



DOH 346-133 September 2022

## COVID Waiver Frequently Asked Questions

On August 1, 2022, the Department of Health sent a communication regarding the governor's announcement of his intent to rescind Proclamation 20-36, which waived certain certificate of need (CN), construction review (CRS), and facility licensing requirements to allow health care facilities to rapidly adapt and expand to meet the demands for surge capacity related to COVID-19. The department hosted multiple webinars in early August to provide additional insight into the department's approach to providing a glide path for facilities to come into compliance and address questions.

During the webinars, we received many great questions. This document outlines the questions we have received and the responses to each question.

We are here to help. Should you have any questions or need assistance, please email [COVIDwaiver@doh.wa.gov](mailto:COVIDwaiver@doh.wa.gov).

### General Questions

Q1: How do the state proclamations and the CMS blanket waivers intersect or impact each other?

A: The governor's proclamations affect state licensing rules and statutes; they do not affect federal waivers or standards. At this time, many CMS blanket waivers pertaining to hospitals remain in effect. It is important to note that both state and federal rules apply in many situations, and one may be more stringent than the other. This FAQ and supporting glide path for coming into compliance is only focused on Proclamation 20-36.

Q2: We do not want our changes to add beds or treatment space to be permanent, only for six more months. Does this require CN/CRS/licensing applications and updates?

A: Maybe. It depends on the facility license type:

- If your facility is licensed under RCW 70.41 as an acute care hospital, see the answer to Q3 regarding the department's temporary surge capacity process.
- If your facility type is not licensed under RCW 70.41, then any COVID surge capacity that exists beyond October 27 requires that a facility submit the appropriate applications/letters of intent.

Q3: Some waivers existed prior to COVID (e.g., emergency bed waivers at certain hospitals). What do we need to do in those situations? Those waivers from the department existed well before the pandemic.

A: The department has a pre-pandemic process to approve temporary surge capacity. Facilities licensed under RCW 70.41 as acute care hospitals may continue to utilize the department's pre-pandemic surge capacity exemption process after Proclamation 20-36 is rescinded. Refer to the [second bullet on the surge FAQ for the process](#).

Q4: What if a facility identifies an issue related to the COVID Waiver **after** August 28 and wants to make the change permanent?

A: Special situations will be dealt with on a case-by-case basis. If you suspect that you may want to make a change permanent, you should proactively submit the required document by August 28.

Q5: What is required for outpatient spaces, including the addition of emergency department beds?

A: Emergency department positions are not counted as beds per state hospital licensing rules, as patients are not allowed to stay over 24 hours. As such, CN would not apply, but construction review would. Generally, CN, CRS, and hospital applications may be required for certain outpatient procedures – please email [COVIDwaiver@doh.wa.gov](mailto:COVIDwaiver@doh.wa.gov) with a more specific scenario.

Q6: Will the cancelation of the waiver eliminate the department's requirements regarding masking and social distancing within hospitals and other patient care areas?

A: This FAQ only addresses the requirements in Proclamation 20-36.

Q7: Did the department consider emergency rules to adjust the fees to accommodate these special circumstances?

A: The department did not consider adjusting fees.

Q8: If a facility has been utilizing the waiver but does **not** intend to make these changes permanent and will revert to original operations by October 27, is there any notice requirement to the department?

A: Notification is not required as long as the facility reverts to pre-COVID capacity/services by October 27, 2022.

Q9: With respect to different facility types, where are the applications?

A: Facilities need to submit a CN Letter of Intent or CRS Application to [COVIDwaiver@doh.wa.gov](mailto:COVIDwaiver@doh.wa.gov) by August 28 If the facility took advantage of the facility waivers in Proclamation 20-36 and plans to maintain these changes beyond October 27, 2022. The facility must then use the regular CN, CRS, or licensure process using the applications and forms available on these department webpages:

CN: <https://doh.wa.gov/licenses-permits-and-certificates/facilities-z/certificate-need/application-forms>

CRS: <https://doh.wa.gov/licenses-permits-and-certificates/facilities-z/construction-review-services-crs/applying-crs/applications>

Hospital: <https://doh.wa.gov/licenses-permits-and-certificates/facilities-z/hospitals/apply-license/amend-license>

Note: When you apply to CN, CRS, or licensure through the normal process, please copy the [COVIDwaiver@doh.wa.gov](mailto:COVIDwaiver@doh.wa.gov) email address when you submit your application.

Q10: We have sites originally set up by the city and county public health they currently support. Do we still need to go through the process?

A: Maybe. If the site is under a license type impacted by Proclamation 20- 36 and the license type requires a CN, CRS, or license, then the process outlined as part of the department's glide path needs to be followed.

Q11: Is there any "lessons learned" approach the department is taking to review the impact of the waivers to identify permanent changes to policy/implementation that might be warranted?

A: We are currently focused on supporting a glide path to support facilities coming into compliance. We would welcome future discussions on lessons learned as time allows.

## CN and CRS Questions

Q12: For concurrent CNs, to clarify ... There are two LOIs but only one application that would be submitted during the concurrent cycle?

A: Correct; the first LOI (August 28) is to allow us to understand any volume spikes and help the department allocate resources to minimize delays. The second LOI is to comply with the respective concurrent review cycle rules. The application should be submitted according to the corresponding concurrent review timeline.

Q13: We changed our existing hospital inpatient rooms to negative pressure, does this require CN and CRS review?

A: No, if the inpatient rooms were already part of your CN-approved, licensed bed count, only a CRS review is required.

Q14: If we need a construction review but **not a** Certificate of Need, do we need to submit the letter of intent?

A: No, if your surge-related changes require construction review but not a certificate of need, you do not need to submit a letter of intent, only an application, fee, and project-related materials by August 28.

Q15: If a project involves CN, CRS, and licensing and one starts with the steps first to obtain CN approval for the permanent change, is this enough to demonstrate coming into compliance? Or can one wait until the appropriate time to engage CRS and licensing?

A: No. If a project requires CN, CRS, and a licensing application, you must make all three applications within the prescribed timelines. Optionally, you may cease all surge activity and apply through the normal process.

Q16: If the project involves CN and construction, are we submitting quarterly reports to the CN Program and CRS, or just one report to the new COVID waiver e-mail?

A: Just CRS. Quarterly progress reports for CN will only be required if the program approves your application. Please submit one report to [COVIDwaiver@doh.wa.gov](mailto:COVIDwaiver@doh.wa.gov).

Q17: The August 28 deadline for submitting CRS applications and CN LOIs is a Sunday. Is the

true deadline Monday, August 29?

A: No, the deadline is August 28, 202

Q18: Can you clarify the CRS process: you must submit the application by August 28, **or** alternatively request a technical assistance meeting with CRS prior to August 28? If you have the technical assistance meeting, do you have additional time to submit a project application?

A: An application is required for either approach and must be submitted by August 28. If requesting a technical assistance conference in lieu of providing complete engineering documents, this conference must be completed on or before October 27. If you request technical assistance, then more time will be granted to submit the complete project documentation.

## **CN Only**

Q19: When will the template for the "patient transition plan" be provided? What level of detail is expected for these plans?

A: The department is not developing a template. As part of the patient transition plan, applicants are expected to outline in general, but not limited to: 1) the average number of clients, 2) identification of similar facilities that could provide care to clients, 3) what steps will be taken for patients to be transitioned if needed, and 4) the timeline for transitioning clients to CN approved facilities/services if an application is denied. The department's goal is to help ensure the continuity of care should an application be denied.

Q20: For the patient transition plans to move patients to other locations in the event a CN is denied for added beds, will the department take into account challenges in hospital inpatient capacity in hospitals across the state?

A: Yes, this will be taken into consideration on a case-by-case basis. The CN program will work with an applicant in this situation to establish timelines and expectations to complete their transition plans within the program's legal authority.

Q21: If you're a facility with a concurrent review cycle, and you submit an application- are you subjected to the same parameters concerning how need is determined?

A: Yes, all applicants will be subject to current CN rules, including numeric need calculations.

Q22: Has the Certificate of Need criteria for approval changed in any practical way, or have all those criteria remained the same?

A: Once Proclamation 20-36 expires, the Certificate of Need regulations currently outlined in WAC will apply.

Q23: How quickly will CN decisions be made?

A: Depending on the COVID-related project workload, the typical CN review process will apply, generally six to nine months, based on information available, challenges, hearing schedule, etc.

Q24: If a CN application is denied, how long would the facility have to revert back to pre-COVID capacity?

A: If an application is denied, we expect facilities to exercise the patient transition plan submitted with their application immediately.

Q25: There are often appeals lasting over one year; how long are current projects under the waiver in compliance before a final adjudicate, superior court, or supreme court decision?

A: The waivers provided by Proclamation 20-36 end on October 27, 2022. At that time, COVID-related surge expansions are not compliant. However, the department does not intend on taking enforcement actions to stop operations that expanded during the pandemic under Proclamation 20-36 until the department first issues a decision denying an application.

Q26: Do facilities that are subject to concurrent review have to pay two sets of fees?

A: No, you will submit your fee with your application by the application submission deadline of the specific concurrent cycle.

Q27: In terms of fees, is the full CN fee due for the facility type, even if there was only an expansion rather than creating a new facility?

A: Yes, CN fees are the same whether an expansion or establishment of a facility. CN fees can be found on the Fees webpage.

Q28: Is there any guidance if a CN application has already been submitted from the previous year and is currently being reviewed?

A: If your application is currently in review, you do not need to submit a new LOI or application.

Q29: Did the department give any thought to emergency rules to build a certain level of flexibility into the system, until such time as various CN methodologies can get updated to reflect the current realities of the health care delivery system?

A: No. The methodologies rely on information gathered outside of the department; creating emergency rules around different methodologies for those who utilized the waivers would create more complexity in the process, potentially delay decisions, and would require a significant amount of stakeholder engagement to minimize impacts on the health care system.

Q30: I am assuming that the CN exemptions for psych beds (RCW 70.38.260) are outside this process since those exemptions continue until June 30, 2023, correct?

A: Correct, this process is specific to those processes waived by Proclamation 20-36. This does not impact all other CN exemption processes allowed under the statute.

Q31: If we are providing services under the waiver with patients on service and a pending CN, do we have permission to continue those services until the CN decision is made, even if the CN decision is not made by the compliance date of October 27?

A: Yes; however, if your application is denied, you will be expected to immediately begin to transition those patients to CN-approved facilities/services.

Q32: The department's email says, "...should the department not approve the application." Under what circumstances would the application not be approved?

A: For CN purposes, "not approve the application" means that your project has been denied by the CN program due to not meeting the review criteria related to financial feasibility, need, cost containment, and/or structures, and care processes.

## Facility Licensing

Q33: Does this rule apply to COVID testing sites?

A: Probably not. Unless your testing site is part of a hospital or some other state-licensed facility, the licensing rules do not apply. A simple test to determine if your testing site is billing Medicare under your hospital's provider number. Note that the Medical Test Site licensing requirements were not waived during the pandemic and may also apply.

Q34: Our understanding from Q32 in the FAQ is that our 12 community sites, which do bill CMS under a hospital (UWMC) tax ID # but a different NPI and different PTAN than the hospital, are not subject to the facility licensing rules under proclamation 20-36. Can DOH confirm that this interpretation is accurate?

A: No. DOH considers all locations that bill CMS under the hospital entity's CMS provider number subject to hospital licensing requirements.

Q35: For our two hospital sites, which do bill CMS under the hospital PTAN, it is unclear whether facility licensing requirements apply for testing services that are outpatient and temporary. Although we intend to continue testing after Oct. 27, it is only for the duration of the federal public health emergency. Testing will not be a permanent expansion of hospital services/use of hospital space. This also applies to some of UW Medicine's mass vaccination sites. Can DOH clarify whether hospital-based testing and vaccination sites are subject to facility licensing?

A: Yes. Hospitals that provide testing services under their hospital's license (see the previous answer) are required to meet all licensing requirements after October 27<sup>th</sup>, 2022, as further described below:

- CN review is not required for testing and vaccination services
- Outpatient testing and vaccination services are already included in your hospital license; therefore, the license would only require an update if new locations (addresses) are added
- Facilities must comply with a hospital's physical environment and operations requirements. This is verified through construction review and routine surveys.
- The Proclamation 20-36 waivers for COVID surge end on October 27<sup>th</sup>. Any services that continue after this date can follow the established glide path to come into compliance, including any "temporary" surge activities that are not

- planned to be permanent but will persist past October 27<sup>th</sup>.
- (Please note that all sites in Washington that perform medical, or laboratory testing are required to have a medical test site license. Collection sites do not require licensing in Washington if no testing is performed at the site.)

Q36: And if they are [subject to hospital licensing], can these sites need to pursue temporary surge capacity approval under DOH's pre-pandemic processes?

A: The hospital licensing program has an established pre-pandemic process for requesting time-limited waivers for increasing *inpatient* bed capacity for seasonal surges (e.g., flu). This is limited to inpatient beds and would not apply to a temporary vaccine and testing sites.

Q37: Does rescinding 20-32 apply to the supervision of MAs in all settings? Or just settings that are subject to facility licensing/state oversight and enforcement?

A: The MA supervision requirements do not vary by setting. The supervision definitions in [RCW 18.360.010](#) require the supervising health care practitioner to be physically present and immediately available in the facility, except in the case of telemedicine supervision and blood draws.

Q38: Based on the FAQ response to Q33 mentioned above, it is unclear whether the requirement of having a higher-level provider physically present applies to our community testing sites. If these locations are not subject to facility licensing requirements overseen/enforced by the state, our understanding is that the provider supervision requirement may not apply. Can DOH confirm that this interpretation is accurate?

A: This is not accurate. The supervision requirements for MAs do not vary based on setting or facility licensing.

Q39: However, if the rules regarding MA supervision apply to all settings, does a higher-level provider need to be physically present for the collection of testing samples at community sites? The RCW exempts the collection of blood samples from needing provider oversight but does not specify the collection of other lab samples.

A: Yes. The only exception to the requirement for the MA supervisor to be physically present or immediately available is for the collection of blood samples. Any other specimen collection would need to be supervised with the higher-level provider on-site or through telemedicine supervision.

Q40: For our hospital sites, we believe it is feasible to have a higher-level provider on-site, but we were unsure whether this supervision requirement applies to testing sites. Can DOH clarify?

A: The requirement to have the supervising health care practitioner on-site or supervising



via telemedicine does not vary by setting so it would apply to testing sites.

Q41: If we have patients boarding in the ED (who need to be admitted but no inpatient beds available), can we use a short stay unit for these boarders until we can open up inpatient beds? The short stay unit does not have a window/door to the outside.

A: On October 27, the licensing rules will apply. Locations not initially approved for 24-hour stay (i.e., a patient "bed") must comply with all licensing rules, including requirements for exterior windows. Any such spaces will require a CN and CRS application and a licensing update.

The department has a pre-pandemic process to approve temporary surge capacity. Facilities licensed under RCW 70.41 as acute care hospitals may utilize the department's pre-pandemic surge capacity exemption process after Proclamation 20-36 is rescinded. Refer to the second bullet on the surge FAQ for the process (see Q3).

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