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GAVIN NEWSOM
Governor

March 1, 2021

AFL 20-32.2

TO: Skilled Nursing Facilities

SUBJECT: Suspension of Regulatory Enforcement of Specified Skilled Nursing Facility Requirements
(This AFL supersedes AFL 20-32.1)

AUTHORITY: Proclamation of a State of Emergency (PDF) and Executive Orders N-27-20 (PDF) and N-39-20 (PDF)

All Facilities Letter (AFL) Summary

- This AFL notifies skilled nursing facilities (SNFs) of a temporary waiver of specified regulatory requirements due to the state of emergency related to the COVID-19 outbreak.
- This revision extends this waiver until June 1, 2021.
- This revision also rescinds all temporary COVID-19 staffing waivers. Effective March 1, 2021, SNFs must maintain required staffing levels at all times.

Pursuant to the Governor's Executive Order N-39-20 (PDF) related to COVID-19 state of emergency, the Director of the California Department of Public Health (CDPH) may waive any of the licensing and staffing requirements of Chapter 2 and Chapter 2.4 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. CDPH is temporarily waiving specified SNF licensing and staffing requirements and suspending regulatory enforcement of the following requirements:

Licensure

1. Title 22 California Code of Regulations (CCR) sections 72201 and 72203 (a)

A SNF that has submitted an application to CDPH for any of the following may begin providing care prior to obtaining approval and licensure by CDPH:

- Initial licensure
- Change of service
- Increase bed capacity

Application fees for change of services and changes of beds shall be waived temporarily for the emergency COVID-19 response. Licensure fees for initial licensure may be submitted within 60 days of filing the application.

Services

2. Title 22 CCR section 72371(c)

A SNF may arrange for a pharmacist to participate in the destruction of Schedule II, III, or IV prescription drugs by means of telecommunication allowing the pharmacist to be virtually and visually present with a registered nurse (RN) while implementing the following process:

1. Drug information must be properly logged.
2. The RN must show the drug count and information to the pharmacist for verification.
3. The pharmacist must witness as the RN disposes of the drug into the waste container.
4. After all drugs are disposed of in this manner, the pharmacist must witness as the RN adds destructive material, such as water or coffee grounds, to the waste container and then seals the container.
5. The RN must sign the drug destruction log and send it to the pharmacist for signature. The pharmacist must sign the log and return the documentation electronically to the facility.
6. The video and written documentation of the destruction must be retained for the mandated time period of at least 3 years.

3. Title 22 CCR sections 72379-72389

A SNF shall have flexibility in providing an activities program, including suspension of activity program requirements in section 72381, to allow for Centers for Disease Control and Prevention (CDC) recommended infection control precautions to prevent the spread of COVID-19 in SNFs.

Space Conversion**4. Title 22 CCR section 72607 (a), (b) and (c)**

(a) A facility shall not have more patients or beds set up for use than the number for which it is licensed except in case of emergency when temporary permission may be granted by the Director or designee.

(b) Patients shall not be housed in areas which have not been approved by the Department for patient housing and which have not been given a fire clearance by the State Fire Marshal except as provided in (a) above.

(c) The number of licensed beds shown on a license shall not exceed the number of beds for which the facility meets applicable construction and operational requirements.

5. Title 22 CCR section 72603

- Spaces approved for specific uses at the time of licensure shall not be converted to other uses without the approval of the Department.
- Any additional beds added for temporary use, shall ensure patient privacy and shall be placed six feet apart in accordance with CDC guidance to prevent the spread of COVID-19. This includes beds temporarily set up in areas previously used for group activities including dining rooms or activity space.

The use of space waiver is extended until June 1, 2021.

This statewide waiver is approved under the following conditions:

- SNFs shall continue to comply with unusual occurrence reporting requirements specified in Title 22 of the California Code of Regulations section 72541.
- SNFs shall continue to report all changes as required under Title 22 CCR section 72211, to CABLTC@cdph.ca.gov, however the 10-day reporting shall not apply. SNFs shall report all changes as soon as practical within 30 days of the change. When any temporary beds are no longer in use, SNFs shall report the lowering of patient capacity to CDPH.
- SNFs shall report any substantial staffing or supply shortages that jeopardize resident care or disrupt operations.
- SNFs shall continue to provide necessary care in accordance with residents' needs and make all reasonable efforts to act in the best interest of residents.

- SNFs shall not discriminate admits or readmits, nor transfer or discharge residents based on their status as a suspected or confirmed COVID-19 case. SNFs shall institute appropriate precautions to prevent the spread of infection to health care personnel and other residents as specified in AFL 20-25.2.
- SNFs shall follow their disaster response plan.
- SNFs shall follow infection control guidelines from the Centers for Medicare and Medicaid Services (CMS) and the CDC related to COVID-19.
- SNFs 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 skilled nursing services. CDPH encourages facilities to implement contingency plans to address staff absenteeism and the rapid influx of residents. CDPH will continue to promote quality healthcare and 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, SNFs do not need to submit individual program flexibility requests for the requirements specified above.

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

CDPH will continue to investigate and conduct enforcement activities, pursuant to Executive Order N-27-20 (PDF).

For capacity tracking purposes during COVID-19, SNFs shall submit an application when seeking initial licensure or changing beds or services listed on their license. This shall not require approval of the application before the SNF may provide care, although CDPH will reach out to provide technical assistance to ensure patient safety and the quality of care.

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 a State of Emergency (PDF)
- Executive Order N-27-20 (PDF)
- Executive Order N-39-20 (PDF)
- AFL 20-25.2 Preparing for Coronavirus Disease 2019 (COVID-19) in California Skilled Nursing Facilities

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