

United States Senate

March 13, 2020

Secretary Alex Azar
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Administrator Seema Verma
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Azar and Administrator Verma:

I write today to urge the Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) to waive—for the duration of the coronavirus pandemic—federal requirements for hospitals that impede their ability to maintain sufficient capacity to treat patients.

On March 9, 2020, CMS released guidance that addressed several obligations of hospitals under the Emergency Medical Treatment and Labor Act (EMTALA). At a time when expanding hospitals' capacity is critical, CMS and HHS should be commended for seeking to provide hospitals greater flexibility.

However, additional aspects of EMTALA and many other federal requirements hinder the ability of hospitals to surge capacity and screen, treat, and discharge patients properly and efficiently. CMS and HHS should do more.

Among other federal requirements, CMS and HHS should at least:

1. Waive conditions and requirements of participation, certification requirements, and preapproval requirements for hospitals that are unable to meet these conditions because of the coronavirus pandemic;
2. Suspend or waive portions of EMTALA, as to allow hospitals maximum ability to screen, triage, and treat patients offsite and better transfer unstable patients as required by this health emergency;
3. Waive Obamacare's limit on the ability of physician-owned hospitals to expand their number of beds and other facilities to meet patient loads that exceed their current capacity;¹

¹ For many in Texas, physician-owned hospitals are the only available site of hospital care.

4. Waive eligibility and appointment requirements for medical staff such that current providers whose privileges will expire and new providers can practice before full medical staff or governing body review and approval;²

5. Waive discharge planning requirements to allow patients to be discharged and quarantined or transferred to post-acute care providers more efficiently so as to open up beds for acutely ill patients;³

6. Waive physical environment requirements to ensure hospitals are able to use all available space and designate alternative sites of care, so long as patient and provider safety is maintained;⁴ and

7. Waive sanctions and penalties arising from non-compliance with the Health Insurance Portability and Accountability Act's privacy requirements in situations where an influx of patients necessitates flexible sharing of information about infection and patient treatment.

I strongly urge CMS and HHS to waive these and other requirements that prevent hospitals from increasing their capacity to handle surging cases of COVID-19 in their communities.

Sincerely,



Ted Cruz
United States Senator

² See 42 C.F.R. § 482.22(a).

³ See 42 C.F.R. §§ 482.43(a)(8); 485.642(a)(8).

⁴ See 42 C.F.R. § 482.41.