

EMERGENCY WAIVERS FOR HEALTH CARE PROVIDERS SET TO EXPIRE WITH END OF COVID-19 PUBLIC HEALTH EMERGENCY

05.05.2023

On May 11, 2023, Social Security Act Section 1135 emergency waivers for health care providers will terminate with the end of the COVID-19 Public Health Emergency. The Centers for Medicare & Medicaid Services (CMS) issued Memorandum QSO-23-13-ALL on May 1, 2023 (the "Memo"), providing guidance for termination of the emergency waivers and timelines for providers.

All Providers/Suppliers: Emergency Preparedness

As of May 11, 2023, all providers/suppliers are expected to return to normal operating status and comply with the regulatory requirements for emergency preparedness, including conducting exercises to test emergency preparedness plans and ensure staff are appropriately trained. In patient providers and suppliers, including long term care facilities, must conduct a full-scale exercise within the annual cycle for 2023 and an exercise of choice. Additional notices for termination of emergency waivers related to the public health emergency for specific providers/suppliers are included in the Memo.

Long Term Care Facilities: Generally

CMS is terminating other waivers specifically for long term care facilities, including but not limited to:

1. 3-day Prior Hospitalization: Unless a different non-COVID-19 waiver applies, skilled nursing facility stays beginning on or after May 12th will again require a 3-day qualifying hospital stay before Medicare coverage, and for any new benefit period that begins on or after May 12th, the beneficiary will need to have completed a 60-day wellness period.

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2. Alcohol-based Hand-Rub Dispensers: skilled nursing facilities and nursing facilities will again be required to maintain alcohol-based hand-rub dispensers pursuant to 42 C.F.R. 483.90(a).
3. Preadmission Screening and Annual Resident Review (PASARR): New residents will be required to receive Level I or Level II Preadmission Screening prior to admission pursuant to 42 C.F.R. 483.20(k).
4. Resident Roommates and Grouping: Previous waivers related to grouping or cohorting residents under 42 CFR 483.10(e)(5) and (7) are ending with the conclusion of the Public Health Emergency.
5. Nurse Aide Training Competency and Evaluation Programs (NATCEP): Waivers to allow facilities to employ individuals for longer than four (4) months without meeting training and certification requirements are ending, and all staff should have all necessary training including as set forth in 42 C.F.R. 483.35(d). Uncertified nurse aides working in a long term care facility covered by a waiver granted to a state or individual facility will have four (4) months from May 11, 2023 (or from the termination of the date of the facility's or state's waiver, if earlier) to complete a state approved NATCEP program.

Long Term Care Facilities: COVID-19 Requirements

The Memo briefly mentions the anticipated end of the COVID-19 vaccination requirements for Medicare and Medicaid-certified providers and suppliers. While CMS is likely to end that requirement soon, providers and suppliers should continue to comply for the time being and stay up to date with COVID-19 vaccines.

Furthermore, the reporting requirements related to COVID-19, including using the CDC National Healthcare Safety Network (NHSN) and informing residents, their representatives and families of confirmed infection of COVID-19, or three (3) or more residents or staff with new-onset of symptoms, will remain in effect at least until December 31, 2024, as set forth in a final rule issued by CMS (CMS-1747-F). Reporting COVID-19 vaccine status of residents and staff through NHSN is permanent and will continue indefinitely unless additional regulatory action is taken. Additionally, requirements for education about, and offering residents and staff the COVID-19 vaccine, will remain effect until May 21, 2024, unless additional regulatory action is taken pursuant to CMS-3414-IFC.

Finally, CMS-3401-IFC, requiring long term care facilities to perform routine testing of residents and staff for COVID-19 infection will also expire at the end of the public health emergency on May 11th. However, CMS still expects facilities to conduct COVID-19 testing in accordance with accepted national standards, such as CDC recommendations. Noncompliance with this expectation may be cited as a F-880 Tag for failure to implement an effective Infection Prevention and Control Program in accordance with accepted national standards.

Home Health Agencies

Home Health Agencies and other providers are also affected by the end of the public health emergency. For example, the waiver of the requirements at 42 CFR 484.55(a) to allow agencies to perform Medicare-covered initial assessments and determine patients' homebound status remotely or by record review will end effective May 11, 2023. Additionally, the waiver of the requirements for a nurse to conduct an onsite visit at least every

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fourteen (14) days is ending and home health agencies should ensure that they are in compliance with 42 CFR 484.80(h), including the supervisory assessment requirements.

If you have questions about the end of the COVID-19 Public Health Emergency, the termination of these waivers, and how that may affect you, please contact us for more help.