

COVID-19 REGULATORY RELIEF

Last week, CMS released a new regulatory memo [QSO-23-13-ALL](#) entitled *Guidance for Expiration of the COVID-19 Public Health Emergency (PHE) on May 11, 2023*. The memo outlines each waiver CMS put into place during COVID-19 and how the end of the PHE will affect those waivers. Additionally, the memo outlined timelines for certain regulatory requirements issued through the PHE. This memo applies to Long Term Care, Intermediate Care Facilities, and other provider types.

AHCA updated this [member alert](#) from earlier this week to call out the regulatory relief related to COVID-19 requirements for nursing homes, specifically F885 and F888, from the [CMS QSO-23-13-ALL memo](#). Here are the highlights:

F885 – Resident and Family Notifications

AHCA received confirmation from CMS that the requirement at §483.80(g)(3) to notify all residents and their representatives about COVID-19 cases ended Monday, May 1, 2023, when the QSO was issued. Facilities are no longer required to notify all residents and their representatives when there is a positive COVID case in the facility, or if there have been three more residents with new onset of respiratory symptoms occurring within 72 hours of each other. Notification of changes in condition for residents will still apply as referenced in F580 at §483.10(g)(14).

F888 – Staff Vaccination Requirements

CMS will soon end the interim final rule requiring facilities to develop and implement policies and procedures to ensure that all staff are fully vaccinated for COVID-19. CMS has stated more detail will be shared regarding the end of this requirement (at §483.80(i)) at the end of the public health emergency on May 11, 2023.

Requirements for Educating About and Offering Residents and Staff the COVID-19 Vaccine

Facilities will need to continue to educate and offer residents and staff the COVID-19 vaccine until the interim final rule expires, 3 years after issuance, which would be May 21, 2024.

Requirements for Reporting Related to COVID-19

The requirement to report via the NHSN is set to terminate on December 31, 2024. This will continue until that time as a requirement to support national efforts to control the spread of COVID-19. CMS does note that some reporting, such as COVID-19 vaccine status of residents and staff through the NHSN, is permanent and will continue indefinitely unless additional regulatory action is taken.

Providers should also be aware that the SNF Quality Reporting Program (QRP) will require reporting of two COVID-19 vaccine related measures:

- COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date (FY24)
- COVID-19 Vaccination Coverage Among Healthcare Personnel

Emergency Preparedness

During the PHE, facilities were not required to complete full-scale Emergency Drills. This allowance will expire at the end of the PHE. This supersedes the previously issued [QSO-20-41-](#)

ALL-REVISED memo for all certified providers/suppliers. CMS regulations for Emergency Preparedness (EP) require the provider/supplier to conduct exercises to test their EP plan to ensure that it works, and that staff are trained appropriately about their roles and the provider/supplier's processes. During or after an actual emergency, the EP regulations allow for a one-year exemption from the requirement that the provider/supplier perform testing exercises. The exemption only applies to the next required full-scale exercise (not the exercise of choice), based on the 12-month exercise cycle. The cycle is determined by the provider/supplier (e.g., calendar, fiscal or another 12-month timeframe). The exemption only applies when a provider/supplier activates its emergency preparedness program for an emergency event.

Providers are expected to return to normal operating status and comply with regulatory requirements for emergency preparedness with the conclusion of the PHE, including conducting a full-scale exercise within its annual cycle for 2023 and an exercise of choice. The cycle is determined by the provider (e.g., calendar, fiscal, or another 12-month time).

3-Day Prior Hospitalization

As previously reported, the 3-Day waiver will terminate immediately with the expiration of the COVID-19 PHE. Meaning, beginning May 12, 2023, SNF stays will require a qualifying hospital stay before Medicare coverage. Additionally, residents will be required to have a 60-day wellness break to begin a new benefit period.

Preadmission Screening and Annual Resident Review (PASARR)

As previously reported, CMS will begin requiring residents to have a PASARR prior to admitting to facilities when the PHE expires. This will affect all admissions taking place after May 11, 2023.

Resident Roommates and Grouping

CMS waived the requirements in 42 CFR 483.10(e)(5) and (7) solely for the purposes of grouping or cohorting residents with respiratory illnesses. The requirements of this waiver will end with the conclusion of the PHE.

Requirements for COVID-19 Testing

The COVID-19 testing requirements will expire with the end of the PHE. However, COVID-19 testing remains important and is a nationally recognized standard to help identify and prevent the spread of COVID-19. Facilities should continue to follow CDC guidelines for when to test residents and staff.

Focused Infection Control (FIC) Surveys

Beginning in Fiscal Year 24, states will no longer be required to conduct additional FIC surveys in their states. For Fiscal Year 23, states are still required to survey 20% of their nursing homes utilizing FIC surveys.

Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs)

CMS previously waived the requirement for clients to have the opportunity to participate in social, religious, and community group activities. The waiver of this requirement ends upon the conclusion of the PHE. Additionally, requirements for routine training, that was waived for ICF/IIDs during the pandemic, will resume when the PHE expires.

CMS waived the requirement that each client must receive a continuous active treatment program. This requirement will resume when the PHE expires. CMS also waived the requirements for the facility to provide sufficient Direct Support Staff (DSS) so that Direct Care Staff could provide direct client care. AHCA is seeking more information on the impact to ICF/IID providers.