



HUSCH BLACKWELL



Converting Hotels for COVID-Related Uses

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As the coronavirus pandemic stresses both metropolitan “hotspots” and under-resourced communities, hotels across the country are being used as temporary lodging for medical workers, patients awaiting test results or self-quarantining, and individuals experiencing homelessness either isolating after potential exposure or attempting to limit exposure. Less frequently, hotels are being considered as overflow care centers to provide for less acute COVID-19 patients. Hotel owners and operators who consider making their properties available for these uses will need to carefully consider the contractual and operational issues involved with these different uses, within the context of their market position and longer-term outlook for “normal” operations.

The following checklist is meant to help hotel owners and operators address urgent community needs while safeguarding the hotel’s value and future.

Required Consents

Uses that vary dramatically from a hotel’s traditional use, such as housing the homeless or providing medical care, may require third-party consents, while holding a block of rooms for front-line medical providers or short-term stays for those in self-quarantine likely less so. Once the proposed use is fully understood, consider:

- Does the party with day-to-day control have the authority to temporarily change the use of the hotel or will other member or partner consents be required?
- If the hotel serves as collateral for a loan, is lender consent required? If the hotel operates under a flag, is franchisor consent required?
- If the hotel is managed by a third party, is manager consent (or modification to the management agreement) required?

Because time is of the essence in bringing facilities on-line for these uses, it’s possible that less intensive uses will be the easiest to navigate – and helping government officials understand the easiest path of travel can help both parties focus on what is most feasible.

Medical Issues

Converting the hotel to COVID use brings both positives and negatives. In the short term, positive publicity can be generated from helping the community in a time of need. That said, not all uses are likely to engender goodwill from the surrounding neighborhood or property guests. Greater stigma is associated sheltering the homeless or providing medical care to COVID-19 patients; longer-term branding and occupancy issues may be associated with those uses. Hotels that house medical workers and first responders are more likely to share the goodwill and positive glow associated with such workers. For hotels whose highest priorities are providing for their employees and minimizing COVID losses, however, any use that enables people to remain on the job and helps cover costs may be worth the potential trade-offs.

Contract Considerations

Following are some of the more material considerations a hotel will need to consider when contracting for COVID-related uses with either a government entity (as is most common to date) or directly with a hospital system:

Scope of the Property Used:

- Will all hotel rooms be blocked for this use? If not, can the hotel segregate uses by wing or floor, to limit contamination of common areas? Because the hotel will need to limit exposure of other guests, if segregation is infeasible it may be more important for the hotel to limit occupancy to COVID use or to modify the potential COVID use to one that presents fewest risks. In addition, if the property will be used for the homeless, consider whether other uses of the property are practical.
- Will conference rooms be needed for patient testing and treatment, temporary office and coordination space, social services, or other uses serving the COVID need? Will hotel business centers be converted to temporary office space?
- Are all common areas and amenities closed? If the entire hotel is given over to COVID use, can any common areas or amenities be safely opened?
- What about space leased to third parties, such as coffee counters or gift shops? Will those third parties be authorized or asked to operate?

Rent:

- In most cases the property is likely to be paid a set amount per room, although some contracts may reflect a different rate based on the type of use – one rate for medical providers and first responders, another for patients in self-isolation, and a lower rate just to block and hold a room. Some contracts may just provide a lump sum payment to book the entire hotel.
- Although some hotels are waiving charges entirely for first responders and medical providers, those arrangements are more likely to be made on an individual basis than when booking entire room blocks with a government entity or medical system.
- Although hotels right now are typically looking to cover operating costs and to keep staff employed, as travel restrictions ease they may need to carefully consider fees in relation to the term of the COVID use. Higher fees are likely warranted where the contracting government or medical system wants an indeterminate term or the flexibility to extend a term at will, since such use will preclude the hotel from accepting other future bookings.

Term:

- How long will the hotel be needed? Only during peak overflow times? For the overflow with a long tail for stepdown care? Until a vaccine is widely available for uses such as housing the homeless who are unable to socially distance or isolate? Due to the evolving nature of the COVID crisis, it's hard for government officials and medical systems to know how long temporary lodging may be needed. As a result, requests for extension or early termination rights may be common. Fees for early terminations or extensions may be more appropriate in markets anticipating a faster rebound to replace revenues from lost bookings.
- The desire to accommodate a flexible term needs to be balanced by the need to know when the property can be returned to its customary use. The property will likely require additional downtime after the COVID use to allow for decontamination, refurbishing, potential replacement of soft goods, etc. An indeterminate term, coupled with this additional downtime, will hinder a property's ability to take advance reservations as the crisis subsides and travel resumes.

Hard and Soft Goods:

- If rooms are used for medical care, will the hotel's hard and soft goods remain? If not, who is responsible for removal, storage and replacement?
- If hospital beds/cots will be installed, will hotel linens be requested or will the medical provider be responsible for providing? The hotel owner/operator may desire that the medical provider replace all linens at the end of the term. For use related to temporarily housing the homeless, high rates of mental health and substance abuse issues among this population may have more significant implications for the durability of both hard and soft goods and the potential need for replacement or repair.

Operations and Maintenance:

- If the hotel normally provides food service and room service, will it do so for the contracted guests and rooms? Room service only? Grab-and-go only? What protocols will be required for ensuring worker safety with respect to social distancing?
- Will housekeeping provide regular service? Only for non-medical use of the rooms? Will the government entity or medical system provide regular cleaning service, in addition to any cleaning provided by the hotel staff? What protocols will be required for ensuring worker safety? Who will provide any required PPE?
- If the hotel's linens will be used, will its linen service or laundry facilities (if any) be contracted for use, or will the government entity or medical system be responsible for laundry? Are there different laundering standards that must be met based on the particular use?
- What additional precautions and special training are required for maintenance and other staff to ensure their health and wellbeing? Who will provide this, and at whose expense?
- Will the hotel permit non-hotel staff to conduct any operations and maintenance? If so, will any union contracts need to be addressed?
- At the end of the term, will the hotel require additional cleaning and refurbishing for which the contracting entity will be responsible?

Insurance:

- Considering the risks involved with and the complexity of COVID uses, hotel owners should require the governmental or medical system party to maintain significant insurance coverage and if the medical provider itself subcontracts for services (e.g., with physician groups, lab services, etc.) then insurance requirements should flow down. Additionally, use by governmental entities that typically self-insure may require additional consideration.
- It will be important to ensure that other interested parties (lenders, for example) are additional insureds. Subrogation provisions may require particular attention.
- Careful and early coordination with the hotel owner's risk management consultants will help ensure both that the user of the hotel has adequate coverage and that any recommended additional coverages for the hotel owner can be obtained.

Indemnification:

- Indemnification obligations often go hand in hand with insurance requirements. If the hotel contracts with a public entity, indemnification becomes more difficult due to governmental immunity and appropriations limitations. Whether and to what extent the hotel owner can be indemnified for will be critical and may limit the types of uses the hotel will consider.

Summary

Hotels face unprecedented challenges during the COVID-19 outbreak. They have an opportunity to both serve their communities and to help their employees by contracting with medical systems and government entities to provide rooms for patients and populations in need. Carefully navigating the contractual and operational issues associated with such uses will best enable hotel owners and operators to meet these needs while mitigating their risks to avoid compounding current challenges.

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