

## WAIVING GOODBYE: UPCOMING TERMINATION OF CERTAIN BLANKET WAIVERS FOR SPECIFIC PROVIDERS

April 18, 2022

On April 7, 2022, the Centers for Medicare & Medicaid Services (CMS) issued [QSO-22-15-NH & NLTC & LSC](#) (the “Memo”) outlining end-dates for certain blanket waivers of Medicare requirements of participation. Specifically, these include blanket waivers issued in response to the COVID-19 Public Health Emergency (PHE) for Skilled Nursing Facilities (SNFs)/Nursing Facilities (NFs), inpatient hospices, Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs), and End-Stage Renal Disease (ESRD) facilities. In discussing its rationale for ending these waivers, CMS noted that it “is still concerned about the risk COVID-19 poses to nursing home residents,” but highlighted that it is also “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.” CMS elaborated that “the minimum regulatory requirements need to be restored to protect residents’ health and safety,” and that 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.”

CMS designated certain waivers to terminate 30 days from publication of the Memo, or May 7, 2022, and other waivers to terminate 60 days from publication of the Memo, or June 6, 2022. Providers should note that, as of the date of this advisory, CMS has provided no additional guidance indicating that these termination dates will change as a result of the April 12, 2022, extension of the PHE to July 15, 2022. Consequently, providers should continue to monitor for any further updates from CMS, but should otherwise be prepared for the termination of waivers as set forth in the Memo. Specific waivers designated to end were listed in the Memo as follows:

### WAIVERS SCHEDULED TO TERMINATE ON MAY 7, 2022

The following waivers will terminate on May 7, 2022:

- **Resident Groups - 42 CFR §483.10(f)(5)**: Waiver of 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 Skilled Nursing Facilities - 42 CFR §483.30(e)(4)**: Waiver of the prohibition on a physician delegating a task when regulations specify that the physician must perform it personally. This

waiver gave physicians the ability to delegate 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)**: Waiver of 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**: Waiver of the requirement for physicians and non-physician practitioners to perform in-person visits for nursing home residents and allowing visits to be conducted, as appropriate, via telehealth options.
- **Quality Assurance and Performance Improvement (QAPI) – 42 CFR §483.75(b)–(d) and (e)(3)**: Waiver modifying certain requirements for 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)**: Waiver of the discharge planning requirement that LTC facilities 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 (note that CMS maintained all other discharge planning requirements).
- **Clinical Records - 42 CFR §483.10(g)(2)(ii)**: Waiver modifying the requirement that long-term care facilities provide a resident a copy of their records within two working days (when requested by the resident).

## WAIVERS SCHEDULED TO TERMINATE ON JUNE 6, 2022

The following waivers will terminate on June 6, 2022:

- **Physical Environment for SNF/NFs - 42 CFR §483.90**: Waiver of requirements to allow: 1) A non-SNF building to be temporarily certified and available for use by an SNF due to a need for isolating COVID-19 positive residents (provided that the state has approved the location as one that sufficiently addresses safety and comfort for patients and staff); 2) Opening of an NF if a state determines there is a need to quickly stand up a temporary COVID-19 isolation and treatment location; and 3) Use of 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)**: Waiver of requirements for on-time preventive maintenance of dialysis machines and ancillary dialysis equipment, as well as 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:** Waiver of 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):** Waiver of 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):** Waiver of requirement to have an outside window or outside door in every sleeping room, which 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):** Waivers permitting: 1) Documented orientation training program related to the current fire plan in lieu of quarterly fire drills; and 2) Temporary walls and barriers between patients.
- **Paid Feeding Assistants for LTC facilities: 42 CFR §§483.60(h)(1)(i) and 483.160(a):** Waiver modifying the requirements regarding required training of paid feeding assistants to permit training of a minimum of one hour in length (note that 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):** Waiver modifying 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):** Waiver of requirements that an SNF and NF not employ anyone for longer than four months unless they met the training and certification requirements under §483.35(d) (see further discussion below).

## SPECIAL CONSIDERATIONS FOR NURSE AIDE TRAINING

With regard to the termination of waivers related to nurse aide training, CMS clarified 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” (emphasis added). CMS acknowledged 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.” To account for this, CMS further clarified “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” (emphasis added). Concerning further steps facilities should take, CMS directed that “when capacity issues exist, facilities should inform their state officials of the issue” (emphasis added). Facilities are advised to ensure they are clearly documenting all efforts to properly certify nurse aides consistent with the above guidance and applicable Medicare requirements of participation, including clearly documenting instances of delays in such certification due to training capacity and informing state licensing authorities of the same.

## WHAT THIS MEANS FOR PROVIDERS

Providers are encouraged to review the Memo thoroughly and to ensure applicable leadership, staff, and other stakeholders within facilities are notified of the upcoming waiver terminations. To the extent these terminations will result in residents/patients being relocated (for example, due to use of rooms in a long-term care facility not normally used as a resident’s room, temporary certification of SNF rooms to permit isolation of COVID-19 positive patients, etc.), facilities should take steps now to make arrangements for relocating residents/patients as needed, including informing such individuals and their families as required. Facilities are encouraged to contact their respective state trade associations and/or counsel with questions in specific areas.

If you have any questions or need further guidance regarding [QSO-22-15-NH & NLTC & LSC](#), please contact a member of Hancock Daniel’s [Long-Term Care & Post-Acute Care](#) team.

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