Indiana State Department of Health
An Equal Opportunity Employer

Eric J. Holcomb
Governor

Kristina Box, MD, FACOG
State Health Commissioner

FOURTH EMERGENCY ORDER GRANTING TEMPORARY BLANKET WAIVERS FOR RESIDENTIAL CARE FACILITIES

Pursuant to the "Declaration of Public Health Emergency for Coronavirus Disease 2019 Outbreak" issued by Governor Eric Holcomb on March 6, 2020, as supplemented (the "Governor's Declaration") and IC 4-21.5-4-1, and as authorized by 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:

Compliance by licensed Indiana residential care facilities with portions of certain state rules is **WAIVED**, subject to the specified terms, conditions, and limits set forth below:

1. The requirements of 410 IAC 16.2-5-1.2(o) and (bb)-(ff) (under "Residents' rights") are **waived** to the full extent necessary to be in accord and co-extensive with applicable restrictions and limitations imposed, directed, or suggested by the Centers for Medicare & Medicaid Services ("CMS") for nursing facilities, the ISDH (including information distributed by ISDH but created by the Centers for Disease Control & Prevention and other government sources), and/or the Governor of Indiana through Executive Order from time to time during the effective period of the Governor's Declaration.

2. The requirement of 410 IAC 16.2-5-1.4(f) that "A health screen shall be required for each employee of a facility prior to resident contact" is waived, conditioned and modified as follows: **A health screen shall be required for each employee of a facility within ninety (90) days after the start of such employment.**

3. The requirements of 410 IAC 16.2-5-1.1(d) and (e) (under "Licenses"), which relate to remodels, structural changes, and bed changes, are **waived** for any residential care facility that has (1) declared a COVID-19 facility emergency and (2) notified ISDH of the declaration, conditioned and modified as follows:

   A. An existing facility may remodel or make other structural changes that vary from a previously approved building and floor plan under the following terms:

      1. No later than three (3) days after the remodel or other change has been completed, the facility must:

         a. Notify ISDH of the change,
         b. Supply ISDH with drawings and supporting narrative sufficient to show

and describe what changes have been or will be made, and
c. Request temporary approval of the change by ISDH, with retroactive effect if needed.

2. If the facility does not wish to make permanent any remodel or other changes completed under this waiver, the facility must:

a. Roll back or undo the change within forty-five (45) days after expiration or withdrawal of the Governor's Declaration.
b. Notify ISDH as soon as the rollback or undoing has been completed.

3. If the facility does wish to make permanent any remodel or other structural changes completed under this waiver, it must submit a request for permanent approval to the ISDH Health Care Engineering program.

a. The request must be submitted to ISDH no later than forty-five (45) days after expiration or withdrawal of the Governor's Declaration.
b. Review of the request will proceed under the applicable law and guidance in effect at the time of the request.

B. An existing facility may relocate, convert, and reclassify beds and renumber rooms (collectively "bed changes") under the following terms:

1. No later than three (3) days after the bed change has been effected, the facility must:

a. Notify ISDH of the bed change,
b. Supply ISDH with drawings and supporting narrative sufficient to show and describe what bed changes have been or will be made, and
c. Request temporary approval of the bed change by ISDH, with retroactive effect if needed.

2. If the facility does not wish to make permanent any bed change effected under this waiver, the facility must:

a. Roll back or undo the bed change within forty-five (45) days after expiration or withdrawal of the Governor's Declaration.
b. Notify ISDH as soon as the rollback or undoing has been completed.

3. If the facility does wish to make permanent any bed change effected under this waiver, it must submit a request for permanent approval to the ISDH Health Care Engineering program.

a. The request must be submitted to ISDH no later than forty-five (45) days after expiration or withdrawal of the Governor's Declaration.
b. Review of the request will proceed under the applicable law and guidance in effect at the time of the request.

4. The following requirements and procedures for resident transfers and discharges are **waived**, subject to the specific terms, conditions, and limits set forth below (changes indicated in bold font):

   A. This Order does not address hospital-to-long term care facility transfers. Such transfers are 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.

   B. 410 IAC 16.2-5-1.2(r)(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**;

   C. 410 IAC 16.2-5-1.2(r)(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**;

(D) an immediate transfer or discharge is required by the resident's urgent medical needs

D. 410 IAC 16.2-5-1.2(r)(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.**

E. 410 IAC 16.2-5-1.2(r)(13) is waived with modification to read as follows:

(13) If a health facility resident requests a hearing, the department shall hold an informal hearing at the health 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 health 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**.

F. 410 IAC 16.2-5-1.2(r)(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.

G. 410 IAC 16.2-5-1.2(r)(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.

H. 410 IAC 16.2-5-1.2(r)(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.

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

6. Each waiver granted herein is effective as of March 6, 2020, and shall expire upon the earliest of (a) expiration or revocation 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.

7. 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.

8. 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