



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

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DAL Number 21-02

Dear Hospital CEO:

This guidance supersedes guidance issued March 19, 2020 (DAL 20-08) issued to healthcare providers seeking emergency approval from the New York State Department of Health (the Department) for additional capacity or alternative sites for testing, triage, screening or treatment related to COVID-19 surge response. The guidance issued previously is available at this link:

https://www.health.ny.gov/professionals/hospital_administrator/letters/2020/docs/dal_20-08_revised_emergency_approvals_covid.pdf

The purpose of this letter is to provide guidance concerning how to manage construction, modifications, closures, limitations or expansions of beds or services that were previously allowed and those that will be allowed going forward, so hospitals can incorporate these requirements in the surge plans that are required to be developed pursuant to Emergency Regulations published on August 6, 2020.

Construction or modification related to the use of alternative facilities or development of additional capacity through changes in beds and/or services are covered under State regulations at 10 NYCRR Section 401.3 and Parts 709 and 710. The Department previously exercised its authority under Executive Order 202.1 to allow construction or modifications, or changes in services, which would ordinarily have required the submission of a Certificate of Need (CON), to provide the flexibility critical to allow hospitals and other healthcare providers to achieve their unprecedented response to COVID. Hospitals were also required, as part of the initial guidance issued for resuming elective surgery, to maintain bed capacity of 30% for a potential COVID-19 surge. Note that this requirement was rescinded in guidance issued on June 14, 2020 as authorized by Executive Order 202.45.

Construction or modifications and expansions, or closures or limitations of beds or services necessary to provide capacity for COVID-19 response may have been submitted to the Department through the Emergency Approval process as outlined in DAL 20-08. Other changes may have been included in surge plans submitted to the Department as requested in the advisory issued on March 23, 2020. Note that as communicated in guidance issued on June 14, 2020, the requirement that hospitals maintain 30% capacity to be eligible for performing elective surgery was rescinded.

Thus, the following requirements will apply to these changes in service delivery:

- Justification must be submitted within 30 days from the date of this letter for any licensed Office of Mental Health (OMH) Article 31 or Office of Addiction Services and Supports (OASAS) Article 32 beds or services must be converted back to their certified use. The

justification must include any alternatives that were explored as well as written agreement from OMH and/or the Office of Addiction Services and Supports (OASAS) as appropriate. The space must be currently occupied for purposes related to COVID-19 and the justification must include a description of how the space will continue to be used for COVID-19 related purposes.

- Emergency Approval requests must continue to be submitted to the appropriate Regional Office for: major construction or modifications; new facilities or locations that are anticipated to be needed for COVID-19 response or surge capacity, and for any changes being made for COVID-19 response or surge capacity that will impact OMH or OASAS services.
- Emergency Approval requests are not required for minor modifications or construction, or changes in beds or services for existing facilities or locations that were or will be put in place for COVID-19 response or surge capacity. These changes can be described and included in the surge plans that hospitals are required to develop pursuant to the Emergency Regulations published on August 6, 2020 and will be in effect until the end of the State of Emergency, as described above.
- Hospitals that received approval from CMS for swing beds must submit an Emergency Approval Request to the appropriate Regional Office within 30 days from the date of this letter. These Emergency Approvals will be in effect until CMS declares the end of the federal Public Health Emergency, or 60 days after a declaration from the Governor that the State of Emergency is over, whichever occurs first.

For any modifications or construction, or changes in beds or services that are anticipated to be permanent or needed beyond 6 months after the end of the State of Emergency, a CON must be submitted within 1 year of the date of this letter. This includes requests for dialysis in nursing homes. In addition, closure plans must continue to be submitted for any closures of sites or services, or changes in beds, that are expected to be permanent.

Thank you for all you have done and continue to do to respond to COVID-19 in our healthcare facilities and our communities.

Sincerely,

Stephanie Shulman, DrPH, MS
Acting Director, Division of Hospitals
and Diagnostic & Treatment Centers