

Publications

CMS Issues Quality Safety & Oversight Memo on Ending of the Public Health Emergency

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On May 1, 2023 the Centers for Medicare and Medicaid Services (CMS) issued [guidance](#) related to the ending of the COVID-19 Public Health Emergency (PHE) on May 11, 2023. With the end of the PHE, the authority to issue and maintain 1135 waivers implemented to help providers respond to the PHE will also expire on May 11, 2023.

The following regulatory requirements established and maintained through the 1135 waivers will change:

- CMS will soon end the requirement that covered providers and suppliers establish policies and procedures for staff vaccination.
- Guidelines related to emergency preparedness (EP) training and testing will change. More specifically, providers and suppliers are required to test their EP plans. During or after an actual emergency, providers and suppliers may qualify for the one-year exemption from the testing exercises only after an emergency preparedness plan has been executed. The exemption only applies to full-scale exercises based on a 12 month cycle determined by the provider or supplier.
- Providers and suppliers are expected to return to normal operating status and comply with the requirements for emergency preparedness.
 - Inpatient providers and suppliers must conduct full scale emergency preparedness exercises within its annual cycle for 2023.
 - Outpatient providers and suppliers must conduct a full scale exercise or an exercise of choice within the annual cycle for 2023. The outpatient provider/supplier must conduct the exercise of choice, only if scheduled during the annual cycle for 2023 and resume the full-scale exercise requirement in 2024.

Active waivers related to Long Term Care (LTC) Facilities will be terminated and/or changed to reflect the end of the PHE. The following information outlines the remaining regulatory waivers and IFC requirements for LTC facilities:

- All new SNF stays beginning on or after May 12th will require a 3-day qualifying hospital stay.
- For any new benefit period that begins on or after May 12th, the beneficiary will need to have completed a 60-day wellness period.
- The requirement for additional alcohol-based hand-run dispensers will terminate.
- Nursing homes must complete a Level I or Level II Preadmission Screening. All providers must be in compliance with the requirements for Preadmission Screening and Annual Resident Review for all admissions taking place after May 11, 2023.
- The waiver for resident roommate and grouping requirements is terminated.
- Providers must give advance notice of options relating to the transfer and discharge of patients to another facility along with written transfer or discharge information which is to be provided before the transfer or discharge.
- A SNF and NF may not employ anyone longer than four months unless they have met the required regulatory training requirements.
- The requirements for reporting related COVID-19 cases will change on December 31, 2024.
- The requirement that facilities report COVID-19 vaccination status of residents and staff through National Healthcare Safety Network (NHSN) will continue indefinitely.
- The requirement to educate residents and staff on the COVID-19 vaccine will remain in effect until May 21, 2024.
- Requirements for COVID-19 testing will expire with the end of the PHE on May 11, 2023.
- The Focused Infection Control (FIC) Survey will be available for states to use at their discretion.

The Acute and Continuing Care Provider flexibilities are also ending. Providers and supplies are expected to return to reinstated health and safety requirements unless otherwise noted in the guidance. Some notable changes include the following:

- Ambulatory Surgical Facilities enrolled temporarily as hospitals must terminate hospital status or convert to a hospital.
- Community Mental Health Centers may no longer use the Quality assessment and Performance Improvement (QAPI) resources for improvements related to the PHE and must meet detailed organization and content requirements.
- Home Health Agencies may no longer determine initial assessments or a patient's homebound status remotely or by record review.
- Hospice must update comprehensive assessments of patients as was done prior to the PHE.
- Physicians may only practice at the hospital after full medical staff/governing body review and approval.
- Hospitals must have a utilization review process that meets specified requirements.

We are continuing to watch this closely and will keep you updated on further developments. For further questions about these decisions or other related COVID-19 legal questions, please contact Robin Amicon, Liam Gruz, or your regular Vorys attorney.