Centers for Medicare and Medicaid Services (CMS) and State Waivers

Granting Waivers in a Disaster

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Division of Licensing
Arizona Department of Health Services

June 29, 2012
Objectives

• Review of Current Waiver Process
  – State Licensing
  – Centers of Medicare and Medicaid (CMS)

• Review of Draft Process Changes
  – Based on Exercise feedback
  – Efficiency for:
    • Provider
    • County
    • Arizona Department of Health Services (ADHS)
Types of Waivers

• Arizona State Licensing
• Centers for Medicare and Medicaid Services
Protocol for Requesting State Waiver

Requirements to request a state waiver include the following:

Director of the Arizona Department of Health Services can approve waiver for specific rule(s) only after the Governor has signed a State of Emergency Declaration.
Protocol for Requesting State Waiver

State waiver is limited to:

• Geographic Area
  • County
  • State
  • Location of emergency- domino effect

• Specific Events
  • H1N1
  • Natural disaster
  • Flooding
  • Winter storm
Protocol for Requesting State Waiver

Specific State Rules for OSC that can be Waived:

- Hours of Operation
- Type of Procedures
- Physician on site until all patients discharged from the licensed premise
Protocol for Requesting State Waiver

Requesting Facility Must:

Communicate the following to the Arizona Department of Health Services (ADHS)-Division of Licensing (DLS):

- Describe why the emergency waiver is being requested.
- Identify what rule(s) are being requested to be waived.
- Provide anticipated timeframe for which the facility is requesting the waiver.
Protocol for Requesting State Waiver

• ADHS (DLS) will review each individual healthcare facility request and communicate back to the Provider and the appropriate County the approval or denial of the waiver.

• County Health/Emergency Preparedness will remain informed to ensure coordination of care and services within the county.
WAIVER PROCESS

• Healthcare Institution must determine the rules that need to be waived based on the situation and the facility’s inability to meet the requirements of the rule.
• One rule per form will need to be identified and the information completed as requested on the form.
• Arizona Department of Health Services will review the information provided by the Healthcare Institution.
• ADHS will then approve, modify or deny each of the rules being requested.
• ADHS will forward the information to the Provider and the appropriate County.
• Each rule waiver will be time limited and the Healthcare Institution will need to return to compliance at the time of the termination or will need to submit an additional request following the steps of 1-5 if there is not the ability for the facility to return to compliance with the applicable waived rule.
Waiver Form

- One Page Form
- Located on the ADHS Web Site
  - [www.azdhs.gov](http://www.azdhs.gov)
- Review
  - Facility Identification
  - Rule Requested To Be Waived
  - ADHS Response
  - Who to contact for Waiver Request
ADHS Waiver Form

FACILITY IDENTIFICATION

FACILITY NAME: ____________________________ LICENSE NUMBER _______

ADDRESS: ___________________________ CITY:_________

ZIP:________________

PROVIDER TYPE: ________ COUNTY:_______ REQUEST DATE/TIME: _______

REQUESTER NAME: _______________________________ POSITION:__________

REQUESTER PHONE #:____________________ REQUESTER E-MAIL __________
ADHS Waiver Form

RULE REQUESTED TO BE WAIVED

SPECIFIC STATUTE/RULE: ______________________________ (example R9-10-1700)

LANGUAGE OF THE STATUE/RULE BEING REQUESTED TO BE WAIVED:
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

JUSTIFICATION:
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

TIME NEEDED FOR THE WAIVER: ______________________

ACTION TAKEN PRIOR TO WAIVER REQUEST: ________________________________
ADHS Waiver Form

FORWARD FORM TO ADHS: heoc_ops@sirenaz.gov

ADHS RESPONSE

APPROVED: YES NO
DENIED: YES NO
MODIFIED: YES NO

COMMENTS:

ADHS SIGNATURE: Date Time

ADHS Notification to County:
Protocol for Requesting State Waiver

While in the Process of Requesting a Waiver

- Hospitals may set up screening sites located near (but separated) from hospitals’ primary EDs, either on or off hospital campus, *on a temporary basis without a waiver*.

- Patients can be directed to *Ambulatory Screening & Care* sites after MSE for continued care not requiring inpatient services.
Approval by the Facility EOC

Facility -1
Requesting waiver for:
Rule-1
Rule-2
Rule-3

Facility -2
Requesting waiver for:
Rule-1
Rule-2
Rule-3

Facility -3
Requesting waiver for:
Rule-1
Rule-2
Rule-3

State Declaration

ADHS

Leadership for a Healthy Arizona

Arizona Department of Health Services
CMS Waiver Process
Conditions of Coverage
Protocol for Requesting Centers for Medicare and Medicaid Services (CMS) Waiver

Waiver or Modification of Regulatory Requirements based on Section 1135(b) of the Social Security Act are as follows:

1. Presidential declared state of emergency under Stafford Act or National Emergency Act; and

2. A waiver or modification is invoked by the Secretary of the Department of Health and Human Services.
CMS Waiver or Modification

The Secretary of State will Invoke when the Emergency

• Poses a risk that sufficient healthcare items and services may not be available to meet the needs of individuals enrolled in Medicare, Medicaid and CHIP programs.

• Providers are unable to comply with one or more of these requirements as a result of the emergency situation.
CMS Waiver or Modification Examples

• Certain Conditions of Coverage, certification, and program participation requirements.

• Requirements that physicians or other healthcare professionals hold licenses in the state in which they provide services if they have an equivalent license from another state.

• Expansion of the Scope of Service
CMS Waiver or Modification Examples (Contd.)

• Deadlines and timetables for the performance of required activities, as determined necessary by CMS.

• Specific Discharge Criteria

• Notifications of Patient Rights
Protocol for Requesting CMS Waiver (Contd.)

Requesting Facility Must:

• Request directly to CMS with a copy to State Survey Agency (DLS) for what rule(s) to be waived in §1135 of the Social Security Act

• Submit a justification of need for a waiver; information to support the request for waiver should be clear & concise
Protocol for Requesting CMS Waiver (Contd.)

CMS will do the Following:

- CMS Waiver Validation Team in consultation with State Survey Agency (DLS) will review request to ensure if request is justifiable.
- Case-by-case determinations will be made.
- Response time is usually within 3-business days of receipt.
- You must operate under normal rules and regulations UNLESS you have been granted modifications under 1135 waiver authority from specific requirements.
Examples of Provider CMS Waiver Requests

- A request to participate in an alternate screening location away from a hospital’s main campus.
- A request to assist with care and services of patients who are in needs of services within the capability and capacity of the ASC.
- A request to waive the no overnight stay requirement.
CMS Waiver

Facility -1
Requesting waiver under §1135 (specific requirements)

Facility -2
Requesting waiver under §1135 (specific requirements)

Facility -3
Requesting waiver under §1135 (specific requirements)

Facilities MUST send a copy of the Request to State Survey Agency (DLS)

CMS Waiver Validation Team in consultation with State Survey Agency (DLS) will review request to ensure if request is justifiable; response time is usually within 3-business days.

Arizona Department of Health Services

Leadership for a Healthy Arizona
Limited to:

- Federally certified providers must operate under normal rules and regulations, unless they have sought and have been granted a waiver or modification from a specific requirement.

- Waivers are permitted only to the extent they ensure that sufficient healthcare items and services are available to meet the needs of Medicare, Medicaid, and CHIP beneficiaries nationwide during the declared Public Health Emergency.
CMS Waiver Limitations (Contd.)

Limited to:

• A Section 1135 Waiver only applies to Federal requirements and does not apply to State laws or regulations.

• Providers must resume compliance with normal rules and regulations as soon as they are able to comply and no later than the termination of the emergency.
CMS Waiver Request Form

INFORMATION NEEDED TO REQUEST
1135 CMS WAIVER
The following information to be completed for each waiver item requested

E-Mail request to both of the following addresses

ROSFOSC@cms.hhs.gov
San Francisco Regional Office
HEOC_OPS@siren.gov
Arizona State Agency
# CMS Waiver Request Form

<table>
<thead>
<tr>
<th>Facility Name:</th>
<th>CMS Provider #:</th>
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<th>County:</th>
<th>Requester Date:</th>
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<th>Waiver Requested: (Regulation)</th>
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<tr>
<th>Requester Name:</th>
<th>Requester E-Mail:</th>
<th>Requester Phone:</th>
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<tr>
<th>Justification:</th>
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<tr>
<th>Time Needed for Waiver: Date(s)/Hours</th>
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<th>Action Taken Prior to Waiver Request:</th>
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<tr>
<th>CMS Approval</th>
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<th>No</th>
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<tr>
<th>CMS Approval</th>
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<th>CMS Signature</th>
<th>Date:</th>
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STATE
Proposed Wavier Process
DRAFT
The Waiver Process has been exercised during local and state exercises. Based on the exercise feedback:

- State has evaluated the process
- Proposed a new process
- Will exercise the proposed process prior to implementation
STATE Proposed Waiver Process

DRAFT

• Highlights of DRAFT Revisions

• ADHS will provide to the Outpatient Surgical Centers a copy of the rules on a Spreadsheet.
• The Spreadsheet will have designated rules that will not be allowed to be waived during a state declared emergency.
• The Spreadsheet can be utilized as part of the Disaster plan for specific rule identification when requesting specific rule waivers.
ARIZONA ADMINISTRATIVE CODE UNCLASSIFIED
R9-10-ARTICLE 17 OUTPATIENT Surgery Center

| ALL RULES WAIVED FOR THE FIRST 48 HOURS WITH THE EXCEPTION OF THE RULES DESIGNATED WITHIN THIS COLUMN WITH AN "X" | WAIVED ONLY WITH INDIVIDUAL HCI SPECIFIC RULE REQUEST AND APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES | REQUESTED WAIVED TIMEFRAME | REQUESTED WAIVED TIMEFRAME | REQUESTED WAIVED TIMEFRAME |
| R9-10-1702. Administration | | | | |
A. The governing authority shall consist of one or more persons responsible for the organization and administration of the outpatient surgical center. The governing authority shall:

1. Adopt policies and procedures for the operation of the surgical center to ensure compliance with state laws, rules, and local ordinances;
STATE Proposed Waiver Process

DRAFT

• Immediate Waiver Process
  – First 48 hours for facilities requesting the immediate waiver and are in the declared disaster area and are unable to meet the needs of the patients.
  – Post 48 hours the provider would need to request the specific rules with the timeframe utilizing the ADHS waiver form. (Changed)
• Immediate Waiver Rules not waived include:

<table>
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<tr>
<th>ARIZONA ADMINISTRATIVE CODE UNCLASSIFED</th>
<th>R9-10-ARTICLE 17 OUTPATIENT</th>
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<tbody>
<tr>
<td>Surgery Center</td>
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**R9-10-1702. Administration**

B. The governing authority shall appoint an administrator who shall have authority and responsibility to manage the facility. The administrator shall:

3. Develop and implement written administrative policies and procedures governing:

   h. Emergency treatment and disaster plan; and

**R9-10-1712. Emergency Standards**

B. The administrator shall ensure the development of a written disaster plan of operation with procedures to be followed in the event of a fire or threat to patient safety and shall ensure that an emergency evacuation route is posted in every room where patients may be present, except restrooms.
## STATE Proposed Wavier Process
### DRAFT ADHS Waiver Form

<table>
<thead>
<tr>
<th>FACILITY REQUEST FOR STATUTE AND RULES WAIVER DURING A DECLARED EMERGENCY BY THE GOVERNOR</th>
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<tbody>
<tr>
<td>Name of Licensed Facility</td>
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<tr>
<td>License Number</td>
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<tr>
<td>Date Waiver Request</td>
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<td>Type of Waiver Requested</td>
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<tr>
<td>Immediate</td>
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<tr>
<td>Specific rule - Attach Rule set with identified rule(s) requested identified</td>
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<td>Other:</td>
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Comments:
## ARIZONA DEPARTMENT OF HEALTH SERVICES APPROVAL FOR STATUTE AND RULE WAIVER DURING A DECLARED DISASTER

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<th>Date and Time received by ADHS HEOC</th>
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<th>ADHS Approval Signature: __________________________</th>
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<th>Date and Time Processed by ADHS HEOC</th>
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<th>Contact email: __________________________</th>
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<td>Contact Phone Number: __________________________</td>
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<th>Type of Waiver Approved</th>
<th>Immediate</th>
<th>1st 24 hrs</th>
<th>Other:</th>
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</thead>
</table>

| Specific rule - Attach Rule set with identified rule(s) approved | Post 48 hrs of declaration |
STATE Proposed Wavier Process

• Projected Plan
  – Finalize the DRAFT Process
  – Identify the users of the Process
    • OSCs
    • Hospitals
    • Child Care
    • Group Homes
    • Assisted Living
    • Long Term Care
    • Outpatient licensed entities etc.
  – Table Top Exercise
Additional Information

• Frequently Asked Questions (FAQs) for Surging Capacity Issues: http://www.azdhs.gov/als/medical/index.htm

Thoughts

Thank you for your continued Collaboration with the Department