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Memorandum

TO: Massachusetts Hospital Chief Executive Officers

FROM: Elizabeth Kelley, MPH, MBA, Director
Bureau of Health Care Safety and Quality

DATE: January 5, 2022

RE: Clarification of Federal and State Hospital Transfer and Discharge Requirements
and Routine COVID-19 Testing Requests

The Massachusetts Department of Public Health (DPH) continues to work with state, federal and local partners on the outbreak of Coronavirus Disease 2019 (COVID-19), caused by the virus SARS-CoV-2, and unprecedented demand on the health care delivery system and we continue to appreciate the essential role you have in responding to this evolving situation.

This guidance provides updated clarifications about hospital responsibilities for COVID-19 testing in the emergency department (ED), patient transfers, and discharges from the ED and inpatient units during the COVID-19 public health emergency and replaces the version released on December 31, 2020.

Emergency Departments:

Hospitals must meet the Emergency Medical Treatment and Labor Act (EMTALA) statute codified at §1867 of the Social Security Act, (the Act), the accompanying regulations in 42 CFR §489.24 and the related requirements at 42 CFR 489.20(l), (m), (q), and (r). EMTALA requires hospitals with EDs to provide a medical screening examination to any individual who comes to the EDs and requests such an examination, and prohibits hospitals with EDs from refusing to examine or treat individuals with an emergency medical condition (EMC).

The Centers for Medicare and Medicaid Services (CMS) has issued blanket 1135 waivers as well as, where applicable, authority granted under section 1812(f) of the Social Security Act (the

Act). Specifically, CMS is waiving the enforcement of section 1867(a) of the Act. This allows hospitals to screen patients at a location offsite from the hospital's campus to prevent the spread of COVID-19, so long as it is not inconsistent with a state's emergency preparedness or pandemic plan. DPH has previously issued guidance enabling hospitals to use alternate space for patient care, including patient screening that may be found here: <https://www.mass.gov/doc/space-on-hospital-premises-for-patient-treatment/download>

If the hospital does not have appropriate space or staff to care for the patient, the hospital may transfer the patient, once stabilized. An appropriate transfer to a medical facility is a transfer:

- in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;
- in which the receiving facility
 - has available space and qualified personnel for the treatment of the individual, and
 - has agreed to accept transfer of the individual and to provide appropriate medical treatment;
- in which the transferring hospital sends to the receiving facility all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification; and
- in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer.

Under EMTALA, a hospital is deemed to meet their requirements if the hospital offers to transfer the individual to another medical facility in accordance with federal requirements and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer, but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.

Patients Seeking Routine COVID-19 Testing:

DPH, consistent with CMS, permits that a hospital may post signage at the ED that informs the public that routine COVID-19 testing of asymptomatic individuals is not performed at the ED and directs patients to the available alternate locations for routine COVID-19 testing. Such signage cannot present barriers to individuals, including those who are suspected of having COVID-19, from coming to the ED, or to otherwise refuse to provide an appropriate medical screening examination to anyone who has come to the ED for examination or treatment of a medical condition.

Inpatient Units:

EMTALA no longer applies once a patient is admitted to the hospital. If a hospital cannot accommodate a patient due to a lack of appropriate space or staff, or because the patient needs a different level of care, the hospital may transfer the patient to a different hospital, post-acute setting, or hospital Alternate Care Site as appropriate, as long as the hospital complies with all discharge planning requirements. Patients have the right to have all reasonable requests responded to, including the patient's choice of facility, *within the capacity of the facility to accommodate the patient*. G.L. c. 111, §70E. It is appropriate for a hospital to transfer a patient to a different hospital, post-acute setting, or hospital Alternate Care Site, notwithstanding the request of the patient, if the facility does not have the capacity to accommodate the patient's request.

Additionally, CMS is waiving some requirements to provide detailed information regarding discharge planning, so as to expedite safe discharge and movement of patients among care settings and to be responsive to changing situations. Hospitals are expected to discharge a patient to an appropriate setting with all necessary medical information and goals of care as described in 42 CFR §482.43(a)(1)-(7) and (b).

Discharge planning must include, but is not limited to:

- Development of a plan with the participation of appropriate health care professionals, the patient and, as appropriate, the patient's family or representative.
- Provision of the discharge plan, in writing to the patient or the patient's representative, in non-technical language, along with sufficient oral explanations to assist the patient in understanding the plan. The plan must be provided at least twenty-four hours prior to discharge, except where that is not feasible due to a short length of stay.
- Review with the patient any information which the hospital has about out-of-hospital resources including community-based services capable of meeting the patient's discharge needs.
- For patients with limited English proficiency, the hospital must provide translation assistance to support the patient and/or as appropriate the family/patient representative in understanding the discharge plan.

DPH strongly encourages all hospitals in Massachusetts to monitor the Centers for Medicare & Medicaid Services (CMS) website and the Centers for Disease Control and Prevention (CDC) website for up-to-date information and resources:

- CMS website: <https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page>
- CMS Blanket Waivers: <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>
- CDC website: <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>

Additionally, please visit DPH's website that provides up-to-date information on COVID-19 in Massachusetts: <https://www.mass.gov/2019coronavirus>.