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## Client Alert: CMS Releases Guidelines for Re-Opening Facilities to Provide Non-Emergent, Non-COVID-19 Health Care: Phase One

### INDUSTRY SECTOR

Health Care

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As some areas throughout the United States begin to see a decline in COVID-19 cases, the White House released its Guidelines for Opening Up America Again (“Guidelines”) in a three phased approach. Phase One of the Guidelines permit health care providers to resume elective surgeries on an outpatient basis. In response to the Guidelines, the Centers for Medicare & Medicaid Services (CMS) released a set of recommendations for re-opening health care facilities to provide in-person care for non-COVID-19 patients, for facilities within communities in Phase One of the Guidelines (“CMS Recommendations”).

Prior to entering Phase One, states or regions must meet the gating criteria set forth in the Guidelines. In summary, these gating criteria are: 1) a state or region must have downward trajectories of flu and COVID-19-like symptoms within a 14-day period; 2) a state or region must have downward trajectories of documented cases or positive tests as a percent of total tests when testing volumes are flat or increasing; and 3) hospitals are treating all patients without crisis care and have robust testing in place for at-risk health care workers, including emerging antibody testing. Accordingly, CMS cautioned that the decision to resume procedures will be up to local and state authorities.

The CMS Recommendations provide that “non-COVID-19 care should be offered to patients as clinically appropriate and within a state, locality, or facility that has the resources to provide such care and the ability to quickly respond to a surge in COVID-19 cases, if necessary.” Adequate resources including Personal Protective Equipment (PPE), facilities, supplies, medication, testing capacity, and post-acute care should be available to the facilities without jeopardizing surge capacity. Additionally, staffing levels must remain adequate to cover a potential surge in COVID-19 cases.

In preparing to accept patients, CMS recommends that facilities establish Non-COVID Care (NCC) zones that would screen all patients for symptoms of COVID-19, including temperature checks, prior to entering an NCC

facility. Before patient care, patients should be screened by laboratory testing when adequate testing capability is established. "Staff would be routinely screened as would others who will work in the facility (physicians, nurses, housekeeping, delivery, and all people who would enter the area." If staff are symptomatic, they should be tested and quarantined.

The CMS Recommendations further provide that areas of NCC should be separate from other facilities to reduce the risk of COVID-19 exposure. Examples given include placing NCC areas in separate buildings or in designated rooms or floors with separate entrances. It is further advised that staff members working in NCC areas be limited to working in these areas and not rotate into areas where COVID-19 patients are being treated. In addition, CMS places the onus on the facilities to establish a plan for thorough cleaning and disinfection prior to using spaces for non-COVID-19 patients.

Once reopened, it will be important for facilities to "evaluate the necessity of care based on clinical needs." CMS advises that providers "prioritize surgical/procedural care and high complexity chronic disease management; however, select preventive services may also be highly necessary."

The CMS Recommendations also establish PPE guidelines for staff and patients. "CMS recommends that health care providers and staff wear surgical facemasks at all times. Procedures on the mucous membranes including the respiratory tract, with a higher risk of aerosol transmission, should be done with great caution, and staff should utilize appropriate respiratory protection such as N95 masks and face shields. Patients should wear a cloth face covering that can be bought or made at home if they do not already possess surgical masks." Most importantly, in accordance with the CDC, every effort should be made to conserve PPE.

Additional recommendations from CMS include:

- Facilitate social distancing within the facilities by minimizing wait times, spacing chairs at least six feet apart, and maintaining low patient volumes;
- Prohibit visitors except if necessary for an aspect of patient care; and
- Ensure that equipment, such as anesthesia machines used for COVID-19 (+) patients are thoroughly decontaminated.

For more details and to read the exact language of the "Guidelines to Opening Up America Again," please click on the link below.

<https://www.whitehouse.gov/openingamerica/#criteria>

For more details and to read the exact language of the CMS Recommendations, please click on the link below.

<https://www.cms.gov/files/document/covid-flexibility-reopen-essential-non-covid-services.pdf>

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