

Report on Medicare Compliance Volume 29, Number 18. May 11, 2020 From Dorms to Tents, Hospitals Adapt for COVID-19; Some Patients Are Stuck

By Nina Youngstrom

The gyms and dorm rooms at Sonoma State University in California are an alternate care site for St. Joseph Health System in Santa Rosa and other health care organizations that have to be creative as they place patients with COVID-19 and “persons under investigation” for the coronavirus who have nowhere to safely isolate. There are so many variations, including patients who are medically safe for discharge from the hospital but may be turned away by skilled nursing facilities (SNFs) despite CMS’s blanket waiver of a three-day qualifying hospital stay,^[1] and patients who are on methadone but can’t go out for their maintenance dose. Depending on where they are, some hospitals are strategizing like mad, working with SNFs, setting up temporary locations, and dispatching home health nurses to patients who are only considered homebound because of a COVID-19 blanket waiver.

“We are coming up with interesting things,” said Sue Pearce, Sonoma County area director of care management at St. Joseph. “Layer after layer, you come across, as many layers as there are people.”

St. Joseph has a lot of things in play as it tests and treats patients for possible and actual cases of COVID-19 and Sonoma County prepares for its peak, which is predicted to hit in late May, Pearce said. The hospital has a work group with area SNFs to “work through the barriers,” including ensuring adequate personal protective equipment. It meets once or twice weekly. Before the SNFs will accept patients discharged from the hospital, they want a negative test for COVID-19, although CMS specifically said in an answer to an April 24 frequently asked question that a negative test for COVID-19 is not required “before a hospitalized patient can be discharged to a nursing home.”^[2] The county also is considering a plan to dedicate one SNF for COVID-19 patients only, which is “a great recommendation,” Pearce said. SNFs are suffering themselves from a shortage of staff and personal protective equipment, with patients dying in alarming numbers at some facilities.

For now, St. Joseph has “a fairly good flow” of patients to SNFs, especially for non-COVID-19 patients, she said. But there are COVID-19 patients that the SNFs are rejecting.

One patient was stuck in a hospital bed for weeks, turned away by SNFs because she continued to test positive for the coronavirus although she was medically safe for discharge. The patient’s family members recovered from COVID-19 but are unable to care for her, and she’s not independent enough to be on her own or at Sonoma State University, even with a walker. “The illness took her down,” Pearce said. “She’s recovering, but had a significant functional status change.” One SNF said it wouldn’t accept the patient until she had two negative tests, so she kept occupying the hospital bed.

Finally, in early May, the SNF admitted her after the patient tested negative for the coronavirus twice. “Her story was so interesting because of the family,” which includes a child, an essential worker and an “elderly stateswoman,” Pearce said. There was “a domino effect” on them with COVID-19. “Regulatorily, the SNFs were supposed to accept COVID-positive patients. In real life, they didn’t and were afraid to.”

Cohorting Is Not a Panacea

Pearce is worried about what the SNFs will do when the surge comes. “I’m guessing if we had a big surge in Sonoma, it would go back to their refusals,” Pearce said. “It’s an uneasy stalemate.” Cohorting is a possibility for SNFs. CMS has granted a blanket regulatory waiver for cohorting for SNFs, where they separate patients by their infection status: “Blanket waiver: Resident Roommates and Grouping. CMS is waiving the requirements in 42 C.F.R. § 483.10(e) (5), (6), and (7) solely for the purposes of grouping or cohorting residents with respiratory illness symptoms and/or residents with a confirmed diagnosis of COVID-19, and separating them from residents who are asymptomatic or tested negative for COVID-19...” CMS also granted a blanket waiver for establishing entire facilities solely for COVID-19 positive or negative patients during the public health emergency.

But cohorting is not a panacea, said attorney Paula Sanders, with Post & Schell in Harrisburg, Pennsylvania. “There’s only a limited set of the population you know for certain has COVID-19,” she said. “A COVID-19 test that shows a negative result only means you’re not COVID positive that day. But you could have it tomorrow.” Meanwhile, SNFs don’t have enough tests and personal protective equipment, and some with staffing shortages are closed to admissions. “I’ve had people cry to me on the phone with the frustration, the sadness, the awfulness,” Sanders said. Anyway, SNFs may not have the volume of patients or the resources to set up an additional location exclusively for infected or noninfected patients, said attorney Holley Lutz, with Dentons LLP in Washington, D.C.

At least there will be transparency about the infection rates. CMS on May 8 published an interim final rule^[3] requiring long-term care facilities to electronically report COVID-19 infections to residents, their representatives, their families and the CDC.

Testing and Treating Patients in Tents

Sonoma State University is not the only alternate care site available to St. Joseph. For example, St. Joseph Health Medical Group opened a respiratory clinic that’s run out of a tent in the parking lot for COVID-19 testing and evaluation and management services. Tests must be ordered by physicians, who are providing a lot of services via telehealth. The results are fed back to St. Joseph’s command center, which is in its conference room. “They follow standard disaster protocol,” Pearce said. “Sadly, we have gotten good at it because we had two years of wildfires.”

Because the outpatient wound center is closed during the pandemic, patients with wounds may receive home health care, thanks to a waiver of the homebound requirement for home health services. “Even if they’re young and can get around, they can be seen by home health,” Pearce said. St. Joseph also equipped certain patients early on with home monitoring. “Waivers have allowed us to be creative and flexible,” she said. For example, St. Joseph got a waiver that allows it to move its acute rehabilitation unit across the street through June. Care management is “working in tandem with compliance,” she said. The hospital also is working on a noncongregate living site for people who are at risk of infection, per COVID-19 risk stratification scores, and don’t have safe housing.

With some hospitals struggling to discharge COVID-19 patients and SNFs reluctant to accept them, hospitals could enter into under arrangements with SNFs, said Mary Ellen Palowitch, former EMTALA technical lead in the CMS Quality, Safety & Oversight Group, who is now with Dentons US LLP in Washington, D.C. Hospitals would keep patients on behalf of the SNFs. “Ideally, if you have bed capacity, the SNF contracts with the hospital to pay for the patient as a SNF patient,” she said. SNFs, however, may not be motivated because it would require them “to take steps to solve a problem that isn’t really theirs,” Lutz said.

Critical access hospitals and small rural hospitals are able to capitalize on swing beds, which are reimbursed whether they’re used for acute care or SNF care. CMS waived the three-day qualifying stay for swing beds used

for SNF admissions during the public health emergency, and there's talk about paying general acute care hospitals for swing beds, Palowitch said. That would allow them to get Medicare SNF reimbursement for patients who linger when they're stable for discharge but SNFs won't take them. Nothing has happened yet. "If your goal is to open up beds, that doesn't help you, but at least you could get SNF reimbursement," Lutz added.

Contact Pearce at susan.pearce@stjoe.org, Palowitch at maryellen.palowitch@dentons.com, Lutz at holley.lutz@dentons.com and Sanders at psanders@postschell.com.

1 CMS, "COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers," April 29, 2020, <https://go.cms.gov/2we4k96>.

2 CMS, "Nursing Home Five Star Quality Rating System updates, Nursing Home Staff Counts, and Frequently Asked Questions," memorandum, April 24, 2020, <https://go.cms.gov/2WE0wa7>.

3 Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program, 85 Fed. Reg. 27,550 (May 8, 2020) .

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