

Eli's Hospice Insider

Survey & Certification: Skipping EP Testing May Land You On The Survey Citation List

Watch out for confusing rules regarding exercise of choice versus full-scale exercise.

Don't make the mistake of thinking you're entitled to a break from emergency preparedness testing when you're not, a recent memo to Medicare surveyors shows.

Background: In a final rule published in the Sept. 30, 2019 Federal Register, the Centers for Medicare & Medicaid Services streamlined a number of duties under Emergency Preparedness requirements (see Hospice Insider, Vol. 13, No. 3). That included how often facilities and providers have to conduct EP testing.

One of the changes in the rule was to allow inpatient providers - including inpatient hospices - to conduct two training exercises a year. "One of the two annually required testing exercises could be an exercise of their choice, which could include one community-based full-scale exercise (if available), an individual facility-based functional exercise, a drill, or a tabletop exercise or workshop that included a group discussion led by a facilitator," CMS explains in the final rule. The other test must be a community-based full-scale exercise, if available, or an individual facility-based functional exercise.

For freestanding hospices, Medicare requires them to conduct "one community-based full-scale exercise, if available, or an individual facility-based functional exercise, every other year and in the opposite years, these providers may choose the testing exercise of their choice" - including a drill, tabletop exercise, or workshop.

Another new rule provision has come into sharp focus in 2020. "Facilities that activate their emergency plans are exempt from the next required full-scale community-based or individual, facility-based functional exercise," CMS says in a Sept. 28 memo to state surveyors released on Oct. 2.

Important: To access this exemption, "facilities must be able to demonstrate, through written documentation, that they activated their program due to the emergency," CMS

tells surveyors in QSO-20-41-ALL, which also includes a worksheet.

Documentation may include items such as an activation notice alert to staff via electronic systems; initiation of additional safety protocols, "for example, mandate for use of personal protective equipment (PPE) for staff, visitors and patients"; coordination with state and local emergency officials; minutes of board/facility meetings; 1135 waiver use; and incident command system-related reports, CMS offers in the nine-page memo.



Proceed with Caution

Providers should "ensure they have adequate documentation of emergency plan activation before foregoing scheduled drills consistent with the exemption," advises law firm Hancock, Daniel & Johnson in online analysis.

Providers "should review both the memo and the work sheet ... to ascertain if they meet the exemption requirements ... and for the types of documentation that surveyors will be looking for to support that an emergency plan was activated," counsels law firm Garfunkel Wild in a Legal Alert.

Providers also need to figure out exactly which exercise they can skip - and when.

Why it's confusing: The memo points out that the exemption is for the "next required full-scale community-based or

individual, facility-based functional exercise” - not the next exercise of choice.

"CMS requires facilities to conduct an exercise of choice annually for inpatient providers and every two years for outpatient providers (opposite the year of the full-scale or facility-based functional exercise)," the agency reiterates in the memo. "Facilities may need to conduct an exercise of choice following the current PHE if they were required to conduct such an exercise this year and did not already do so," CMS explains.

"These providers will need to prepare to conduct their next required testing exercise following the conclusion of the PHE," advise attorneys **Brittany Bell** and **Sandra DiVarco** with law firm McDermott Will & Emery in online analysis.

Suggestion: "Facilities may choose to conduct a table-top exercise ... which could assess the facility's response to COVID-19," the CMS memo offers. "This may include ... discussions surrounding availability of personal protective equipment (PPE)" and "other activities implemented during the activation of the emergency plan."

If you're still confused on what to do when, check out the scenarios CMS offers in the memo.

For example: "Facility Y conducted a table top exercise in January 2019 as the exercise of choice and conducted a full-scale exercise in January 2020," CMS offers. "In March 2020, Facility Y activates its emergency preparedness program due to the COVID-19 PHE."

In that scenario, "the facility is exempt from the January 2022 full-scale exercise for that 'annual year'. However, the facility must conduct its exercise of choice by January 2021, and again in January 2023," CMS explains.

Note: The memo is at <https://www.cms.gov/files/document/qso-20-41-all.pdf>.