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**California Department of
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GAVIN NEWSOM
Governor

January 24, 2021

AFL 20-26.5

TO: General Acute Care Hospitals

SUBJECT: Suspension of Regulatory Enforcement of Hospital Requirements
(This AFL supersedes AFL 20-26.4)

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 clarifies the waivers of nurse-to-patient ratios for intensive care units (ICUs), 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.
- This AFL revision reduces the timeframe that a staffing waiver approved January 24 and thereafter may be approved to 60 days.
- This AFL has been updated to provide additional specified administrative waivers for a period of 30 days.

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 (OSHPD's) 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 and Administration

When the county where the GACH is located is in a region under the Regional Stay at Home Order that has zero percent ICU availability (0%) and the CDPH calculation of the ICU availability for that county is ten percent (10%) or less, all GACHs in the county, the following administrative waivers are effective for 30 days following the publication date of this AFL:

1. **HSC section 1254.4:** Hospitals are not required to allow family or next of kin to gather at a deceased patient's bedside to accommodate religious and cultural practices. Hospitals should continue to try to accommodate religious and cultural practices and concerns if they do not directly or indirectly jeopardize the health and safety of other patients or hospital staff or impede hospital operations.
2. **HSC section 1257.7:** Hospitals may suspend annual detailed security and safety assessments, revisions to the hospital's security plan, and tracking of incidents of aggressive or violent behavior as part of the quality assessment and improvement program.
3. **HSC section 1280.15(b):** Hospitals may delay reporting any unlawful or unauthorized access to, or use or disclosure of, a patient's medical information to CDPH and to the affected patient or the patient's representative beyond the current 15-business day requirement.
4. **Title 22, Section §70215, "Planning and Implementing Patient Care":**
 1. Ongoing patient assessments shall continue to be performed as required by each unit's guidelines of care; however, documentation of these assessments may be made by exception. "By exception" means that a notation is made only when there is a deviation from baseline, deviation from normal limits, or an unexpected outcome.
 2. Ongoing patient education shall continue to be performed as required by each unit's guidelines of care. Documentation in the medical record may be made by exception; however, discharge patient education shall continue to be performed and documented for each patient as usual.
 3. Documentation of formal nursing diagnosis and care plans in the medical record may be eliminated. This aligns with CMS's COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers, which waives the requirements of 42 CFR §482.23(b)(4) and requires the nursing staff to develop and keep current a nursing care plan for each patient.
5. **Title 22, Division 5, Chapter 1, §70749 (a) (6) (A), "Patient Health Record Content":**
 1. Documentation of nursing care administered pursuant to each unit's guidelines of care may be restricted to the following:
 - Patient assessments by exception
 - Abnormal findings and pertinent clinical status changes (e.g., lungs that are clear to auscultation are documented if the patient had crackles previously)
 - Critical lab values/critical results not already documented

- Vital signs, including pain assessment
- Administered medications and treatments (including blood transfusions)
- Invasive lines and tubes - lines, drains, and airway (LDA) documented upon insertion or presentation. Ongoing assessment of LDAs will take place; documentation of care by exception (abnormal findings)
- Clinically relevant attending and consulting provider communication
- Clinically relevant intake and output
- Key patient information (e.g., height, weight, allergies, advance directives, home medications, and admission intake form)
- Restraint assessments and monitoring
- Patient education at discharge
- Isolation precautions
- Anything that, in the judgment of the nurse, would compromise patient safety if it were not documented

1. In addition, nurses shall document a note at the end of each shift for clinically significant events if not documented elsewhere.

2. Other nursing care that is provided (including but not limited to activities of daily living, hygiene, routine catheter and ostomy care, repositioning, infection control practices, etc.), shall continue to be performed as required by each unit's guidelines of care, but documentation may be done by exception. For example, if a patient must be turned and repositioned Q2H, a note will be entered only if this is *not* done.

- Alternatively, a GACH may adopt a policy requiring the care described in this paragraph to be documented in an end-of-shift note. For example, the note would state that "the patient was turned and positioned Q2H as per policy," rather than having the nurse document every two hours throughout the shift.
- A hospital may adopt a hybrid policy. For example, activities of daily living and hygiene will be documented by exception, but routine ostomy care and repositioning will be documented in an end-of-shift note rather than documenting throughout the shift. GACHs adopting a hybrid policy shall list which activities are documented by exception and which are documented in the end-of-shift note.

6. Title 22 California Code of Regulations (CCR) section 70213(a)(3) & (4): Hospitals are not required to review and revise nursing service patient care policies and procedures, nor does the administration and governing body need to review and approve all nursing service-related policies and procedures.

7. Title 22 CCR section 70435(b)(2): Hospital surgical teams do not need a minimum of three surgeons for the performance of all cardiovascular operative procedures requiring extracorporeal bypass. Hospitals implementing this waiver must provide a minimum of two surgeons to constitute this surgical team, one of whom must be certified or eligible for certification by the American Board of Thoracic Surgery or the American Board of Surgery with training and experience in cardiovascular surgery.

8. Title 22 CCR section 70741(d): A hospital's disaster plan does not need to be rehearsed at least twice a year, with a written report and evaluation of all drills.

9. Title 22 CCR section 70751(g): The timeline for completion and authentication of medical records for discharged patients is extended from 2 weeks to within 30 days following the patient's discharge for any patients discharged while this waiver is effective.

10. Title 22 CCR section 70213 and 70719: Hospitals are not required to complete annual written performance evaluations for all nursing staff and all other staff.

The following service-related waivers are valid until March 1, 2021:

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 and should also consider administrative and documentation efficiencies provided pursuant this AFL revision as applicable.

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.

CDPH will monitor GACHs that have staffing waivers to ensure they maintain efforts to increase staffing levels and return to the required staffing levels. CDPH may revoke a staffing waiver for GACHs unable to demonstrate diligent efforts to recruit and retain staff.

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. Effective January 24, temporary staffing waivers will only be approved for 60-days. This shall not affect waivers that CDPH has already approved. A hospital whose waiver expires prior to March 1, 2021 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 CCR 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 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
- Regional Stay at Home Order

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