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**California Department of
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GAVIN NEWSOM
Governor

December 11, 2020

AFL 20-26.4

TO: General Acute Care Hospitals

SUBJECT: Suspension of Regulatory Enforcement of Hospital Requirements
(This AFL supersedes AFL 20-26.3)

AUTHORITY: Proclamation of Emergency, Executive Order N-27-20 and Executive Order N-39-20

All Facilities Letter (AFL) Summary

- This AFL notifies hospitals of a temporary waiver of specified regulatory requirements due to the state of emergency related to the Coronavirus Disease 2019 (COVID-19) outbreak. This waiver is valid until March 1, 2021.
- This AFL has been updated to clarify the waivers of nurse-to-patient ratios for intensive care units, step-down units, telemetry units, emergency medical services and medical/surgical units. Approval or notice is needed if a hospital is seeking a waiver of minimum nurse-to-patient ratios. Hospitals must submit a CDPH form 5000A (PDF) and provide supporting documentation to the CHCQ Duty Officer at CHCQDutyOfficer@cdph.ca.gov and copy the local district office.
- This AFL provides clarifying changes for downgrading, changing, or eliminating services and specified alternative measures for which facilities may request a staffing waiver.

Pursuant to the Governor's declaration of a state of emergency related to COVID-19, the Director of the California Department of Public Health (CDPH) may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code (HSC) and accompanying regulations with respect to any hospital or health facility identified in HSC section 1250. CDPH is temporarily waiving specified hospital licensing requirements and suspending regulatory enforcement of the following requirements as specified below:

Licensing

Hospitals seeking initial licensure or to change beds or services to their license shall submit an application online at the CDPH Health Care Facilities Online Application webpage. This shall not require approval before the hospital may provide care, although CDPH will reach out to provide technical assistance to ensure patient safety and the quality of care.

Space

All statutory and regulatory provisions related to the configuration and use of physical space and classification of beds in a hospital. Hospitals may reconfigure space as needed to accommodate observed or predicted patient surge, patient cohorting, modified infection and source control procedures, and other COVID-19 related mitigation strategies.

Temporary changes of use or modification to the physical environment must be restored to original conditions following expiration of a waiver. Where such temporary changes are to be made permanent, projects must be submitted for Office of Statewide Health Planning and Development's (OSHPDs) review and approval (whether the changes involve construction or not) no later than two weeks after waiver expiration. Permanent modifications to the physical environment or changes of use must be submitted to OSHPD as projects for review and approval (whether the changes involve construction or not) immediately.

Services

- 1.** Detailed notifications and notification timeframes specified in HSC sections 1255.1, 1255.2, and 1255.25 that are required when a hospital plans to downgrade, change, or eliminate the level of a supplemental service. The notification procedures and timeframes may only be waived if the hospital is modifying services to address patient surge related to COVID-19. A hospital must provide notice to the public regarding the availability of supplemental services at the hospital by posting signage at the entrance of each location and on its internet website. The hospital must provide notice at least 24 hours in advance of the service change to the public and CDPH. Approval is needed if a service is being added or changed.
- 2.** Due to the alternative arrangements available for homeless patients authorized by Executive Order N-32-20 (PDF), detailed discharge planning documentation and the provision of nonmedical services to homeless individuals specified in HSC section 1262.5 is temporarily waived.

Staffing

Only those hospitals experiencing a COVID-19 related surge of patients or staffing shortages resulting from COVID-19 impacts, including, increasing need to meet demand for surge either by regional surge or incoming transfers, daycare or school closures, COVID-19 staffing absenteeism for multiple reasons, or an emergency such as a fire or public safety power shutoff, may request a waiver of minimum nurse-to-patient ratios. Before hospitals submit a waiver to begin flexible staffing ratios, they should first attempt to increase staffing levels through other means such as contracting for additional staffing.

Hospitals may choose one of the following staffing waiver options:

1. Expedited waiver process

Under the expedited waiver process CDPH will consider a waiver of the existing nurse-to-patient ratios with the following specified alternative measures. For an intensive care unit, a nurse-to-patient ratio waiver is approved with an alternative ratio of 1:3 or fewer at all times. For a step-down unit, a nurse-to-patient ratio is approved with an alternative ratio of 1:4 or fewer at all times. For a telemetry unit, a nurse-to-patient ratio is approved with an alternative ratio of 1:6 or fewer at all times. For the emergency medical services department, a nurse-to-patient ratio is approved with an alternative ratio of 1:6. For a medical/surgical care unit, a nurse-to-patient ratio waiver is approved with an alternative ratio of 1:7 or fewer at all times.

A hospital seeking a staffing waiver must submit a CDPH form 5000A (PDF) and provide supporting documentation to the CHCQ Duty Officer at CHCQDutyOfficer@cdph.ca.gov and copy the local district office. The hospital may begin implementing the alternative ratio upon submission of the CDPH 5000A unless otherwise notified by CDPH. CDPH will follow-up within 10 working days if more information is needed.

Temporary staffing waivers using this process will only be approved for 60-days.

2. Existing waiver process

Under the existing waiver process, a hospital seeking a staffing waiver must submit a CDPH form 5000A (PDF) and provide supporting documentation to the CHCQ Duty Officer at CHCQDutyOfficer@cdph.ca.gov and copy the local district office. CHCQ is able to respond quickly to urgent requests from hospitals seeking a waiver 24/7 and should only mark urgent if needed approval within 8 hours. Hospitals may not implement alternatives under this process until they receive approval from CDPH.

Pursuant to the Proclamation of Emergency (PDF), all staffing waivers will be posted on the CDPH website. Hospitals must resume mandatory staffing levels as soon as feasible during the waiver period to minimize the need for additional waivers. Temporary staffing waivers will only be approved for 90-days. A hospital may reapply for a waiver if the conditions necessitating the waiver still apply.

This statewide waiver is approved under the following conditions:

- Hospitals shall continue to make every attempt, even if only periodically, to meet the required staffing ratios by pursuing registry or other staffing options to meet ideal nurse-patient ratios as required by Title 22 section 70217.
- Hospitals shall continue to comply with adverse event and unusual occurrence reporting requirements specified in HSC section 1279.1 and Title 22 California Code of Regulations section 70737(a).
- Hospitals shall report any substantial staffing or supply shortages that jeopardize patient care or disrupt operations.
- Hospitals shall continue to provide necessary care in accordance with patient needs and make all reasonable efforts to act in the best interest of patients.
- Hospitals shall follow their disaster response plan.
- Hospitals shall follow infection control guidelines from the Centers for Medicare and Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC) related to COVID-19.
- Hospitals shall comply with directives from their local public health department, to the extent that there is no conflict with federal or state law or directives or CDPH AFLs.

CDPH understands the importance of ensuring the health and safety of all Californians and maintaining vital access to acute care services. CDPH encourages facilities to implement contingency plans to address staff absenteeism and the rapid influx of patients. CDPH will continue to promote quality healthcare, provide technical assistance and support compliance with core health and safety requirements, pursuant to Executive Order N-27-20 (PDF). CDPH is taking this unprecedented action due to the significant challenges California's health care system is facing as a result of the COVID-19 outbreak. As a result of this temporary waiver, hospitals do not need to submit individual program flexibility requests for the requirements specified above, except when seeking a staffing waiver.

This waiver is valid until March 1 2021, and may be extended or reduced based on the conditions of the pandemic and any updated Executive Orders or guidance from CMS or the CDC.

If you have any questions about this AFL, please contact your local district office.

Sincerely,

Original signed by Heidi W. Steinecker

Heidi W. Steinecker

Deputy Director

Resources

- Proclamation of Emergency (PDF)
- Executive Order N-27-20 (PDF)
- Executive Order N-39-20 (PDF)
- CDPH 5000A (PDF)
- CDPH Health Care Facilities Online Application webpage

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