



Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-22-15-NH & NLTC & LSC

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DATE: April 7, 2022

TO: State Survey Agency Directors

FROM: Director
Quality, Safety & Oversight Group

SUBJECT: Update to COVID-19 Emergency Declaration Blanket Waivers for Specific Providers

Memorandum Summary

- CMS continues to review the need for existing emergency blanket waivers issued in response to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE).
- Over the course of the COVID-19 PHE, skilled nursing facilities/nursing facilities (SNFs/NFs), inpatient hospices, intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs), and end-stage renal disease (ESRD) facilities have developed policies or other practices that we believe mitigates the need for certain waivers.
- Applicable waivers will remain in effect for hospitals and critical access hospitals (CAH).
- CMS will end the specified waivers in two groups:
 - 60 days from issuance of this memorandum
 - 30 days from issuance of this memorandum
- *CMS is providing more information related to waivers of the Nurse Aide Training Competency and Evaluation requirements.*

Background

In response to the COVID-19 PHE and under the Secretary's authority set out at section 1135 of the Social Security Act, CMS enacted several temporary emergency declaration blanket waivers which were intended to provide health care providers with extra flexibilities required to respond to the COVID-19 pandemic.¹ CMS continues to evaluate the impact of these waivers on patient care and providers along with corresponding data.

While the waivers of regulatory requirements have provided flexibility in how nursing homes may operate, they have also removed the minimum standards for quality that help ensure residents' health and safety are protected. Findings from onsite surveys have revealed significant concerns with resident care that are unrelated to infection control (e.g., abuse, weight-loss, depression, pressure ulcers, etc.). We are concerned that the waiver of certain regulatory

¹ [COVID-19-emergency-declaration-waivers.pdf](#)

requirements has contributed to these outcomes and raises the risk of other issues. For example, by waiving requirements for training, nurse aides and paid feeding assistants may not have received the necessary training to help identify and prevent weight-loss. Similarly, CMS waived requirements for physicians and practitioners to perform in-person assessments, which may have prevented these individuals from performing an accurate assessment of the resident's clinical needs, contributing to depression or pressure ulcers. Lastly, due to the waiver of certain life-safety code requirements, facilities may not have had their fire prevention systems inspected to ensure they operate effectively to detect or prevent fire. As a result, CMS is very concerned about how residents' health and safety has been impacted by the regulations that have been waived, and the length of time for which they have been waived.

We note that CMS is still concerned about the risk COVID-19 poses to nursing home residents. We expect providers to continue to implement actions to reduce the likelihood of COVID-19 transmission and follow all existing requirements. For example, COVID-19 vaccines are the strongest tool we have to protect the health and safety of residents and staff, and facilities should use all available resources to support their residents and staff in getting vaccinated, and in doing so, adhere to the requirements for educating residents and staff regarding the benefits and potential side effects associated with the COVID-19 vaccine, and offering the vaccine (per [Interim Final Rule CMS-3414-IFC](#)).

However, in addition to taking actions to reduce the likelihood of the transmission of COVID-19, the minimum regulatory requirements need to be restored to protect residents' health and safety. This is particularly true in light of the increased protection against serious illness and death from COVID-19 afforded by the high and growing vaccination rates among nursing home residents and staff (see generally <https://www.cdc.gov/nhsn/covid19/ltc-vaccination-dashboard.html>), including as a result of the implementation and enforcement of Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61,555, 61,556 (Nov. 5, 2021). Therefore, we believe it is imperative that requirements to protect residents' health and safety be restored as soon as possible. The waivers listed below have been identified as those requirements that should be restored to address the risks to resident health and safety that are not related to infection control. Furthermore, we believe that at this time, nursing homes should be able to adjust their operations to meet these regulatory requirements, while also addressing any issues related to COVID-19. We note that states and individual facilities are still able to request regulatory waivers for issues unique to their facility or location (similar to actions taken in response to natural disasters) to provide flexibility.

Waiver Terminations:

CMS is ending the specific emergency declaration blanket waivers for SNFs/NFs, inpatient hospices, ICF/IIDs and ESRD facilities listed below. The termination of these blanket waivers will have no effect on other blanket waivers that remain in place such as those for hospitals and CAHs. Those blanket waivers remain in effect to assist hospitals and CAHs, among others, in dealing with their response to the surges of COVID-19 cases in the community. Providers are expected to take immediate steps so that they may return to compliance with the reinstated requirements according to the timeframes listed below. We also recommend that providers continue to follow CDC guidance for preventing the spread of COVID-19 especially during activities that may increase patient or resident contact. For additional information on individual waivers or flexibilities providers can apply for, please visit the [Coronavirus waivers & flexibilities](#) webpage.

Emergency Declaration Blanket Waivers Ending for SNF/NFs 30 Days from Publication of this Memorandum:

- Resident Groups - 42 CFR §483.10(f)(5)
 - CMS waived the requirements which ensure residents can participate in-person in resident groups. This waiver permitted the facility to restrict in-person meetings during the COVID-19 PHE.
- Physician Delegation of Tasks in SNFs - 42 CFR §483.30(e)(4)
 - CMS waived the requirement that prevents a physician from delegating a task when the regulations specify that the physician must perform it personally. This waiver gave physicians the ability to delegate any tasks to a physician assistant, nurse practitioner, or clinical nurse specialist, but specified that any task delegated under this waiver must continue to be under the supervision of the physician.
- Physician Visits - 42 CFR §483.30(c)(3)
 - CMS waived the requirement that all required physician visits (not already exempted in §483.30(c)(4) and (f)) must be made by the physician personally. The waiver modified this provision to permit physicians to delegate any required physician visit to a nurse practitioner, physician assistant, or clinical nurse specialist who is not an employee of the facility, who is working in collaboration with a physician, and who is licensed by the State and performing within the state's scope-of-practice laws.
- Physician Visits in Skilled Nursing Facilities/Nursing Facilities - 42 CFR §483.30
 - CMS waived the requirement for physicians and non-physician practitioners to perform in-person visits for nursing home residents and allow visits to be conducted, as appropriate, via telehealth options.
- Quality Assurance and Performance Improvement (QAPI) – 42 CFR §483.75(b)–(d) and (e)(3)
 - CMS modified certain requirements which require long-term care facilities to develop, implement, evaluate, and maintain an effective, comprehensive, data-driven QAPI program. This waiver gave providers the ability to focus on adverse events and infection control, and those aspects of care delivery most closely associated with COVID-19 during the PHE.
- Detailed Information Sharing for Discharge Planning for Long-Term Care (LTC) Facilities - 42 CFR §483.21(c)(1)(viii)
 - CMS waived the discharge planning requirement which requires LTC facilities to assist residents and their representatives in selecting a post-acute care provider using data, such as standardized patient assessment data, quality measures and resource use. CMS maintained all other discharge planning requirements.
- Clinical Records - 42 CFR §483.10(g)(2)(ii)
 - CMS modified the requirement which requires long-term care (LTC) facilities to provide a resident a copy of their records within two working days (when requested by the resident).

Emergency Declaration Blanket Waivers For Various Provider-Types Ending 60 Days from Publication of this Memorandum:

- Physical Environment for SNF/NFs - 42 CFR §483.90
 - CMS waived requirements to allow for a non-SNF building to be temporarily certified and available for use by a SNF in the event there were needs for isolation processes for COVID-19 positive residents, which may not be feasible in the existing SNF structure to ensure care and services during treatment for COVID-

- 19, provided that the state has approved the location as one that sufficiently addresses safety and comfort for patients and staff.
- Certain conditions of participation and certification requirements for opening a NF if the state determines there is a need to quickly stand up a temporary COVID-19 isolation and treatment location.
 - Requirements to temporarily allow for rooms in a long-term care facility not normally used as a resident's room, to be used to accommodate beds and residents for resident care in emergencies and situations needed to help with surge capacity.
- Equipment Maintenance & Fire Safety Inspections for ESRD facilities - 42 CFR §494.60(b) and(d)
 - CMS waived the requirement for on-time preventive maintenance of dialysis machines and ancillary dialysis equipment. Additionally, CMS waived the requirements for ESRD facilities to conduct on-time fire inspections.
 - Facility and Medical Equipment Inspection, Testing & Maintenance (ITM) for Inpatient Hospice, ICF/IIDs and SNFs/NFs – 42 CFR §§418.110(c)(2)(iv), 483.470(j), and 483.90
 - CMS waived ITM requirements for facility and medical equipment to reduce disruption of patient care and potential exposure/transmission of COVID-19.
 - Life Safety Code (LSC) and Health Care Facilities Code (HCFC) ITM for Inpatient Hospice, ICF/IIDs and SNFs/NFs - 42 CFR §§ 418.110(d)(1)(i) and (e), 483.470(j)(1)(i) and (5)(v), and 483.90(a)(1)(i) and (b)
 - CMS waived ITM required by the LSC and HCFC, with specified exceptions, which permitted facilities to adjust scheduled ITM frequencies and activities to the extent necessary.
 - Outside Windows and Doors for Inpatient Hospice, ICF/IIDs and SFNs/NFs – 42 CFR §§418.110(d)(6), 483.470(e)(1)(i), and 483.90(a)(7)
 - CMS waived the requirement to have an outside window or outside door in every sleeping room. This permitted spaces not normally used for patient care to be utilized for patient care and quarantine.
 - Life Safety Code for Inpatient Hospice, ICF/IIDs, and SNFs/NFs - 42 CFR §§418.110(d), 483.470(j), and 483.90(a)
 - CMS waived these specific LSC provisions:
 - Fire Drills: Due to the inadvisability of quarterly fire drills that move and mass staff together, CMS permitted a documented orientation training program related to the current fire plan, which considered current facility conditions.
 - Temporary Construction: CMS waived requirements that would otherwise not permit temporary walls and barriers between patients.
 - Paid Feeding Assistants for LTC facilities: 42 CFR §§483.60(h)(1)(i) and 483.160(a)
 - CMS modified the requirements regarding required training of paid feeding assistants to allow that training can be a minimum of one hour in length. CMS did not waive other requirements related to paid feeding assistants or required training content.
 - In-Service Training for LTC facilities – 42 CFR §483.95(g)(1)
 - CMS modified the nurse aide training requirements for SNFs and NFs, which required the nursing assistant to receive at least 12 hours of in-service training annually.
 - Training and Certification of Nurse Aides for SNF/NFs - 42 CFR §483.35(d) (Modification and Conditional Termination)

- CMS waived the requirements which require that a SNF and NF may not employ anyone for longer than four months unless they met the training and certification requirements under §483.35(d). CMS previously provided information related to nurse aides working under this blanket waiver in CMS memorandum [QSO-21-17-NH](#). This memo provides additional information as well on the modification of this waiver below.

We remind states that all nurse aides, including those hired under the above blanket waiver at 42 CFR §483.35(d), must complete a state approved Nurse Aide Competency Evaluation Program (NATCEP) to become a certified nurse aide. State approved NATCEPs must have a curriculum that includes training in the areas defined at 42 CFR §483.152(b), such as respecting residents' rights, basic nursing skills, personal care skills, and caring of cognitively impaired residents. Additionally, the requirements at 42 CFR §483.154(b)(i) and (ii) requires these nurse aides pass a written or oral exam, and demonstrate skills learned. Lastly, we note that CMS did not waive the requirement that the individual employed as a nurse aide be competent to provide nursing and nursing related services at 42 CFR §483.35(d)(1)(i), and that requirement must continue to be met.

We are aware that there may be instances where the volume of aides that must complete a state approved NATCEP exceed the available capacity for enrollees in a training program or taking the exam. This may cause delays in in nurse aides becoming certified. If a facility or nurse aide has documentation that demonstrates their attempts to complete their training and testing (e.g., timely contacts to state officials, multiple attempts to enroll in a program or test), a waiver of these requirements (42 CFR §483.35(d)) is still available and the aide may continue to work in the facility while continuing to attempt to become certified as soon as possible. However, **for all other situations, this waiver is terminated**. When capacity issues exist, facilities should inform their state officials of the issue. State agencies should also verify the capacity issues that are reported. Lastly, state agencies should provide their CMS Location with information about the status of their NATCEPs.

CMS will review waiver requests in the following manner:

*1. **Individual Facility waiver:** When there are localized barriers to training/testing in a state or county not otherwise covered by a waiver, facilities may request a waiver by providing documentation of the barriers. The documentation must include information demonstrating that the aide(s) have attempted to become certified (e.g., enrollment in training or testing), but the NATCEP entity cannot accommodate the applicant(s) at this time.*

- *Documentation should include the date(s) and contact(s) that the communication occurred between.*
- *Documentation can be in the form of email, letters, or documentation of a phone call.*
- *Documentation must show timely contacts to state officials.*
- *Facilities should include the estimated date by which their aides will get certified.*

2. State-wide or County waiver: *When there are widespread barriers to training/testing that are statewide or in a particular county within a state, the state agency may submit a request for the waiver for the affected jurisdiction. The state agency must provide documentation of the status of their NATCEP program and a plan for remedying the situation.*

- a. **Documentation:** At minimum, documentation of the status must include information on the number of aides that need to be certified, a description of issue causing barriers to certification (e.g., training or testing capacity), and the available capacity to certify aides (e.g., describe the gap between the number of aides that need to be certified and capacity available, the number of aides to be certified on a monthly or weekly basis, etc.).*
- b. **Plan:** At minimum, the plan to remedy the situation must include the actions the state will take to improve the rate at which aides are certified and a target date for all aides to be certified.*

Waivers are time-limited, and CMS expects state agencies to actively work towards resolution of barriers to certification. CMS may require that state agencies provide progress reports on the submitted action plan to maintain the waiver.

A state or facility cannot attain or retain a waiver longer than the declaration of a PHE. CMS will grant these waivers for a timeframe that is as short as possible, and CMS will only grant these waivers while the declaration of a COVID-19 public health emergency is still in effect. If the PHE ends during or before the granted period of waiver for a facility or a state or a county, the waiver also ends.

State agencies or facilities should use the following portal to submit a waiver request: https://cmsqualitysupport.servicenowservices.com/cms_1135

Poor quality of care, such as improper transfers, turning and positioning, poor incontinent/skin care, or weight loss related to poor assistive dining techniques could be related to inadequate training, as these skills are required components of NATCEP programs. We acknowledge that federal requirements allow states to use a variety of means to administer the curriculum (e.g., online, classroom, or onsite training). However, all programs must adequately provide the required training. For example, if a state has approved a NATCEP that allows for the time worked onsite by a nurse aide over the COVID-19 PHE to qualify for the 75 hours training in the required areas, yet, observes trends in poor quality of care among certified nurse aides that were hired under the nurse aide training waiver, this could indicate that the NATCEP does not adequately address the components of the required curriculum specified at 42 CFR §483.152(b). In these cases, the state should re-evaluate the approved NATCEP to see if the components of the program need to be adjusted to ensure the regulatory requirements are met and avoid poor quality of care. As stated in CMS memorandum [QSO-21-17-NH](#), “states must ensure that all of the required areas of training per 42 CFR §483.152(b) are addressed, and any gaps in onsite training that are identified are fulfilled through supplemental training.”

Contact:

DNH_TriageTeam@cms.hhs.gov for questions related to nursing homes;
QSOG_LifeSafetyCode@cms.hhs.gov for questions related to physical environment and life safety code.

Effective Date: The emergency declaration blanket waivers identified above will end according to the timeframes described in this memorandum.

/s/

David R. Wright

cc: Survey and Operations Group Management