

## MDS Alert

### COVID-19: The Virus is Still Around, but These COVID Waivers are Ending

**Expect more surveyors to come knocking - and know what they're looking for.**

A slew of blanket waivers enacted by the Centers for Medicare & Medicaid Services (CMS) in earlier phases of the COVID-19 pandemic are slated to end, according to recent releases from the agency. The 2022 dates you need to know are coming up: May 7 (but really May 6, since May 7 is a Saturday), and June 6.

"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 requirements has contributed to these outcomes and raises the risk of other issues," said **David R. Wright**, director of quality, safety, & oversight group at CMS, in an April 7 QSO memorandum.



#### Note These 5 Changes for May

The waivers that CMS is ending first, in May, include the following:

- **Resident groups:** In April 2020, CMS restricted in-person group gatherings. CMS is now removing that restriction, so residents are able to gather in groups once again.
- **Physician delegation of tasks in SNFs:** This waiver allowed physicians to delegate some tasks to other qualified healthcare professionals (QHP), like nurse practitioners, physician assistants, and clinical nurse specialists, and to let those QHP perform some tasks. Another waiver requiring physicians to perform visits to SNFs via telehealth is also ending.
- **QAPI:** CMS had enacted a waiver that let nursing homes focus their Quality Assurance & Performance Improvement (QAPI) programs on infection control and adverse events that might be associated with COVID-19.
- **Information sharing for discharge planning:** CMS had waived specific requirements that long-term care (LTC) facilities had to help residents and their representatives select post-acute care providers using data such as standardized patient assessment data, quality measures, and resource use. (Other discharge planning requirements were not modified by the waiver that is now ending.)
- **Clinical records:** CMS is ending the waiver that had modified the requirement for nursing homes to provide residents' copies of their medical records within two days of the request.

#### Change These Environment and Care Situations by June

CMS had made several waivers to allow facilities and communities more flexibility during some of the most emergent periods of the COVID-19 pandemic. Some of the waivers that covered situations involving physical environmental concerns, particularly in regard to resident rooms are ending. They include:

- **Physical environment:** CMS had allowed non-SNFs to be certified temporarily for use by SNFs if the need arose within a community and for nursing homes to open temporarily for the purpose of caring for people with COVID-19. The waiver that allowed rooms not originally designed for use by residents to house people needing care will also end.
- **Outdoor doors and windows:** This waiver had required nursing homes to make sure every room used for sleep had a window or door to the outside.

- **Life Safety Code and Health Care Facilities Code ITM:** CMS had issued a waiver modifying the frequency and activities for inspection, testing, and maintenance (ITM).

CMS had also enacted several waivers to help nursing homes adequately staff their floors during emergent phases of the COVID-19 pandemic. The following waivers are ending:

- **Paid Feeding Assistants:** This waiver had allowed feeding assistance training to be a minimum of one hour.
- **In-service training for nurse aides:** This waiver had modified the requirements surrounding the minimum of 12 hours of in-service training for nurse aides.
- **Training and certification of nurse aides:** This waiver had modified requirements that nursing homes and SNFs not keep any employees for longer than four months if those employees did not meet the training or certification standards for their roles.

Sufficient, quality staffing has been a chronic issue for the LTC industry, and leaders note that the nurse aide exemptions have been a particularly useful band-aid, whose sudden loss will reverberate throughout LTC.

The American Health Care Association/National Center for Assisted Living (AHCA/NCAL) recommends putting a lot of focus on documentation if your facility will be adversely affected by the waivers related to nurse aides ending. Evaluate and document each aide-in-training's efforts to complete their respective training and testing, and make sure each enrolls in the appropriate training/testing programs or centers as soon as possible - even if they can only join a waitlist. The organizations also recommend keeping a log of all communications with the state agencies overseeing nurse aide programs, as well as any training/testing centers.



### **Understand the Context**

CMS had issued many blanket waivers in an attempt to maximize flexibility and resiliency for nursing homes during several emergent phases of the COVID-19 pandemic. Many of the waivers were also intended to reduce the risk of exposing residents to people who did not already reside or work in the facilities.

However, in a previous memorandum, CMS noted that some residents were suffering from conditions that surveyors usually caught, like weight loss, pressure ulcers, loss of mobility or function, abuse or neglect, depression, inappropriate use of antipsychotic medications, and the competency of nurses providing care, notes **Linda Elizaitis, RN, RAC-CT, BS**, president and founder of CMS Compliance Group in Melville, New York.

Surveyors who have returned to on-site inspections - of facilities that were deemed to have high-risk situations or a history of failures in care for residents - found the inadequacies they expected to find. Wright notes that this breakdown in resident care is part of the reason CMS is scrapping some of the waivers.