

CDPH Program Flexibility

Authority

The California Department of Public Health (CDPH) has the authority to grant flexibility to a hospital in how the hospital meets the intent of licensing *regulations*. This is called “program flexibility,” and applies to Title 22 requirements. This authority always exists; it is not related to COVID-19.

In addition, the Governor’s proclamation of emergency dated March 4, 2020 gives CDPH the authority to waive licensing *statutes* (found in the Health and Safety Code) during the COVID-19 emergency period (which at this time has no specified end date). Pursuant to the Governor’s proclamation, any facility granted a waiver must be operated in accordance with its disaster and mass casualty plan (this requirement does not apply to facilities granted a Title 22 program flex). CDPH will inform the hospital when a condition of approval includes operation in accordance with the disaster and mass casualty plan. CDPH will post these waivers on its website.

Process

The process for requesting program flexibility or a waiver is the same at this time (both are called “flex” in this document). The hospital must submit a request to its local district office (DO). The DO will send all COVID-19 related requests for program flex to the Medical and Health Coordination Center (MHCC) for priority action. Alternatively, the hospital may submit the flex request directly to the MHCC at chcq-dutyofficer@cdph.ca.gov. The Office of Statewide Health Planning and Development (OSHPD) and other state agencies are included in, or working with, the MHCC to help expedite processing of COVID-19 flex requests.

The MHCC’s goal is to respond to requests within 24 hours. A site visit is often not required. Hospitals with questions about flexes or the status of a flex request should contact their DO or the Center for Health Care Quality duty officer at chcq-dutyofficer@cdph.ca.gov.

The information to be included in the request is detailed below.

Space Flexes

Some hospitals are currently seeking flexes related to space. For example, a hospital may wish to set up a tent in its parking lot to screen potential COVID-19 patients or put med/surg patients in same-day surgery or PACU space. Providing care in nonroutine space requires approval from CDPH. CDPH has developed a special form for hospitals to complete to request a space-related flex - CDPH Form 5000 A, which may be found at

<https://www.cdph.ca.gov/CDPH%20Document%20Library/ControlledForms/cdph5000a.pdf>.

Staffing Flexes

CDPH has requested that hospitals unable to meet the nurse staffing ratios on a prolonged or sustained basis due to COVID-19 submit a request for program flexibility.

The hospital must submit the regular “Program Flexibility” form to its DO - CDPH 5000, which may be found at <https://www.cdph.ca.gov/CDPH%20Document%20Library/ControlledForms/cdph5000.pdf>. (Note that CDPH may revise its flex request forms in the near future; it will send an AFL when it does so, and we anticipate that the updated Form 5000 A will be appropriate to request ratio flexes.) In the subject line on the form, the hospital should enter “70217” as the section of Title 22 of the California Code of Regulations that it wants to flex. CDPH has requested the following information:

1. Why is the hospital requesting the flex? For example, are staff furloughed due to exposure to COVID-19? Are they calling in sick, or staying home to care for children because school is closed? Is the hospital’s usual temporary staffing service unable to provide nurses because they are declining to work in California? Is there normal staffing, but a patient surge?
2. What has the hospital done to obtain additional staffing? Have temporary staffing agencies been called? Has the hospital imposed voluntary or mandatory overtime or called in recently-retired nurses?
3. Specifically, what does the hospital plan to do instead of meeting the ratios? For example, which units will be staffed differently? What nurse staffing level is proposed? Is the hospital proposing to use a higher proportion of LVNs than permitted by the regulation, or will other types of licensed or unlicensed staff be used instead of licensed nurses?
4. Duration: Is this flex requested for the duration of the COVID-19 surge, or for a shorter time period?

This process is not needed for one-time or isolated incidents of noncompliance with the nurse staffing ratios. The ratio regulation provides an explicit exception for such noncompliance related to the change in patient census:

The hospital shall plan for routine fluctuations in patient census. If a healthcare emergency causes a change in the number of patients on a unit, the hospital must demonstrate that prompt efforts were made to maintain required staffing levels. A healthcare emergency is defined for this purpose as an unpredictable or unavoidable occurrence at unscheduled or unpredictable intervals relating to healthcare delivery requiring immediate medical interventions and care. [Title 22, California Code of Regulations, Section 70217(q)]

For one-time or isolated incidents of noncompliance with the nurse staffing ratios, regardless of the reasons, hospitals should make prompt efforts to mitigate the noncompliance, and retain documentation in the event of a later survey. There is no requirement to report such incidents to CDPH.

Other Flex Requests

Other state agencies and licensing authorities may also have the ability to waive or flex various legal requirements. CHA is working with federal agencies as well as other state agencies to obtain waivers and will inform hospitals as more information becomes available.

Hospitals with general questions about licensing matters or program flexes may contact BJ Bartleson at bjbartleson@calhospital.org or (916) 552-7537.