

June 18, 2020

Seema Verma, Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

*Re: White House Executive Order on Regulatory Relief to Support Economic Recovery and CMS COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers*

Dear Administrator Verma:

The National Council of State Boards of Nursing (NCSBN) appreciates the opportunity to provide feedback on the President's Executive Order from May 19, 2020 regarding the regulatory changes made throughout the COVID-19 global pandemic. NCSBN recognizes the unique situation presented by COVID-19 and commends the Health and Human Services (HHS) Secretary Alex Azar for declaring a Public Health Emergency and the Centers for Medicare and Medicaid Services (CMS) for issuing waivers to address unprecedented challenges facing patients and healthcare providers. These waivers were crucial steps forward in facilitating care delivery during the COVID-19 pandemic, with many of them becoming staples in new healthcare delivery models. NCSBN would like to identify which waivers we believe should remain in effect as we have concluded that they remove unnecessary bureaucracy, increases access, and importantly do not present a tangible threat to the recipients of services. We also have identified a number that once the Public Health Emergency ends these waivers should expire as their continuance does undermine the public safety of vulnerable groups.

NCSBN is an independent, non-profit association comprising 59 boards of nursing (BONs) from across the U.S., the District of Columbia and four U.S. territories. BONs are responsible for protecting the public through regulation of licensure, nursing practice, and discipline of the over 5 million registered nurses (RNs), licensed practical/vocational (LPN/VNs) and advanced practice registered nurses (APRNs) in the U.S. with active licenses.

### **Scope of Practice**

NCSBN has long supported removing federal barriers to practice for Advanced Practice Registered Nurses (APRNs), allowing them to practice to the full extent of their education and training. Several waivers issued by CMS have enabled APRNs to more easily provide high quality care during the COVID-19 pandemic. NCSBN would like to see the following waivers remain in place at the conclusion of the Public Health Emergency:

- waiving requirements under 42 CFR §482.12(c)(1)–(2) and §482.12(c)(4), which requires that Medicare patients be under the care of a physician.

- waiving requirements under 42 CFR §482.52(a)(5), §485.639(c) (2), and §416.42 (b)(2) that a certified registered nurse anesthetist (CRNA) is under the supervision of a physician in paragraphs §482.52(a)(5) and §485.639(c)(2). CRNA supervision will be at the discretion of the hospital and state law.
- waiving the minimum personnel qualifications for clinical nurse specialists at paragraph 42 CFR §485.604(a)(2), nurse practitioners at paragraph §485.604(b)(1)– (3), and physician assistants at paragraph §485.604(c)(1)–(3).
- waiving 42 CFR §485.608(d) regarding the requirement that staff of the CAH be licensed, certified, or registered in accordance with applicable federal, state, and local laws and regulations
- waiving requirement for CAHs that a Doctor of Medicine or osteopathy be physically present to provide medical direction, consultation, and supervision for the services provided in the CAH at § 485.631(b)(2).
- waiving 42 CFR 491.8(b)(1), modifying the requirement that physicians must provide medical direction for the clinic’s or center’s health care activities and consultation for, and medical supervision of, the health care staff, only with respect to medical supervision of nurse practitioners, and only to the extent permitted by state law
- waiving the requirement in 42 CFR 483.30 for physicians and non-physician practitioners to perform in-person visits for nursing home residents and allow visits to be conducted, as appropriate, via telehealth options.
- waiving 42 CFR 483.30(e)(4), the requirement that prevents a physician from delegating a task when the regulations specify that the physician must perform it personally
- waiving the requirement at § 483.30(c)(3) that all required physician visits (not already exempted in § 483.30(c)(4) and (f)) must be made by the physician personally
- modifying the requirement at 42 CFR §494.180(c)(1) related to transferability of provider credentialing, which requires that all medical staff appointments and credentialing are in accordance with state law, including attending physicians, physician assistants, nurse practitioners, and clinical nurse specialists.

## **Telehealth**

Telehealth has played a critical role in delivering care during this global health emergency for all populations. Through the waivers issued by CMS that allowed greater use of telehealth services, practitioners have continued to be able to reach a much wider range of patient populations, including those located in rural and underserved areas, and allowed those in vulnerable populations to receive care while remaining at home. NCSBN was pleased to see CMS take steps to reduce barriers to telehealth and would like to see the following waivers remain in place at the conclusion of the Public Health Emergency:

- waiving requirements of section 1834(m)(4)(E) of the Act and 42 CFR § 410.78 (b)(2) which specify the types of practitioners that may bill for their services when furnished as Medicare telehealth services from the distant site.
- waiving requirements of section 1834(m)(1) of the ACT and 42 CFR § 410.78(a)(3) for use of interactive telecommunications systems to furnish telehealth services, to the extent they require use of video technology, for certain services.
- waiving requirements related to telemedicine at 42 CFR §482.12(a) (8)– (9) for hospitals and §485.616(c) for CAHs, making it easier for telemedicine services to be furnished to the hospital’s patients through an agreement with an off-site hospital.

### **State Licenses and Workforce Waivers**

In the early days of the global pandemic, states, along with CMS, took steps to waive certain licensure, scope of practice, and workforce training requirements to increase the number of practitioners available to respond to the pandemic. NCSBN has long held that state licensing and training requirements should be dealt with at the state level. While these waivers were helpful policy changes for responding to the pandemic, NCSBN believes that the following CMS waivers should expire at the conclusion of the Public Health Emergency:

- waiver of 42 CFR §482.23(b)(4), which requires the nursing staff to develop and keep current a nursing care plan for each patient, and §482.23(b)(7), which requires the hospital to have policies and procedures in place establishing which outpatient departments are not required to have a registered nurse present.
- waiver of requirements at 42 CFR 483.35(d) (with the exception of 42 CFR 483.35(d)(1)(i)) related to the training and certification of nurse aides, which require that a SNF and NF may not employ a nurse aide for longer than four months unless they met the training and certification requirements under § 483.35(d).
- waiver of the requirement for out-of-state practitioners to be licensed in the state where they are providing services (the patient’s location) when they are licensed in another state.

### **Conclusion**

The Public Health Emergency created by COVID-19 required CMS to adapt and issue waivers to address a growing health emergency. Removing unnecessary regulatory hurdles for APRNs and expanding opportunities for patients and providers to leverage telehealth are both stated goals of the Administration. As important as removing certain barriers are, it is critical that patient safety remain a top priority. Ensuring that providers are licensed in the state where the patient is located when delivering in person care gives state licensing boards the authority necessary to fulfill their mandate to protect the public. NCSBN recognizes that the process of making some of these waivers permanent, particularly some of the telehealth provisions, will require legislative action, while others can be changed

through the regulatory process by CMS. We look forward to working with CMS and members of Congress to help put these policy changes into place.

NCSBN appreciates the opportunity to comment on this important matter. If you have any questions or would like any additional information, please do not hesitate to contact us. Elliot Vice, NCSBN's Director, Government Affairs, can be reached at [evice@ncsbn.org](mailto:evice@ncsbn.org) and 202-288-5755. We look forward to continuing the dialogue on this very important issue.

Sincerely,



David Benton, RGN, PhD, FFNF, FRCN, FAAN  
Chief Executive Officer  
National Council of State Boards of Nursing

Cc: Vice President Mike Pence

