



ELECTRONIC MAIL

October 22, 2020

Governor Michael Dunleavy
P.O. Box 110001
Juneau, AK 99811-0001

RE: Extension of Alaska's Public Health Disaster Emergency Declaration

Dear Governor Dunleavy,

We want to thank you for your partnership and leadership during the COVID-19 pandemic. Alaska's hospitals and nursing homes have been in constant communication with Commissioner Crum, Dr. Zink, and your leadership team at the Department of Health and Social Services, and this collaboration has been a highlight in these otherwise challenging times.

Alaska's hospitals and nursing homes continue to serve Alaskans in their time of need. Providing health care during a pandemic is extremely challenging and full of uncertainty. This work takes agility and perseverance to respond to the everchanging dynamics of the COVID-19 virus and the way it affects our communities, our patients, and our residents. Simply put, with community spread at an all-time high in Alaska, as hospital and nursing home operators, we need every available tool and flexibility to do our jobs.

It is for this reason that we write you today. We are acutely concerned that your public health disaster emergency declaration ("emergency declaration") will expire after November 15.

If the emergency declaration is not extended, we believe that Alaska's health care providers may lose key flexibilities afforded by (1) "blanket waivers" from the Centers for Medicare and Medicaid Services ("CMS"), and (2) key provisions from SB 241. Additionally, we are concerned that not extending the emergency declaration sends inconsistent signals to the public that an otherwise active pandemic is over, which could compromise future funding opportunities from the federal government, and prevent necessary focus on mitigation strategies to constrain the spread of COVID-19.

Alaska's hospitals and nursing homes respectfully request that the current emergency declaration be extended before it expires on November 15. We recognize that to fully preserve the flexibilities enumerated in SB 241, it may be necessary to involve the Legislature or pursue other regulatory avenues. Regardless, our sole priority is receiving clarity on this matter and removing uncertainty for Alaska's health care providers.

With that said, the analysis below shows just how serious the declaration is to Alaska's health care system. To put this in perspective, there are approximately 125 blanket waiver

flexibilities for 32 categories of health care services and provider types at the federal level that are in question for Alaska’s health care system without the emergency declaration. The same holds true for the flexibilities in SB 241.

If the emergency declaration is not extended, Alaska’s health care providers may lose key flexibilities afforded by “blanket waivers” from the Centers for Medicare & Medicaid Services.

On March 11, 2020, Governor Dunleavy issued a public health disaster emergency declaration (“emergency declaration”). This declaration was predicated on the Commissioner of Health and Social Services certifying that there is “a high probability that COVID-19 presents a credible threat of an imminent outbreak of the disease in the state.” Per Senate Bill 241 (“SB 241”), the legislature extended the Governor’s emergency declaration to November 15, 2020.

With the emergency declaration in place, the State immediately pursued and implemented a variety of resources and flexibilities, many of which were intended to aid the health care system in responding to the pandemic. This included the State applying to the federal government for approval to waive or modify certain provisions of the Social Security Act as they relate to Alaska’s health care system.

Your communication to CMS on March 27, 2020, detailed a number of federal Medicaid, and Medicare requirements that pose issues or challenges for the health care delivery system in all counties in Alaska and requested a waiver or modification of those requirements. Attached, please find a response to your requests for waivers or modifications, pursuant to section 1135 of the Social Security Act, to address the challenges posed by COVID-19. This approval addresses those requests related to Medicaid and Medicare. *CMS Letter to Commissioner Crum, April 2, 2020.*

While it is unknown, we presume the State’s 1135 waiver is contingent on the national emergency declaration being in effect, and therefore, expect the State’s 1135 waiver to be valid for the duration of the national emergency declaration, regardless of whether a State public health disaster emergency declaration is in place. However, the same presumption does not necessarily hold true for the Centers for Medicare and Medicaid Services’ (“CMS”) blanket waivers.

In addition to Alaska’s 1135 waiver, CMS issued “a number of blanket waivers for many Medicare provisions, which primarily affect requirements for individual facilities, such as hospitals, long term care facilities, home health agencies, and so on.” *CMS Letter to Commissioner Crum, April 2, 2020.* Blanket waivers are automatically in effect, meaning they do not require applications from the State or providers.

CMS’ 41-page Fact Sheet for “COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers” (“Fact Sheet”) details approximately 125 waiver flexibilities for 32 categories of health care services and provider types. Flexibilities range from

expanding the types of practitioners who can provide telehealth services to allowing hospitals to screen patients at offsite locations to prevent the spread of COVID-19, and beyond.

Unlike the State's 1135 waiver, CMS' blanket waivers include the following language in 20 specific waiver flexibilities: "This waiver [or these flexibilities] may be implemented so long as it is not inconsistent with a state's emergency preparedness or pandemic plan." *CMS Fact Sheet*.

The 20 waiver flexibilities directly affect screening procedures in hospital emergency departments, the ability to use offsite screening locations, the ability to use space for surge capacity and patient quarantine, expanded roles of practitioners to render care, and a host of other services.

As stated earlier, providing health care during a pandemic is extremely challenging and full of uncertainty. The last thing we need is more uncertainty, and at this moment, Alaska's health care system is uncertain whether it will lose the ability to use some or all of the flexibilities from CMS' blanket waivers in the event that the State's emergency declaration expires on November 15.

More specifically, if the State no longer formally recognizes the existence of a public health disaster emergency in Alaska, then are the CMS blanket waivers "inconsistent with" the state's emergency preparedness or pandemic plan? It is not unreasonable to conclude yes when the opening sentence of the State of Alaska Department of Health and Social Services Emergency Operations Plan describes its purpose as guiding "the Department's response to public health or medical *emergencies and disasters*." (emphasis added).

Again, one could logically conclude that if there is no formal emergency declaration, then there is no longer an emergency or disaster, so the role of the emergency operations plan is reduced or no longer applicable, and thus the federal blanket waivers are no longer consistent with Alaska's emergency preparedness or pandemic plan. Further, the lack of an emergency declaration could place Alaska at risk for missing future COVID-19 stimulus relief.

It is possible to reverse this logic and prove that there is consistency, but that is not the point of this letter. Rather, the takeaway is that reasonable minds can differ on whether the blanket waivers will remain accessible to Alaskan providers should the State's emergency declaration expire on November 15, which means there is significant uncertainty in a time when uncertainty is not welcome (i.e. a time when community spread and hospitalizations are at an all-time high in Alaska).

All of this uncertainty will go away if the emergency declaration is extended, and we as providers can focus our energy on delivering health care for Alaskans in arguably their greatest time of need.

If the emergency declaration is not extended, health care providers will lose key flexibilities afforded by key provisions from SB 241.

In addition to the concerns detailed above about losing access to key flexibilities from the CMS blanket waivers, if the State’s emergency declaration is not extended, Alaska’s health care providers, and others, will lose key flexibilities enumerated in SB 241. There are three provisions in particular, that if they were to expire on November 15, would severely inhibit the ability of hospitals and nursing homes to respond to the escalating pandemic. Specifically, SB 241 mandates critical flexibilities for professional and occupational licensing (Section 6), telemedicine and telehealth (Section 7), and fingerprinting (Section 8).

Even prior to the pandemic, health care providers expressed concerns about the length of time and efficiency for physician and nurse licensing. Section 6 in SB 241 improves this by allowing “expedited” licensing, especially for those who hold a corresponding license in good standing in another jurisdiction. This provision is more important now than ever as hospitals, nursing homes, and other providers are sprinting to secure traveling health care workers and locum tenens as we brace for a surge. If this ability to expedite is lost, our ability to staff up for a surge, and to reinforce our workforce into the future, is effectively gone.

Telemedicine will also be significantly impaired. We all understand the importance of delivering care remotely in the face of a highly infectious disease. SB 241 maximizes telehealth by removing prior authorization barriers, such as a limitation that telehealth can only be rendered following an “in person” physical exam. Again, if the State’s emergency declaration expires, the ability to use telehealth to deliver health care services in a safe way that mitigates potential exposure to and spread of an infectious disease is effectively gone.

These issues are particularly important for remote and rural health care providers. The expedited licensing and telemedicine capabilities have been critical to providing care in communities across rural Alaska. Expedited licensing has facilitated quick insertion of essential personnel in areas of shortage, providing coverage for employees on isolation and quarantine, and assuring no gaps in clinical services in communities.

Similarly, the expanded telemedicine access has allowed providers—including the desperately needed mental health clinicians—to work with patients in remote communities, even when the patient / client is in isolation or quarantine, without risking exposure to other patients or air travelers. The state and local travel mandates have been instrumental in protecting extremely vulnerable tribal communities, and a reduction in telemedicine services threatens that safety by necessitating travel for patients who could otherwise be treated at home.

Finally, expediting the fingerprinting process through SB 241 is another instance of “cutting red tape” so that the health care system can more efficiently secure critical personnel as we brace for and work through a surge in community need for health care services across the

continuum.

Alaska’s hospitals and nursing homes fear that not extending the emergency declaration sends inconsistent signals to the public that the an otherwise active pandemic is over, which could compromise future funding opportunities from the federal government, and prevent necessary focus on mitigation strategies to constrain the spread of COVID-19. Simply put, we cannot let our guard down now even though we are all exhausted from the pandemic. If anything, rising case counts and hospitalizations tell us that even greater challenges lie ahead.

Conclusion

Thank you again for your partnership and leadership during the COVID-19 pandemic. Alaska’s hospitals and nursing homes need as much flexibility as possible to meet the challenges of these unprecedented times. We appreciate your attention to this matter.

Sincerely,

Alaska State Hospital & Nursing Home Executive Committee

ASHNHA Executive Committee CEOs			
Dave Wallace Mat-Su Regional Medical Center	Ryan Smith South Peninsula Hospital	Robert Rang Providence Seward Medical & Care Center	Rick Davis Central Peninsula Hospital
Preston Simmons Providence St. Joseph Health	Julie Taylor Alaska Regional Hospital	Ruth Johnson Wildflower Court	Liz Woodyard Denali Center
Chuck Bill Bartlett Regional Hospital	Angela Gorn Norton Sound Health Corporation	Shelley Ebenal Fairbanks Memorial Hospital	Phil Hofstetter Petersburg Medical Center
	Kay Turner SEARHC Sitka Long-Term Care	Jared C. Kosin ASHNHA	

CC: Representative Bryce Edgmon, Speaker of the House
Senator Cathy Giessel, Senate President
Ben Stevens, Chief of Staff
Adam Crum, Commissioner
Dr. Anne Zink, Chief Medical Officer

ENCLOSED: CMS Fact Sheet for “COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers”