

Using Skilled Nursing Facilities to Expand Hospital Capacity During COVID-19 Crisis

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The nation's healthcare system is preparing to reach record capacity in the coming weeks. Much focus has been on the limited capacities of the nation's acute care hospitals. As a result of the COVID-19 public health emergency, the Health and Human Services ("HHS") Secretary is authorized to make temporary waivers under the Social Security Act (known as "Section 1135 Waivers"). In turn, the Center for Medicare and Medicaid Services ("CMS") COVID-19 Emergency Declarations have expanded the ability to move patients from acute care setting to skilled nursing settings in an expedited manner to reserve hospital beds for the most severely ill patients.

Waiver of Qualifying Hospital Stay. With Section 1135 Waivers in place, Section 1812(f) of the Social Security Act authorizes the HHS Secretary to provide for Medicare coverage of a skilled nursing facility ("SNF") stay in the absence of a qualifying hospital stay. Typically, a patient must have a 3-day prior hospitalization in order to qualify for Medicare coverage in a SNF. This waiver allows hospitals to transfer patients who need to be transferred due to disaster or emergency. Accordingly, less acute patients can be transferred to a SNF without financial penalty to the hospital or patient. This waiver of the qualifying hospital stay also benefits Medicare beneficiaries who had not been in a hospital or a SNF, but who need skilled nursing care as a result of the emergency. Such patients will be eligible for Medicare Part A SNF coverage without having to meet the 3-day qualifying hospital stay requirement.

Waiver to Allow 100 Additional Days of Part A SNF Coverage. Typically Part A SNF coverage is limited to 100 days following a qualifying hospital stay; however, under HHS Secretary's authority under Section 1812(f), Medicare beneficiaries will be able to receive up to an additional 100 days of SNF Part A coverage for care needed as a result of the 2019-Novel Coronavirus (COVID-19) outbreak.

Waiver of MDS Assessment Timeline. Another Section 1135 Waiver facilitates the transfer and admission to a SNF by waiving 42 CFR §483.20 regarding timeframes for Minimum Data Set ("MDS") assessments and transmissions. This simplifies the admissions process for a SNF. Typically, the MDS assessment must be completed within 14 calendar days after admission.

Based on these Section 1135 Waivers, hospitals should evaluate their current patient census to determine which patients can be safely transferred to a SNF to increase hospital capacity. Hospitals must also remember that these Section 1135 Waivers typically end no later than the termination of the emergency period, or 60 days from the date the waiver or modification is first published.

Link to Department of Health & Human Services Findings Concerning Section 1812(f) of the Social Security Act in Response to the Effects of the 2019-Novel Coronavirus (COVID-19) Outbreak:

<https://www.cms.gov/files/document/coronavirus-snf-1812f-waiver.pdf>.

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