HOSPITALS WITHOUT WALLS FAQS RELATED TO THE COVID-19 PANDEMIC

COVID-19 has made an unprecedented impact on our world. Most ambulatory surgery centers (ASCs) have either closed or reduced their operation to only treat permitted emergent cases. Many facilities have been forced to make difficult employee decisions, including furloughs and layoffs. The future continues to hold uncertainty and challenges.

Fortunately, the federal government is helping health care facilities by providing avenues for financial assistance (CARES, PPP, and APP) and issuing waivers to relax hospital regulations. “Hospitals Without Walls” is such a waiver, allowing hospitals to provide services in other settings such as ASCs, skilled nursing facilities (SNFs), hotels, and tents. In preparation for a surge of COVID-19 patients, these sites can act as a temporary extension of the hospital.

Is this a feasible opportunity for your ASC? Maybe. This is a complex and evolving initiative. While regulations have been relaxed, there are still compliance standards that must be met in order to participate. Those are covered later.

Logistics aside, there are two main value propositions when considering this for your ASC. First, the tangible contribution your organization can make to your community’s COVID-19 crisis response. Second, the short-term revenue potential this program represents.

This FAQ sheet seeks to answer these considerations and other common questions about the Hospitals Without Walls program to better inform your decision-making regarding participation.

How can I support my local health care community during the COVID-19 pandemic?

- **Be proactive.** Complete the COVID-19 Emergency Response Service Expansion Checklist and the ASC Facility Demographic Inventory Checklist. A few states have mandated submission of these lists to their local health departments. Be aware of what you need to do and what you can share with your local community, as needed.

- **Do not wait for a government representative or hospital administrator to call you.** Call your local Department of Health, Emergency Planning Department, and area hospital(s) to determine their needs and your capacity to assist. Review your Emergency Operations Plan and previous local emergency response team meeting notes to guide your response efforts. Perhaps you can serve as a respite location for hospital staff or aid in another way as outlined by your local emergency response team.

- **Encourage your clinical staff to work at the hospital, as needed.**

- **Consider becoming a temporary expansion site.**

How do I know if my local hospital needs my facility as a temporary expansion site?

- **Call your local hospital administrator.** Discuss what the needs are or will be during a surge. What types of cases or patients does the administrator feel would be appropriate to send to your facility? Some examples are:
  - Medical surgical beds
  - ICU beds
  - Maternity
  - Infusion suites
  - COVID testing sites
  - Surgeries not on the ASC list, if appropriate and related to a hospital capacity issue due to COVID-19
What are my options for my ASC to be a temporary expansion site?

- **Remain an ASC but expand your scope of services.** As long as you are allowed to remain open per your state’s mandates. For example, perhaps you are an ASC where only pediatric cases are currently performed. You determine that you can add emergent cases such as surgery for fractures, so you expand your services to accommodate this. Remember, you must adapt your policies, credential and appoint providers, and ensure staff competencies with any scope of care expansion. Contact your state Department of Health and accrediting organization to determine if you need to formally notify either of them of this change.

- **Lease your ASC to a local hospital.** You will need to execute a lease agreement with the hospital, with the hospital paying you an agreed upon rate during the declared emergency.

- **Apply for temporary hospital status.** If approved, you will be paid for services rendered to Medicare recipients at Medicare hospital rates during this declared national emergency. For details, see “how do I become a temporary hospital?” below.

My ASC is physician owned. Are there any issues with Stark or the Anti-Kickback Statute?

- A blanket waiver allows physician-owned ASCs to become temporary hospitals without violating Stark during the COVID-19 epidemic. In order to comply, this expansion must be related to the pandemic. The Office of Inspector General (OIG) does not yet have an opinion on the Anti-Kickback Statute as it relates to COVID-19.

- As with any legal agreement, have your attorney review the contract and advise you on any potential risks.

How do I structure a lease agreement with my local hospital?

- As with any lease arrangement, use fair market value to determine the amount of remuneration from the hospital.

- Besides the dollar amount per square foot for the physical space, consider these other potential costs:
  - Staff
  - Equipment
  - Ancillary services (i.e., linen)
  - Supplies
  - Pharmaceuticals

- Remember, leasing can be on a per patient or per service basis. Discuss methodologies with your attorney and facility leadership as you explore your options.

- Adhere to applicable (non-waived) federal (CMS) and state hospital regulations. Outline these responsibilities in your lease agreement.

- Determine the processes for billing/collections, obtaining supplies and equipment, and staffing/skill matching to hospital services at the ASC.

- As with any legal contract, have your attorney review the lease agreement and provide input.
How do I become a temporary hospital?

- Contact your Medicare Administrative Carrier (MAC) to inform that insurer of your plan to pursue this action.
- Complete an attestation and send it to your MAC.
- Upon review, your MAC will forward that attestation to the CMS Regional Office for its review. Approval is effective as of the date your MAC accepted the attestation, if approved.
- Approval is contingent upon review of your ASC’s survey activity for the past three years.
  - Your facility cannot be approved as a temporary hospital if you have had immediate jeopardy-level deficiencies within the past year or if enforcement activities are currently occurring.
  - If no immediate jeopardy deficiencies were issued in the previous three years, or if they were removed through the normal survey process, the CMS Regional Office will:
    - Approve the attestation statement.
    - Create a new facility profile and certification kit in the Automated Survey Process Environment (ASPEN).
    - Assign a hospital CMS Certification Number (CCN).
    - Send a tie-in notice as a hospital to the MAC.

For additional information visit CMS

Do I have to work with a local hospital to become a temporary expansion site?

- No, however, as stated in the April 3, 2020, CMS memo, the expectation is for “ASCs to coordinate with their local healthcare systems and/or their state and local health departments operating under their state’s emergency preparedness or pandemic plan during this Public Health Emergency to help meet surge needs in their community.”
  - It is impossible to meet that expectation without a conversation with one of the entities mentioned above. The goal is to assist the local hospital in its needs, which will vary by community.
- Remember, the Stark Law is waived with the assumption that your ASC is converting to a temporary hospital to assist with COVID-19 efforts.

What issues should my governing body consider for my facility before entering into a lease agreement or applying for temporary hospital designation?

- **Landlord:** Does your lease allow you to expand your services? If not, can you do an amendment?
- **Insurance:** Will your insurance carrier cover your expanded services for malpractice, property, and any other insured items? What steps need to be taken to ensure coverage?
- **Hospital state licensing regulations and CMS relaxed Conditions for Coverage:** What resources will it take in terms of cost and personnel to meet these requirements? How much time will it take? Does it make sense to pursue this given COVID-19 statistics in your community?
COVID19: Should you take active COVID-19 patients? This may depend on where the local health care community feels it has a need, but taking on active COVID-19 patients may impact how quickly you can start practicing as an ASC again after this pandemic.

Pharmacy: Do steps need to be taken to “close” medications (including narcotics) in the ASC before it can be used as a temporary expansion site? Discuss this with your pharmacy consultant.

What if my ASC does not meet all state hospital licensure requirements?

- Remember that compliance with applicable state regulations is a prerequisite to CMS certification. Exemptions to this have not been included in a blanket waiver.
- Review your state regulations for hospitals to determine your capacity to comply. Make sure there is nothing that prohibits you from being a temporary hospital. Certain state regulations may present obstacles to ASCs, such as a need for a full-time pharmacist or the requirement to be open 24 hours a day. It is imperative you understand what is required of you and that you can document compliance.
- Your state may have hospital waivers to deal with COVID-19. If they exist in your state, be sure you’re familiar with them.
- Investigate your local emergency preparedness organization and state pandemic rules and orders to identify anything that precludes you from being a temporary hospital.

Where can I find the Medicare Conditions for Coverage for hospitals?


What if my ASC does not meet all non-waived CMS hospital conditions for coverage?

- Contact your MAC to discuss the issue. It may be able to help you resolve the matter during a telephone call without having to take further action.
- If the solution is that you need a specific waiver, email 1135waiver@cms.hhs.gov
- If requested, submit a CMS 1135 Waiver.

Where can I find the blanket waivers for hospitals?

- CMS COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers
- Relaxation of a variety of regulations are included in the blanket waivers, including, but not limited to, verbal orders, sterile compounding, CRNA supervision, and the physical environment.
Temporary expansion site waivers cover Medicare beneficiaries. Does it cover Medicare Advantage beneficiaries or third-party payors?

- As of April 11, 2020, the coverage of Medicare Advantage beneficiaries is unknown. CMS will post its ruling when it has an answer on this issue.
- Hospitals Without Walls only includes Medicare recipients. Third-party payor reimbursement for an ASC functioning as a temporary hospital is most likely not covered unless the payors in your community have agreed to do so.

Who can I contact at CMS for payment questions?

- Email Hapg_COVID-19@CMS.hhs.gov

For additional COVID-19 resources as they relate to your ASC, visit https://progressivesurgicalsolutions.com/covid-19-resources/.

**NOTE:** Hospitals Without Walls does not eliminate the recommendation and/or mandate to refrain from performing non-essential elective surgical procedures at this time.

The information in this FAQ is current as of its posting on April 16, 2020. Be sure to independently verify current regulations and guidance should you elect to participate in the Hospitals Without Walls program.