



**Center for Clinical Standards and Quality/Quality, Safety & Oversight Group**

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**Ref: QSO-22-XX-ASC & Hospital**

**DATE:** December 1, 2021

**TO:** State Survey Agency Directors

**FROM:** Director, Quality, Safety & Oversight Group (QSOG)

**SUBJECT:** Ending the Streamlined Process for Ambulatory Surgical Centers and Independent Freestanding Emergency Departments to Temporarily Enroll as Hospitals during the COVID-19 Public Health Emergency

**Memorandum Summary**

CMS continues to review the need for existing waivers and flexibilities issued in response to the Public Health Emergency (PHE). Over the course of the PHE, states and hospitals have developed policies or other practices that we believe mitigate the need for certain flexibilities created to address surge capacity.

- **CMS is announcing it is ending the flexibility of a streamlined process to allow Ambulatory Surgery Centers (ASCs) and licensed Independent Freestanding Emergency Departments (IFEDs) to temporarily enroll as hospitals during the COVID-19 PHE.**
- **Effective upon issuance of this memo, no new ASC or licensed IFED requests to temporarily enroll as hospitals will be accepted.**
- **Those facilities that are temporarily enrolled as hospitals under this flexibility can continue providing inpatient and outpatient hospital services until:**
  - **They voluntarily terminate from temporary hospital enrollment; or**
  - **CMS initiates enforcement action for any facility that is non-compliant with applicable participation requirements, to the extent not waived; or**
  - **The Secretary of the Department of Health and Human Services (Secretary) determines there is no longer a PHE due to COVID-19; or**
  - **CMS provides additional public notice that this guidance has ceased to be effective.**

**Background**

In response to the 2019 Novel Coronavirus (COVID-19) PHE and under its authority pursuant to section 1135 of the Social Security Act (Act), CMS granted temporary emergency blanket waivers and implemented additional flexibilities for providers and suppliers which were intended to provide ASCs, hospitals, home health agencies, and others with flexibility to respond to the COVID-19 PHE.

Specifically, these two flexibilities were created to establish:

- A streamlined process to allow Medicare-enrolled ASCs to temporarily enroll as hospitals to provide hospital services and help address the need to increase hospital capacity as outlined in [QSO 20-24-ASCs](#) and [QSO-20-24-ASCs-Revised](#).
- A streamlined process to allow licensed IFEDs to temporarily enroll as hospitals to provide inpatient and outpatient care to help address the need for hospital capacity as outlined in [QSO-20-27-Hospitals](#).

## **CMS Will No Longer Accept Temporary Hospital Enrollment Requests for ASCs and IFEDs**

### *Ending the Streamlined Process for ASCs to Temporarily Enroll as Hospitals*

During the COVID-19 PHE, CMS created a streamlined and temporary enrollment process for ASCs that wished to convert to a hospital to expand capacity and treat inpatients and outpatients. During the pandemic, ASCs were identified as a critical resource to assist in expanding capacity for inpatient and outpatient hospital services for patients requiring a higher level of care.

CMS believes states and hospitals have developed effective strategies for managing capacity and safely resuming elective surgery. Given the low volume of inpatient services delivered in ASCs under this flexibility, CMS believes there is no longer a need for expanded hospital capacity through ASCs. Therefore, effective immediately, CMS will no longer accept **new** temporary enrollment requests from ASCs seeking to enroll as hospitals.

While CMS is ending the streamlined process for new enrollees, we recognize that the [COVID-19 PHE determination](#) continues and that a large number of temporarily enrolled hospitals are located in States that are currently experiencing high rates of COVID-19 community transmission.<sup>1</sup> Therefore, CMS will allow those ASCs which are already temporarily enrolled and functioning as hospitals to continue with this flexibility until:

- The temporarily enrolled hospital wishes to voluntarily terminate from temporary hospital enrollment and convert back to ASC status; or
- CMS initiates enforcement action for any facility that is non-compliant with applicable participation requirements, to the extent not waived; or
- The Secretary of the Department of Health and Human Services (Secretary) determines there is no longer a PHE due to COVID-19; or
- CMS provides additional public notice that this guidance has ceased to be effective.

As stated in [QSO-20-24-ASC](#), “if the temporarily enrolled hospital decides to revert back to an ASC prior to the end of the PHE period, they must notify their Medicare Administrative Contractor in writing. Note that once there is no longer a need for the ASC to be a hospital under their state’s emergency preparedness or pandemic plan, the ASC should come back into compliance with all applicable ASC federal participation requirements, including the Conditions for Coverage.”

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<sup>1</sup> Data accessed from CDC’s COVID-19 Integrated County View <https://covid.cdc.gov/covid-data-tracker/#county-view> on July 26, 2021.

## *Ending the Streamlined Process for Licensed IFEDs to Temporarily Enroll as Hospitals*

As with ASCs, CMS created the same streamlined approach for the temporary enrollment of IFEDs during the COVID-19 PHE, which allowed them to provide care to inpatients to expand capacity and reduce hospital burden. Although they were not previously treating patients in this manner, CMS believed that certain IFEDs had an appropriate infrastructure to be able to deliver care to patients requiring acute care. Unlike ASCs, the IFEDs are not a recognized Medicare provider-type.

CMS believes that states and hospitals have developed strategies to manage capacity and meet the needs of patients they serve across the nation. Given the low volume of inpatient services delivered in IFEDs under this flexibility, CMS believes there is no longer a need for expanded hospital capacity from IFEDs. Therefore, effective immediately, CMS will no longer accept new temporary enrollment requests from IFEDs seeking to enroll as hospitals.

Similar to ASCs, while CMS is ending the streamlined process for new IFED enrollees, we recognize that the [COVID-19 PHE determination](#) continues and that Texas, the only state where IFEDs are temporarily enrolled as hospitals, is currently experiencing high rates of COVID-19 community transmission.<sup>2</sup> Therefore, CMS will allow those licensed IFEDs that are currently temporarily enrolled and functioning as hospitals to continue with this flexibility until:

- The temporarily enrolled hospital wishes to voluntarily terminate from temporary hospital enrollment and convert back to non-Medicare-participating IFED status; or
- CMS initiates enforcement action for any facility that is non-compliant with applicable participation requirements, to the extent not waived; or
- The Secretary of the Department of Health and Human Services (Secretary) determines there is no longer a PHE due to COVID-19; or
- CMS provides additional public notice that this guidance has ceased to be effective.

**Contact:** Questions about this memorandum should be addressed to [QSOG\\_ASC@cms.hhs.gov](mailto:QSOG_ASC@cms.hhs.gov)

**Effective Date:** The flexibility for ASCs and IFEDs to temporarily enroll as hospitals will end immediately for new temporary enrollment requests. This policy should be communicated with all survey and certification staff, their managers, and the State/CMS Locations training coordinators immediately.

/s/

David R. Wright

cc: Survey and Operations Group Management

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<sup>2</sup> Data accessed from CDC's COVID-19 Integrated County View <https://covid.cdc.gov/covid-data-tracker/#county-view> on July 26, 2021.