY

- Relaxed provider credentialing for Medicaid and commercial insurance
- Board of Medical Practice can issue temporary licenses to those licensed in other jurisdictions and in good standing as well as those who have retired in the last 10 years in good standing. All fees waived.

PROGRAMS AND COVERAGE FOR PATIENTS

- Expanded health insurance coverage for cost sharing requirements related to COVID-19 diagnosis
- Pharmacies can re-fill maintenance medications in 30 day supplies and physicians prescribing buprenorphine for treatment of SUD can renew the prescription without an office visit, to the extent federal law requires
- AHS may expand food support programs

TELEHEALTH EXPANSION

- Same reimbursement as in-person visit for a telehealth visit
- Store and forward expansion
- DFR can require telephone, e-mail, and fax health care services to be reimbursed by commercial insurers
- AHS can reimburse for health care services by telephone, to the extent allowed by the federal government