Arizona Department of Health Services
Division of Licensing Services
Information for Hospitals during Public Health Emergency Situations
Prior to a Declaration

The following information is provided by the Arizona Department of Health Services (ADHS) to assist hospitals with understanding the Arizona Administrative Code for Hospitals related to surge, capacity, capability and emergency situations. The following information is intended to provide general guidance and may not be construed as a final legal determination by ADHS with regards to a specific situation. ADHS will continue to evaluate each situation that may arise on a case-by-case basis for purposes of ensuring compliance with applicable state and federal laws, rules and regulations.

There is a distinction between anticipated seasonal increases in demands for hospital services and public health emergencies in which the Governor has declared an emergency in accordance with A.R.S. §36-787(A)(7). ADHS's Bureau of Emergency Preparedness and Response provides for the implementation of a Hospital Surge Capacity and Capability Plan during public health emergencies. ADHS is not addressing this plan; rather it is responding to the issue of exceeding licensed capacity in high-demand, non-declared emergency situations.

Related to this, the only time a hospital would be exempt from meeting the requirements of licensing would be when the Governor declares a state disaster and the Director of the Department of Health Services approves waivers of specific health care institution licensing requirements under A.R.S. §36-787(A)(7).

ADHS LICENSING QUESTIONS AND ANSWERS

WAIVERS

Question: Can ADHS waive licensure requirements when a public health emergency has not been declared?

Answer: No. The only time a hospital would be exempt from meeting the requirements of licensing would be when the Governor declares a state disaster with temporary waivers of specific health care institution licensing requirements under A.R.S. §36-787(A)(7) and the Director of Department of Health Services has approved the waiver for a specific facility.

Question: When can CMS rules and regulations be waived?

Answer: The CMS rules and regulations can be waived only if the President has declared an emergency or disaster under the Stafford Act or the National Emergency Act and the Secretary of Health and Human Services has declared a public health emergency and the Secretary of Health and Human Services has invoked the waiver authority

Question: How does a facility request a waiver related to licensing requirements once the Governor has declared a state disaster?

Answer: The facility would contact the Arizona Department of Health Services Division of Licensing, Bureau of Medical Facilities Licensing 602-364-3030, during normal business hours, and request to speak with the surveyor of the day or a team leader.

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Question: How does a hospital get answers to questions regarding a Public Health emergency?

Answer: Contact the local county health department hotline listed at http://www.azdhs.gov/phs/local health/health depts.htm.

Question: How does a hospital get answers to questions specific to Licensing?

Answer: The following are the guidelines for questions related to Licensing:

- For Public Health emergency information, contact the local county health department hotline.
  The county will contact ADHS, either through the Health Emergency Operation Center (HEOC) or Emergency Preparedness and Response (EPR). The HEOC or EPR will contact Licensing as appropriate.

- For routine questions regarding licensing, call the Office of Medical Facilities Licensing at (602) 364-3030 and ask to speak with the surveyor of the day or a team leader.

DISASTER PLANS

Question: What are the expectations for hospital preparedness and the content and execution of hospital diversion and disaster plans?

Answer: When preparing and executing its plans, each hospital must take into consideration the following:

- The scope and services provided by the hospital
- The hospital resources available during the disaster
- The community needs and resources, and
- Compliance with state rules (See A.A.C. R9-10-232 Disaster Management; A.A.C. R9-10-217 Emergency Services; and A.A.C. R9-10-203.C.l.f, Diversion, if applicable).

Question: To what extent can a hospital's diversion or disaster plan override state regulatory requirements when the hospital is overcapacity? In other words, can the hospital's disaster plan call for measures that would ordinarily conflict with state licensure requirements?

Answer: The hospital's diversion or disaster plan cannot override state regulatory requirements when the hospital exceeds licensed capacity. The hospital's diversion or disaster plan must be established and have the ability to be implemented within ADHS licensing requirements. The only time the hospital would be exempt from meeting the requirements of licensing would be when the Governor declares a state disaster with

temporary waivers of health care institution licensing requirements under A.R.S. §36-787(A)(7) and the Director of Arizona Department of Health Services has approved the waivers for the specific facility.

Question: Would ADHS be willing to provide technical assistance for disaster planning?

Answer: ADHS is available to provide technical assistance for disaster planning as well as when a facility exceeds licensed capacity.

Question: Under what circumstances is it acceptable for a hospital to "close", under ADHS' definition or refuse to accept new patients?

Answer: The hospital cannot deny access to services to any patient presenting for emergency medical services, unless a disaster occurs which makes it impossible for the hospital to provide services. The hospital's disaster plan shall include how to determine whether it is "impossible" to deliver services and how to utilize community resources to obtain services for patients.

EXCEEDING LICENSED CAPACITY

Question: What is ADHS' expectation for a hospital that exceeds capacity in an organized service?

Answer: The hospital must follow the ADHS rules for overcapacity including a review by the medical staff member to determine if an admission is an emergency. A patient is not admitted to the organized service except in an emergency. In addition, the hospital must have a method to document, evaluate and take action of each occurrence. If licensed capacity is exceeded or patients are kept in areas without licensed beds, nursing personnel are assigned according to the specific rule for the organized service R9-10-204.B.1.e, R9-10-214.C.2, R9-10-203.C.5.

Question: What is ADHS' enforcement policy when a hospital violates a state licensure requirement due to overcapacity? Does ADHS take the fact that the hospital was overcapacity into account as a mitigating circumstance in a compliance inspection, complaint investigation or enforcement proceeding?

Answer: ADHS' primary response to a rule violation is to issue a Statement of Deficiency. When the scope and severity of the violations warrant it, ADHS may take enforcement action. ADHS will take into consideration the circumstances leading to a hospital exceeding licensed capacity and its efforts to mitigate those circumstances in determining whether or to what extent to take enforcement action. A hospital must follow the overcapacity rules and their disaster plan requirements to reduce the risk of enforcement.

Question: Does ADHS require that hospitals notify ADHS when they are in an overcapacity situation?

Answer: No. The rules do not require that hospitals notify ADHS when they exceed licensed capacity, although hospitals may do so if they wish. Hospitals may contact ADHS for technical assistance when they are exceeding licensed capacity.

Question: What is a hospital's responsibility when its on-call surgeons refuse to perform surgery on emergency patients because the hospital's ICU is overcapacity?

Answer: A hospital is required to provide emergency services under Emergency Services (A.A.C. R-9-10-217). If emergency services cannot be provided, subsection (A)(5) provides that measures and procedures must be implemented to minimize risk to the patient until the patient is transported or transferred to another hospital.

Question: What are ADHS' expectations for rural or regional hospitals that have met all regulatory requirements regarding calling in staff, prioritizing emergency admissions, etc. but are still overcapacity? In these situations, ambulances cannot be diverted and frequently, receiving hospitals are also at capacity or overcapacity, so transferring patients to a higher level of care is frequently not an option.

Answer: ADHS expects that the hospital continue to provide care and services to the patients within the hospital and those patients arriving at the hospital. From a survey perspective, ADHS would look at how the hospital prioritizes care and resources to protect the health and safety of patients. For example, has the medical staff evaluated and discharged current patients if possible, have elective surgeries been cancelled, etc.

Question: Cancelling scheduled, elective procedures does not always have a significant impact on patient volume and such cancellations may compromise the scheduled patient's care, particularly when the hospital is located in a rural area and is routinely overcapacity. Do hospitals have any flexibility under existing ADHS rules to continue to provide scheduled procedures when the hospital is overcapacity if this is determined to be in the scheduled patient's best interest?

Answer: Yes. The hospital can exceed capacity only when a patient has been determined to be an emergency admission either to an organized service or to the hospital. The medical staff member reviews the history of the patient scheduled to be admitted to determine whether the admission is an emergency. Administration A.A.C. R9-10-203.C.5. Patients can be admitted to one organized service even when another organized service is overcapacity, as long as the patient's needs are met at the hospital. For example, a hospital could still admit a surgical patient even though the ICU is overcapacity and it is determined by the medical team the patient's surgical procedure or the patient's medical condition would not cause the patient to require intensive care services.
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Question: What are ADHS' expectations for inpatient transfers when the hospital is overcapacity? Does ADHS impose any "duty to accept" requirement for patient transfers?

Answer: The hospital is not obligated to accept inpatient transfers.

Question: Does the hospital have an obligation to have to accept a patient to the ED when the ED is overcapacity?

Answer: The hospital has the obligation to accept patients who present to the hospital requesting emergency services. From an ADHS standpoint, the hospital should refer to their diversion policy, if applicable. EMTALA requires an ED to accept patients if they have capacity and capability. (A.A.C. R9-10-203.C.1.f, A.A.C. R9-10-217)

Question: What is ADHS' position on ambulance diversion and to what extent can hospitals divert pre-hospital providers when they are overcapacity? Does ADHS' position change if the hospital is participating in a "no diversion" pilot project or a community has eliminated ambulance diversion?

Answer: ADHS hospital rules require the hospital to have a policy and procedure regarding diversion including criteria for initiating diversion (A.A.C. R9-10-203.C.1.f). Although emergency medical service providers may not recognize hospital diversion in certain areas of the state, ADHS expects hospitals to implement diversion procedures contained in its policy as required by rule. Depending on the hospitals' diversion policy and area of the state, this may include initiating diversion when the hospital is at capacity in the Emergency Department. Diversion and patient off-load guidelines established through collaboration on the part of hospitals, first responders and ambulance services within regions provide important guidance on this issue. ADHS strongly recommends that hospitals, first response agencies and ambulances follow these guidelines.

Question: What is ADHS' position on patient choice as a deciding factor when the hospital is overcapacity? Are EMS personnel required to take a patient to the hospital of their choice even when the patient's preferred hospital is on diversion or overcapacity?

Answer: EMS statutes and rules do not identify patient choice as the single deciding factor in the transport destination decision. Each EMS region has developed guidelines for the transport destination decision and as stated above, ADHS strongly recommends that hospitals, first response agencies and ambulances follow these regional guidelines.

PATIENT OVERFLOW OPTIONS

Question: How much flexibility do hospitals have to "overflow" patients into different beds/units when overcapacity exists?

Answer: Every circumstance is different. When the hospital is exceeding licensed capacity, please refer to the Licensed Capacity A.A.C R9-10-203.C.5, Quality Management A.A.C. R9-10-204.B.1.e, and Nursing Services Rules A.A.C. R9-10-217.C.4.

Some specifics are that hospitals may not overflow into Medicare excluded units; when overflowing pediatric/OB patients, the hospital must close the unit into which the patients are overflowed to other types of patients; the hospital with organized Pediatric Services may not comingle pediatric and adult patients; hospital that meets the requirements in

AAC R9-224.F.G. may admit Pediatric patient to the hospital; and the hospital must utilize only qualified/trained staff appropriate to those types of patients.

In addition, hospitals can create "new" overflow units in hospital space, for example the hospital may turn a non-IPPS exemption rehabilitation unit or pain clinic into an overflow emergency department or inpatient unit or convert a telemetry unit into a temporary ICU when they are overcapacity.

Hospitals need to ensure resources are available to meet patient needs and protect patient rights when determining where to place patients. CMS does not allow IPPS certified beds to be utilized for non IPPS patients unless a declaration through the federal process has occurred. ADHS can provide technical assistance to hospitals upon request.

Question: Can hospitals use cots purchased with HRSA bioterrorism grant monies for surge capacity when there is not a declared state of emergency?

Answer: Yes. The hospital can use cots purchased with HRSA bioterrorism grant monies for surge capacity when there is not a declared state of emergency. However, the hospital must only use the cots on a temporary basis limited to overcapacity.

PROVISION OF CARE IN TEMPORARY AREAS

Question: Can hospitals set up triage tents outside of the hospital's emergency department in an overcapacity situation to provide emergency department triage and medical screening examination services?

Answer: If all other options, including contacting the respective county and utilizing other community resources, have been exhausted; the hospital may expand its emergency department beyond licensed space. The hospital must ensure that hospital personnel and medical staff provide a medical screening/assessment to each patient that presents and
that all appropriate resources are available to meet patient needs and protect patient rights.

Question: Can a facility set up temporary clinics off of the hospital's premises?

Answer: When a health care institution is providing off-site services, a separate health care institution license is not required. ADHS encourages health care institutions to work with their respective county to coordinate these "alternative care centers" under the county plan. Please refer to #SP-013-ALS-OAD Providing Off-Site Services. A *premise* is defined as property that is licensed by ADHS as part of the health care institution when medical services, nursing services, or health related services are provided to a patient.

STAFFING

Question:

- What are ADHS' expectations for acuity staffing when the hospital is overcapacity?
- What if the hospital cannot bring any additional staff members after documented attempts and patient transfer to other hospitals is not an option?
- What are ADHS' ICU staffing expectations in an overcapacity situation when the hospital has tried to, but cannot, bring in sufficient staff to meet the ICU ratios and acuity staffing requirements?

Answer: The rules provide that the hospital determine the patient needs and adjust the number and type of personnel to meet those needs. There is no exception to this rule, nor can ADHS waive this rule. There is also no exception to or ability to waive the ICU ratios. The Department recognizes however, that the hospital's acuity plan may be impossible to implement due to circumstances beyond the hospital's control. For example, acuity may increase unexpectedly during a shift requiring an increase in staffing or it may be impossible for the hospital to locate additional staff. In these situations the hospital is required to implement its acuity policy according to the situation creating the increased staffing requirement. Hospital policies and procedures are required that address how patients' needs for nursing services will be met in these circumstances and the hospital is required to document the implementation of these policies and procedures. See ADHS Substantive Policy SP-027-DLS-OMF.

Question:

- Can hospitals ask EMS personnel to provide staff assistance with hospital patients when they are over capacity?
- In overcapacity situations can EMS personnel, with appropriate supervision and consistent with their scope of practice, provide care to hospital patients, for example, patients that EMS personnel have transported to the hospital even if they are not credentialed by the hospital?
- Are there any restrictions on a hospital's use of EMS personnel in an overcapacity situation?

Answer: The hospital rules and the EMS rules allow hospitals to enter into contracts or agreements with EMS agencies to utilize their EMS personnel. Hospitals may also employee EMS personnel. Please refer to ***SP-082-PHS-EMS:*** *Emergency Medical Technicians (EMTs) Practicing in Hospitals.* For additional information: http://www.azdhs.gov/diro/admin_rules/substantivedocs/sp-082-phsems.pdf.

PEDIATRIC PATIENTS

Question: Can a hospital that does not have an organized pediatric service admit nonemergent pediatric patients to the hospital when there is no hospital with an organized pediatric service available to accept these patients?

Answer: Hospitals with organized pediatric service must follow the over capacity requirements if the organized service exceeds capacity. If there are no licensed organized pediatric services, the hospital that meets requirements in AAC R9-10-224.F.G. may admit Pediatric patients.

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FEDERAL REQUIREMENTS

Question: Can a hospital place signage on its property to notify patients that it is overcapacity?

Answer: According to the Acute Care Hospital EMTALA regulations, the hospital must have signage posted to inform patients that they have the right to a medical screening exam once they present to the hospital requesting emergency services. Once a person is at the hospital, they have to be screened. The hospital can set up alternative screening sites within 250 yards of the hospital property, but cannot tell people by signage or otherwise, to leave hospital property.

Question: What are ADHS' and CMS' expectations with respect to the EMTALA medical screening examinations for patients who likely do not need emergency services and can be triaged to a lower level of care, for example, an urgent care center?

Answer: The hospital is required to conduct a medical screening exam for all patients who present to the hospital for emergency services. Once the patient is determined not to have a medical emergency, the patient can be transferred to the level of care that is appropriate for the patient's medical condition.

Question: When determining whether the medical screening examination is sufficient, would the medical screening examination be compared to a typical medical screening examination or compared to medical screening examinations provided in an overcapacity situation?

Answer: The content of the medical screening examination varies according to the individual's presenting signs and symptoms. It can be as simple or as complex, as needed, to determine whether an emergency medical condition exists. Please refer to CMS S & C-09-52.