Missouri Alliance for **HOME CARE**

2420 Hyde Park, Suite A, Jefferson City, MO 65109-4731 ▪ (573) 634-7772 ▪ (573) 634-4374 Fax

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- **CMS Issues Additional Home Health and Hospice 1135 Waivers for Duration of COVID-19 Emergency**
- **Interim Final Rule (IFR) Also Released – Includes Home Health Changes**

CMS Issues Additional Home Health and Hospice 1135 Waivers for Duration of COVID-19 Emergency

On April 30, the Centers for Medicare & Medicaid Services (CMS) issued additional waivers under Section 1135 of the Stafford Act to provide flexibilities to health care providers. Additional information for Healthcare Provider waivers is available here; specifically for Home Health available here; specifically for Hospice available here.

New Waivers Applicable to Home Health:

Training and Assessment of Aides: ***(New since 4/21 Release)*** CMS is waiving the requirement at 42 CFR §484.80(h)(1)(iii) for HHAs, which require a registered nurse or other appropriate skilled professional (physical therapist/occupational therapist, speech language pathologist) to make an annual onsite supervisory visit (direct observation) for each aide that provides services on behalf of the agency. In accordance with section 1135(b)(5) of the Act, CMS is postponing completion of these visits. All postponed onsite assessments must be completed by these professionals no later than 60 days after the expiration of the Public Health Emergency (PHE).

Quality Assurance and Performance Improvement (QAPI). ***(New since 4/21 Release)*** CMS is modifying the requirement at 42 CFR §484.65 for HHAs, which requires HHAs to develop, implement, evaluate, and maintain an effective, ongoing, HHA-wide, data-driven QAPI program. Specifically, CMS is modifying the requirements at §484.65(a)–(d) to narrow the scope of the QAPI program to concentrate on infection control issues, while retaining the requirement that remaining activities should continue to focus on adverse events. This modification decreases burden associated with the development and maintenance of a broad-based QAPI program, allowing the providers to focus efforts on aspects of care delivery most closely associated with COVID-19 and tracking adverse events during the PHE. The requirement that HHAs maintain an effective, ongoing, agency-wide, data-driven quality assessment and performance improvement program will remain.

12-hour Annual In-Service Training Requirement for Home Health Aides. ***(New since 4/21 Release)*** CMS is modifying the requirement at 42 C.F.R. §484.80(d) that home health agencies must assure that each home health aide receives 12 hours of in-service training in a 12-month period. In accordance with section 1135(b)(5) of the Act, CMS is postponing the deadline for completing this requirement throughout the COVID-19 PHE until the end of the first full quarter after the declaration of the PHE concludes. This will allow aides and the registered nurses (RNs) who teach in-service training to spend more time delivering direct patient care and additional time for staff to complete this requirement.

Detailed Information Sharing for Discharge Planning for Home Health Agencies. ***(New since 4/21 Release)*** CMS is waiving the requirements of 42 CFR §484.58(a) to provide detailed information regarding discharge planning, to patients and their caregivers, or the patient's representative in selecting a post-acute care provider by using and sharing data that includes, but is not limited to, (another) home health agency (HHA), skilled nursing facility (SNF), inpatient rehabilitation facility (IRF), and long-term care hospital (LTCH) quality measures and resource use measures.

- This temporary waiver provides facilities the ability to expedite discharge and movement of residents among care settings. CMS is maintaining all other discharge planning requirements.

Clinical Records ***(New since 4/21 Release)*** In accordance with section 1135(b)(5) of the Act, CMS is extending the deadline for completion of the requirement at 42 CFR §484.110(e), which requires HHAs to provide a patient a copy of their medical record at no cost during the next visit or within four business days (when requested by the patient). Specifically, CMS will allow HHAs ten business days to provide a patient's clinical record, instead of four.

New Waivers Applicable to Hospice Providers:

Annual Training. ***(New since 4/21 Release)*** CMS is modifying the requirement at 42 CFR §418.100(g)(3), which requires hospices to annually assess the skills and competence of all individuals furnishing care and provide in-service training and education programs where required. Pursuant to section 1135(b)(5) of the Act, we are postponing the deadline for completing this requirement throughout the COVID-19 PHE until the end of the first full quarter after the declaration of the PHE concludes. This does not alter the minimum personnel requirements at 42 CFR §418.114. Selected hospice staff must complete training and have their competency evaluated in accordance with unwaived provisions of 42 CFR Part 418.

Training and Assessment of Aides: ***(New since 4/21 Release)*** CMS is waiving the requirement at 42 CFR §418.76(h)(2) for Hospice which require a registered nurse to make an annual onsite supervisory visit (direct observation) for each aide that provides services on behalf of the agency. In accordance with section 1135(b)(5) of the Act, we are postponing completion of these visits. All postponed onsite assessments must be completed by these professionals no later than 60 days after the expiration of the PHE.

Quality Assurance and Performance Improvement (QAPI). ***(New since 4/21 Release)*** CMS is modifying the requirement at 42 CFR §418.58 for Hospice which requires these providers to develop, implement, evaluate, and maintain an effective, ongoing, hospice/HHA-wide, data-driven QAPI program. Specifically, CMS is modifying the requirements at §418.58(a)–(d) to narrow the scope of the QAPI program to concentrate on infection control issues, while retaining the requirement that remaining activities should continue to focus on adverse events. This modification decreases burden associated with the development and maintenance of a broad-based QAPI program, allowing the providers to focus efforts on aspects of care delivery most closely associated with COVID-19 and tracking adverse events during the PHE. The requirement that hospices maintain an effective, ongoing, agency-wide, data-driven quality assessment and performance improvement program will remain.

Physical Environment for Multiple Providers/Suppliers, including Hospice Inpatient Units (*New since 4/21 Release)*:

Inspection, Testing & Maintenance (ITM) under the Physical Environment Conditions of Participation: CMS is waiving certain physical environment requirements for Hospitals, CAHs, inpatient hospice, ICF/IIDs, and SNFs/NFs to reduce disruption of patient care and potential exposure/transmission of COVID-19. The physical environment regulations require that facilities and equipment be maintained to ensure an acceptable level of safety and quality.

CMS will permit facilities to adjust scheduled inspection, testing and maintenance (ITM) frequencies and activities for facility and medical equipment.

Specific Physical Environment Waiver Information:

42 CFR §482.41(d) for hospitals, §485.623(b) for CAH, §418.110(c)(2)(iv) for inpatient hospice, §483.470(j) for ICF/IID; and §483.90 for SNFs/NFs all require these facilities and their equipment to be maintained to ensure an acceptable level of safety and quality. CMS is temporarily modifying these requirements to the extent necessary to permit these facilities to adjust scheduled inspection, testing and maintenance (ITM) frequencies and activities for facility and medical equipment.

42 CFR §482.41(b)(1)(i) and (c) for hospitals, §485.623(c)(1)(i) and (d) for CAHs, §482.41(d)(1)(i) and (e) for inpatient hospices, §483.470(j)(1)(i) and (5)(v) for ICF/IIDs, and §483.90(a)(1)(i) and (b) for SNFs/NFs require these facilities to be in compliance with the Life Safety Code (LSC) and Health Care Facilities Code (HCFC). CMS is temporarily modifying these provisions to the extent necessary to permit these facilities to adjust scheduled ITM frequencies and activities required by the LSC and HCFC. The following LSC and HCFC ITM are considered critical are not included in this waiver:

- Sprinkler system monthly electric motor-driven and weekly diesel engine-driven fire pump testing.
- Portable fire extinguisher monthly inspection.
- Elevators with firefighters' emergency operations monthly testing.
- Emergency generator 30 continuous minute monthly testing and associated transfer switch monthly testing.
- Means of egress daily inspection in areas that have undergone construction, repair, alterations or additions to ensure its ability to be used instantly in case of emergency.

42 CFR §482.41(b)(9) for hospitals, §485.623(c)(7) for CAHs, §418.110(d)(6) for inpatient hospices, §483.470(e)(1)(i) for ICF/IIDs, and §483.90(a)(7) for SNFs/NFs require these facilities to have an outside window or outside door in every sleeping room. CMS will permit a waiver of these outside window and outside door requirements to permit these providers to utilize facility and non-facility space that is not normally used for patient care to be utilized for temporary patient care or quarantine.

A full list of new/updated items released on April 30 is available here:

- COVID-19 Emergency Declaration Blanket Waivers & Flexibilities for Health Care Providers (PDF) UPDATED (4/30/20)
- Medicare and Medicaid IFC: Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency (CMS-5531 IFC) (PDF) (4/30/20)
- List of Hospital Outpatient Services and List of Partial Hospitalization Program Services Accompanying the 4/30/2020 IFC (ZIP) (4/30/20)
- List of lab test codes for COVID-19, Influenza, RSV (PDF) (4/30/20)
- Home Health Agencies (PDF) UPDATED (4/30/20)
- Physicians and Other Practitioners (PDF) UPDATED (4/30/20)
- Ambulances (PDF) UPDATED (4/30/20)
- Hospitals (PDF) UPDATED (4/30/20)
- Teaching Hospitals, Teaching Physicians and Medical Residents (PDF) UPDATED (4/30/20)
- Long Term Care Facilities (Skilled Nursing Facilities and/or Nursing Facilities) (PDF) UPDATED (4/30/20)
- Hospices (PDF) UPDATED (4/30/20)
- Inpatient Rehabilitation Facilities (PDF) UPDATED (4/30/20)
- Long Term Care Hospitals & Extended Neoplastic Disease Care Hospitals (PDF) UPDATED (4/30/20)
- Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs) (PDF) UPDATED (4/30/20)
- Laboratories (PDF) UPDATED (4/30/20)
- End Stage Renal Disease (ESRD) Facilities (PDF) UPDATED (4/30/20)
- Durable Medical Equipment (PDF) UPDATED (4/30/20)
- Participants in the Medicare Diabetes Prevention Program (PDF)-UPDATED (4/2/20)
- Medicare Advantage and Part D Plans (PDF) UPDATED (4/30/20)
- State Medicaid & Basic Health Programs (4/30/20)
- Medicare Shared Savings Program Participants (PDF) (4/30/20)

Interim Final Rule (IFR) Also Released – Includes Home Health Changes

In addition to the previous waivers, there are Home Health changes that are part of the Interim Final Rule with Comment (IFC) that was also released on April 30. Click here to access the IFC.

NPPs and Home Health Services

The IFC implements section 3708 of the CARES Act to permit nurse practitioners, physician assistants, and certified nurse specialists ("allowed practitioners") to certify and order home health service or Medicare beneficiaries, retroactive to March 1, 2020.

The flexibility for NPs, CNSs and PAs to order home health services must be done in accordance with state law. Individual states have varying requirements for conditions of practice, which determine whether a practitioner may work independently, without a written collaborative agreement or supervision from a physician, or whether general or direct supervision and collaboration is required.

CMS originally announce they would not enforce the prohibition on these NPPs to certify and order home health services during the public health emergency (PHE). In the IFC CMS is codifying into regulation the scope of practitioner who may certify and order home health services and not limiting the flexibility to the PHE.

Therefore, in addition to a physician, "allowed practitioner" may certify, establish and periodically review the plan of care, as well as supervise the provision of items and services for beneficiaries under the Medicare home health benefit. Additionally, CMS is amending the regulations to state that an allowed practitioner would also perform the face-to-face encounter for the patient for whom they are certifying eligibility; however, if a face-to-face encounter is performed by an allowed NPP, in an acute or post-acute facility, from which the patient was directly admitted to home health, the certifying practitioner may be different from the provider performing the face-to-face encounter.

CMS will be amending addition regulations to reflect these changes including the provider enrollment requirements to included allowed practitioner 's NPI to be listed on the home health claim.

CMS is applying the same regulatory modification to the Medicaid program to align the role of allowed practitioners within both programs.

Home Health Value Based Purchasing Model

As previously reported, CMS waived enforcement of the following reporting requirements under the Home Health Value Based Purchasing (HHVBP) model:

- **April 2020 new measures submission period (data collection period October 1, 2019 –March 31, 2020)**
- **July 2020 new measures submission period (data collection period April 1, 2020 –June 30, 2020)**

At the time CMS announced this enforcement waiver, CMS also announced it was granting an exemption for the Home Health Quality Reporting Program (HH QRP), which includes HH CAHPS, for the following quarters.

- **October 1, 2019–December 31, 2019 (Q4 2019)**
- **January 1, 2020–March 31, 2020 (Q1 2020)**
- **April 1, 2020–June 30, 2020 (Q2 2020)**

In the April 30 IFC, CMS is implementing a policy to align the HHVBP Model data submission requirements with any exceptions or extensions granted for purposes of the HH QRP during the PHE for COVID-19. CMS is also implementing a policy for granting exceptions to the New Measures data reporting requirements under the HHVBP Model during the PHE for COVID-19. Under this policy to align HHVBP data submission requirements with any exceptions or extensions granted for purposes of the HH QRP during the PHE for COVID-19, HHAs in the nine HHVBP Model states are not required to separately report measure data for the quarters listed above for purposes of the HHVBP Model.

CMS is granting an exception to all HHAs participating in the HHVBP Model for the following New Measure reporting requirements:

- **April 2020 New Measures submission period (data collection period October 1, 2019 –March 31, 2020).**
- **July 2020 New Measures submission period (data collection period April 1, 2020 –June 30, 2020).**

Although the data collection period for the April 2020 New Measures submission period began in 2019, the data collected during this period are used for the calculation of the TPSs for CY 2020 performance, not CY 2019 data. HHAs may optionally submit part or all of these data by the applicable submission deadlines. If CMS makes the determination to grant an exception to New Measure data reporting for periods beyond the April and July 2020 submission periods, for example if the PHE for COVID-19 extends beyond the New Measure submission periods we have listed in this IFC, CMS will communicate this decision through routine communication channels to the HHAs participating in the HHVBP Model.

CMS acknowledges that these exceptions, as well as the modified submission deadlines for OASIS, may impact the calculation of performance under the HHVBP Model for the performance year (PY)2020. CMS notes that while it is able to extract the claims-based data from submitted Medicare FFS claims, it may need to assess the appropriateness of using the claims data submitted for the period of the PHE for COVID-19 for purposes of performance calculations under the HHVBP Model. Therefore, CMS is evaluating possible changes to the payment methodologies for CY 2022 in light of this more limited data, such as whether it is able to calculate payment adjustments for participating HHAs for CY 2022, including those that continue to report data during CY 2020, if the overall data is not sufficient, as well as whether to consider a different weighting methodology given that there may be sufficient data for some measures and not others.

CMS also is evaluating possible changes to the public reporting of CY 2020 performance year data. Any such changes to the payment methodologies for CY 2022 or public reporting of data will be in future rulemaking

OASIS-E

CMS is delaying implementation of OASIS-E which was slated to begin on January 1, 2021. HHAs will be required to use OASIS-E to begin collecting data on the two TOH Information Measures beginning with discharges and transfers on January 1st of the year that is at least 1 full calendar year after the end of the COVID-19 PHE. For example, if the COVID-19 PHE ends on September 20, 2020, HHAs will be required to begin collecting data on those measures beginning with patients discharged or transferred on January 1, 2022.

CMS will also require HHAs to begin collecting data on the SPADEs beginning with the start of care, resumption of care, and discharges (except for the hearing, vision, race, and ethnicity SPADEs, which would be collected at the start of care only) on January 1st of the year that is at least 1 full calendar year after the end of the COVID-19 PHE.