



TOP TEN ISSUES FOR HOSPITAL CLOSURES

Ceasing hospital operations is a complex process that involves a range of critical planning and coordination steps to ensure the health, welfare and safety of hospital patients and mitigate legal and other risks for the hospital and its officers and directors. As hospitals and their governing bodies make tough decisions and prepare to cease operations, it is important to put in place comprehensive closure plans, and communicate details of these plans to stakeholders and regulatory bodies.

Although not intended to be an exhaustive checklist, the following top ten issues should be considered as part of any closure process. To develop a final plan, each hospital should carefully review and consult with counsel on the impact of these considerations on the organization’s unique circumstances. Depending on the closure plan, this may require multiple sequential notices to regulators or others if, for example, the number of available beds are stepped down over a number of weeks or months, or where certain services are discontinued prior to the final shutdown.



FEDERAL, STATE AND LOCAL REGULATORY

Governmental agencies typically require advance or contemporaneous notice in connection with hospital closure. Failure to provide that notice may result in fines, sanctions and loss of entitlements to government payments and could conceivably trigger an injunction against closure – significantly disrupting closure plans.

CONSIDER THE FOLLOWING:

FEDERAL	STATE	LOCAL
Centers for Medicare & Medicaid Services (Medicare and Medicaid)	State licensing agency	Local licenses and permits
Clinical Laboratories Improvement Act	<ul style="list-style-type: none"> Facility license Medical practice State laboratory license State pharmacy and controlled substances State environmental permits Medical records and retention 	<ul style="list-style-type: none"> Facility permits for elevators, boilers, storage tanks Zoning and property permits Business licenses Food service permits
Drug Enforcement Agency	State planning board/CON	<p>Because these entities are typically the most sensitive to the impact of the closure on their communities, they tend to enforce laws strictly.</p>
Federal Communications Commission (radio transmitters and devices)	State Attorney General	
Environmental Protection Agency		



ACCREDITATION

Accrediting bodies also request notice of closure. For those hospitals that are part of healthcare systems, or organizations that have other healthcare functions, failure to provide notice and work with the accrediting organization can affect timing and could impact the organization’s other facilities and operations. In addition to the main accrediting organizations like The Joint Commission, hospitals also typically hold service line or specialty accreditations that may also require notice of closure and cessation of services.

 **REQUIRE NOTICE OF CLOSURE AND CESSATION SERVICES** 



EMPLOYEE MATTERS

To minimize employment-related liabilities, hospital closure plans should include:

- adherence to all state and federal statutes regarding employee rights and the policies articulated in employee handbooks and/or benefit plan documents;
- analysis of all employment contract-related liability to identify severance and other early-termination-related provisions;
- review of employee welfare benefit plan documents – including medical, dental, vision, long-term disability and long term disability – which often stipulate advance notice and
- review of employee retirement benefit plans for notice and termination provisions pertaining to terminating and liquidating benefit plans.

Hospitals may need to engage in additional diligence and develop financial contingency plans with respect to winding down benefit plans in compliance with applicable laws and to address any over- or under-funding issues. For example, any defined benefit pension plan that is subject to ERISA can only be terminated in accordance with the Pension Benefit Guaranty Corporation termination process on a fully funded basis.



**60 DAYS
PRIOR**

If more than 100 employees will be terminated, the Worker Adjustment and Retraining Notification Act (WARN Act) will apply, requiring written notice to that employees, collective bargaining units and local government agencies.

Implications of not adhering to WARN provisions can include:

- Monetary penalties, including back pay to employees for each day of violation, and
- Benefits including the cost of medical expenses which would have been covered by an employee's benefit plan if the termination had not occurred.

Where hospital staff are employed by a non-licensed affiliate (e.g., a parent corporation) there may need to be additional coordination to ensure appropriate notices are provided, where applicable.



PHYSICIAN AND MEDICAL STAFF

Physicians and other medical staff serve as key stakeholders during a closure, responsible for continuing to deliver essential services until the closure is complete. As such, frequent and transparent communication about the closure plan with this audience is critical.

In addition to all employee matters described above, essential services such as anesthesia and emergency services need to be identified, and physician contracts reviewed to identify those who provide those services. Depending upon the complement of staff needed to operate through the closure date, the hospital may need to enter into retention agreements with key medical staff. For those medical staff who are no longer necessary, existing arrangements need to be carefully unwound, including likely waiving any restrictive covenants.



COMMUNITY RELATIONS

Losing a hospital may have negative impacts for the community. To minimize negative effects:

- **Develop a strong community relations plan**, including ongoing communications about the reason for the closure and the process that will govern it.
- **Engage an experienced public relations** advisor to help craft the appropriate messaging and gain local buy-in.
- **Create a coordinated team** of such as politicians, community groups, social service agencies, state agencies and other key service providers.

Even the most proactive and transparent community relations outreach may be met with hostility, which in turn can complicate the closure process by introducing third parties, the threat of litigation and influencing the government agencies from which the hospital must obtain approvals. Accordingly, investing time and money in this aspect of the closure process is advantageous on many levels.



MEDICAL AND BUSINESS RECORDS

Federal and state statutes mandate the retention of medical and business records in both hard copy and electronic repositories for varying periods of time. A hospital will need to designate a custodian for these records who is responsible for their retrieval if necessary. Once the storage period has expired, specific plans must also be in place to properly dispose of medical, drug and employment records.



Where a hospital is part of a larger system, transition of records upon closing can be easily managed.



On the other hand, where a freestanding hospital closes, finding a custodian for records poses additional complexities and adds significantly to costs.



FINANCE

As most hospitals that face closure are in financial distress or are facing default under bond and other financing covenants, close communication with lenders is paramount. In addition, there are heightened requirements for the board of an entity that is in the zone of insolvency. Hospital leaders should involve financial and legal advisors to ensure all options are evaluated and decisions are made in the context of the broader closure plan.



VENDOR CONTRACTS

Often, material vendor contracts such as EHR/IT and supply agreements, and are not easily terminated without paying significant penalties. In addition, distressed facilities that are already behind on payments or in repayment plans may be required to come current on financial obligations in order to terminate the contract and avoid further action from the vendor.

As with physician staffing, those vendor contracts that pertain to operations that need to be maintained through closure (such as food service, HVAC and environmental services) may require interim payments or settlement agreements to provide a path for safe care as patient care winds down.

Hospitals are also forced to consider post-closing vendor needs as they wind down the business, given their workforce will also gradually be eliminated by the closure date (e.g., billing and collections).



PATIENT TRANSITION

Closure cannot happen until all patients are safely transferred from the facility.

This can be achieved in a gradual manner through:

- ending elective inpatient admissions,
- cessation of elective procedures,
- closure of the Emergency Department, and
- transfer of inpatients to other hospitals in the area. Hospitals receiving these patients may seek liability protection and payment guarantees in return for accepting the transfers.

States expect that the hospital will continue to provide services at the minimum level required for licensed hospitals until the last patient is transferred. In addition, the state may request more frequent reporting and communication regarding the closure plan and patient transitions, beyond those set forth in existing regulations.



FACILITY CLOSURE

A hospital closure plan should provide comprehensive physical closing guidelines for each of the hospital's clinical service areas (each as approved by state agencies, as appropriate), including:

- Closure of the hospital's Emergency Department
- Suspending hospital admissions
- Discontinuance of prospective operating room bookings and the possible cancellation of scheduled surgeries
- Closure of the hospital's off-site and outpatient facilities
- Ceasing services such as imaging, rehabilitation, physical, and respiratory therapy
- Transfer of patients to other facilities providing the appropriate level of care
- Shutting down the morgue and arrangements for bodies stored at the morgue
- Accounting for all medical supplies and drugs
- Arranging for the removal and disposal of hazardous medical waste
- Retaining security services to watch over the vacated premises
- Coordinating removal of signs indicating the presence of the hospital (e.g., blue "H" signs on the highway)
- Inventorying all hospital equipment, supplies, and inventory and returning items where necessary
- Collecting patient accounts receivable

KEY CONTACTS



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