

Report on Medicare Compliance Volume 29, Number 13. April 06, 2020 COVID-19 Waivers, New Rule Clear Regulatory, Audit Decks; Reviews Will Come in Time

By Nina Youngstrom

Attorney Ann McCullough has clients who are turning medical office buildings into COVID-19 screening sites and enrolling ambulatory surgery centers in Medicare as hospitals, all with CMS's blessing, which was unthinkable a few weeks ago within the existing regulatory framework. But a slew of blanket waivers^[1] announced March 30 under Sec. 1135 of the Social Security Act^[2] — the second round of waivers since the coronavirus took hold — will clear the regulatory brush that slows patient testing and treatment until the pandemic ends.

“CMS issued very sweeping blanket waivers. For hospitals specifically, the waivers provide very temporary flexibility for space, for the workforce and for paperwork,” said McCullough, with Polsinelli in Denver, Colorado. CMS also issued an interim final regulation^[3] to suspend regulatory requirements that overlap with the waivers but require activation by regulation because they're payment related, said attorney Andy Ruskin, with Morgan Lewis in Washington, D.C.

The waivers and related activity cover an astounding amount of ground, including aspects of the patient discharge regulations, documentation, the Emergency Medical Treatment and Labor Act (EMTALA), enrollment and licensure, and the Stark Law (see story, p. 1),^[4] to name a few. In addition to the waivers, CMS informally freed hospitals from distractions in their battle against the pandemic. For example, CMS suspended most fee-for-service audits and additional documental requests, according to answers to frequently asked questions about COVID-19 provider burden relief.^[5]

Notwithstanding the reprieve, hospitals must keep their eyes on compliance, attorneys said. “I don't think you can throw normal compliance procedures to the winds,” said attorney Jim Boswell, with King & Spalding in Atlanta, Georgia. Some Sec. 1135 waivers must be viewed side by side with state requirements, including waivers that apply to personnel, what locations are eligible to provide services and what services can be provided where consistent with state pandemic plans, he said. “One difficult and somewhat intricate part of this is figuring out the relationship between federal and state regulations of facility licensure and the licensure of personnel,” Boswell said. “It requires checking two boxes.”

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