Indiana State Department of Health
An Equal Opportunity Employer

Eric J. Holcomb
Governor

Kristina Box, MD, FACOG
State Health Commissioner

FIFTH EMERGENCY ORDER GRANTING TEMPORARY BLANKET WAIVERS FOR COMPREHENSIVE CARE FACILITIES

Pursuant to the "Declaration of Public Health Emergency for Coronavirus Disease 2019 Outbreak" issued by Governor Eric Holcomb on March 6, 2020 and as supplemented (the "Governor's Declaration"), and as authorized by IC 4-21.5-4-1, IC 16-28-1-10, and the September 18, 1991 resolution of the Executive Board of the Indiana State Department of Health ("ISDH"), the Indiana State Health Commissioner hereby **ORDERS** as follows:

The following requirements and procedures for resident transfers and discharges in or from licensed comprehensive care facilities are **WAIVED**, subject to the specific terms, conditions, and limits set forth below (changes indicated in bold and unfont):

1. This Order does not address hospital-to-long term care facility transfers. Such transfers are deemed to be covered by the "Interim Guidance for Long-Term Care Facilities: Transfer of Patients Between Hospitals and Long-Term Care Facilities during COVID-19 Pandemic" (the "Transfer Guidance") issued by ISDH on April 1, 2020, and accessible at https://coronavirus.in.gov/files/IN_COVID-19_LTCtransfer 4.1.20.pdf.

2. 410 IAC 16.2-3.1-12(a)(4)(A) is waived with modification to read as follows:

   (4) Health facilities must permit each resident to remain in the facility and not transfer or discharge the resident from the facility unless:

      (A) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility**, or is part of a facility's implementation of emergency response and containment measures imposed or directed through guidance by (i) the Centers for Medicare & Medicaid Services, (ii) the Indiana State Department of Health, including through the Transfer Guidance as applicable and distribution of information from the Centers for Disease Control & Prevention and other government sources, and/or (iii) Governor Eric Holcomb's March 6, 2020 "Declaration of Public Health Emergency for Coronavirus Disease 2019 Outbreak," as supplemented by later Executive Orders**;

3. 410 IAC 16.2-3.1-12(a)(8)(D) is waived with modification to read as follows:

(8) Notice may be made as soon as practicable before transfer or discharge when:

(D) an immediate transfer or discharge is required by the resident's urgent medical needs**, or is part of a facility's implementation of emergency response and containment measures imposed or directed through guidance by (i) the Centers for Medicare & Medicaid Services, (ii) the Indiana State Department of Health, including through the Transfer Guidance as applicable and distribution of information from the Centers for Disease Control & Prevention and other government sources, and/or (iii) Governor Eric Holcomb's March 6, 2020 "Declaration of Public Health Emergency for Coronavirus Disease 2019 Outbreak," as supplemented by later Executive Orders**;

4. 410 IAC 16.2-3.1-12(a)(9)(D) is waived with modification to read as follows:

(9) For health facilities, the written notice specified in subdivision (7) must include the following:

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(D) A statement in not smaller than 12-point bold type that reads, "You have the right to appeal the health facility's decision to transfer you. If you think you should not have to leave this facility, you may file a written request for a hearing with the Indiana state department of health postmarked within ten (10) days after you receive this notice. If you request a hearing**, ~~it will be held within twenty-three (23) days after you receive this notice, and~~* you will not be transferred from the facility earlier than thirty-four (34) days after you receive this notice of transfer or discharge unless the facility is authorized to transfer you under subdivision (8). If you wish to appeal this transfer or discharge, a form to appeal the health facility's decision and to request a hearing is attached. If you have any questions, call the Indiana state department of health at the number listed below**," with the marked phrase above stricken from any blanks of State Form 49969 "Notice of Transfer or Discharge" used by the facility while this Order is in effect.**

5. 410 IAC 16.2-3.1-12(a)(13) is waived with modification to read as follows:

(13) If a facility resident requests a hearing, the department shall hold an informal hearing at the facility **or at the department as soon as the department deems practical after expiration or withdrawal of the Governor's Declaration.** The department shall attempt to give at least five (5) days written notice to all parties prior to the informal hearing. The department shall issue a decision within thirty (30) days from the date **of the informal hearing.** ... Both the resident and the facility

have the right to administrative or judicial review under IC 4-21.5 of any decision or action by the department arising under this section. If a hearing is to be held de novo, that hearing shall be held in the facility where the resident resides or at the department.

7. 410 IAC 16.2-3.1-12(a)(14) is waived with modification to read as follows:

(14) An intrafacility transfer can be made only if:

(A) the transfer is necessary for medical reasons as judged by the attending physician, or is part of a facility's implementation of emergency response and containment measures imposed or directed through guidance by (i) the Centers for Medicare & Medicaid Services, (ii) the Indiana State Department of Health, including through the Transfer Guidance as applicable and distribution of information from the Centers for Disease Control & Prevention and other government sources, and/or (iii) Governor Eric Holcomb's March 6, 2020 "Declaration of Public Health Emergency for Coronavirus Disease 2019 Outbreak," as supplemented by later Executive Orders; or

(B) the transfer is necessary for the welfare of the resident or other persons.

8. 410 IAC 16.2-3.1-12(a)(15) is waived with modification to read as follows:

(15) If an intrafacility transfer is required, the resident must be given notice at least two (2) days before relocation, except when:

(A) the safety of individuals in the facility would be endangered;

(B) the health of individuals in the facility would be endangered;

(C) the resident's health improves sufficiently to allow a more immediate transfer; or

(D) an immediate transfer is required by the resident's urgent medical needs, or is part of a facility's implementation of emergency response and containment measures imposed or directed through guidance by (i) the Centers for Medicare & Medicaid Services, (ii) the Indiana State Department of Health, including through the Transfer Guidance as applicable and distribution of information from the Centers for Disease Control & Prevention and other government sources, and/or (iii) Governor Eric Holcomb's March 6, 2020 "Declaration of Public Health Emergency for Coronavirus Disease 2019 Outbreak," as supplemented by later Executive Orders.

9. 410 IAC 16.2-3.1-12(a)(18) is waived with modification to read as follows:

   (18) Prior to**, or in case of an emergency concurrent with,** any interfacility or involuntary intrafacility relocation, the facility shall prepare a relocation plan to prepare the resident for relocation and to provide continuity of care. In nonemergency relocations, the planning process shall include a relocation planning conference to which the resident, his or her legal representative, family members, and physician shall be invited. The planning conference may be waived by the resident or his or her legal representative.

10. No other state rule or portion of a state rule is affected by this Emergency Order or the waivers granted herein.

11. Each waiver granted herein is effective as of March 6, 2020, and shall expire upon the earliest of (a) expiration or withdrawal of the Governor's Declaration, including any extensions thereof; (b) revocation of this Emergency Order; or (c) expiration of this Emergency Order under IC 4-21.5-4-5(a)(3), including any extensions thereof, plus such additional time as the ISDH deems necessary to enable an orderly transition by facilities back to compliance with the rules or parts of rules herein waived.

12. The waivers granted herein are unique to the present emergency, and are strictly limited in effect to this time and specific situation. No part of the waivers or their language, terms or conditions shall apply or have relevance to other waivers or situations. These waivers neither establish nor continue any precedent, policy, or approach for issuance of waivers individually or in general.

13. The ISDH has affirmatively determined that granting the waivers herein will not adversely affect the health, safety and welfare of any affected residents or patients.

SO ORDERED as of the date set forth below.

Kristina Box, MD, FACOG
State Health Commissioner

By: _____
Matthew Foster, Assistant Commissioner
Consumer Services & Health Care Regulation

Date: April 2, 2020