



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

DATE: April 4, 2020
TO: Nursing Homes (NHs)
FROM: NYSDOH Division of Nursing Homes & ICF/IID Surveillance

Health Advisory:
**In Response to COVID-19, CMS Has Released 1135 Waivers to Address
an Adequate Supply of Workforce Staff and Facilities**

Please distribute immediately to:
Administrators, Medical Directors, Nursing Directors, Risk Managers

Workforce

The Centers for Medicare and Medicaid Services (CMS) has temporarily waived Training and Certification of Nurse Aides to assist with potential staffing challenges during the COVID-19 pandemic.

To ensure resident health and safety, requirements at 42 CFR §483.35(d) are waived **except** 42 CFR §483.35(d)(1)(i), which requires that a Skilled Nursing Facility (SNF) and Nursing Facility (NF) may not employ anyone for longer than **four months** unless they meet the training and certification requirements under §483.35(d).

CMS is not waiving §483.35(c), which requires facilities to ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

Recommendation(s):

- Consider hiring nursing students, Personal Care Assistants (PCAs), and Home Health Aides (HHAs). Develop a competency skills evaluation tool for staff with prior health care experience to work as a nurse aide.
- Consider hiring staff without prior health care experience, but who are otherwise competent to provide nursing-related services, to work as a nurse aide. Develop a training program with a competency skills evaluation tool for staff without prior health care experience.
- Maintain a record of the completed competency evaluation tool in the employee's personnel file.

**As a reminder, consider providing Paid Feeding Assistant Program training to all nursing home staff.*

The following regulations are waived in response to COVID-19:

- **§483.35(d)(6) Required retraining.** CMS is waiving the requirement that nursing aides must complete a new training and competency evaluation program or a new competency evaluation program, if there has been a continuous period of 24 consecutive months during

none of which the individual provided nursing or nursing-related services for monetary compensation.

Recommendation(s):

- Consider rehiring Certified Nursing Assistants that have retired or those for which retraining requirements have lapsed.
- **§483.35(d)(7) Regular in-service education.** CMS waived the requirement that facilities must complete a performance review of every nurse aide, at least once every 12 months, and provide regular in-service education based on the outcome of these reviews.

Recommendation(s):

- Consider education related to infection control practices during the COVID-19 crisis, as part of in-service education, when waiver no longer in effect.
- **3-Day Prior Hospitalization.** Using the authority under Section 1812(f) of the Act, CMS is waiving the requirement for a 3-day prior hospitalization for coverage of a SNF stay, which provides temporary emergency coverage of SNF services without a qualifying hospital stay, for those people who experience dislocations, or are otherwise affected by COVID-19. In addition, for certain beneficiaries who recently exhausted their SNF benefits, it authorizes renewed SNF coverage without first having to start a new benefit period (this waiver will apply only for those beneficiaries who have been delayed or prevented by the emergency itself from commencing or completing the process of ending their current benefit period and renewing their SNF benefits that would have occurred under normal circumstances).

Recommendation(s):

- Maintain documentation for admissions, transfers, and discharges.
- **Reporting Minimum Data Set.** CMS is waiving 42 CFR 483.20 to provide relief to SNFs on the timeframe requirements for Minimum Data Set assessments and transmission.
- **Staffing Data Submission.** CMS is waiving 42 CFR 483.70(q) to provide relief to long-term care facilities on the requirements for submitting staffing data through the Payroll-Based Journal system.

Recommendation(s):

- Maintain staffing records.
- **Pre-Admission Screening and Annual Resident Review (PASRR).** CMS is waiving 42 CFR 483.20(k), allowing states and nursing homes to suspend these assessments for new residents **for 30 days**. After 30 days, new patients admitted to nursing homes with a mental illness (MI) or intellectual disability (ID) should receive the assessment, as soon as resources become available.

Recommendation(s):

- Obtain adequate discharge information from sending facility related residents with known or suspected serious mental illness (SMI) or intellectual disabilities/developmental disabilities (ID/DD) and related condition (RC).
- Maintain a tracking log of residents with SMI, ID/DD and RC.

- **Resident Groups.** CMS is waiving the requirements of 42 CFR 483.10(f)(5), which ensure residents can participate in-person in resident groups. This waiver would only permit the facility to restrict in-person meetings during the national emergency given the recommendations of social distancing and limiting gatherings of more than ten people. Refraining from in-person gatherings will help prevent the spread of COVID-19.
- **Physician Visits in Skilled Nursing Facilities/Nursing Facilities.** CMS is waiving the requirement in 42 CFR 483.30 for physicians and non-physician practitioners, to perform in-person visits for nursing home residents and allow visits to be conducted, as appropriate, via telehealth options.

Recommendation(s):

- **Telehealth:** NYS Medicaid expanded coverage of telehealth services in 2019. Per Insurance Law and Public Health Law, services that are covered under a comprehensive health insurance policy or contract cannot be excluded when the service is delivered via telehealth. To the extent it is practical, the Department encourages the use of telehealth to provide COVID-19 related services to Medicaid members. More information on the current telehealth policy can be found in the most recent Medicaid Update at https://www.health.ny.gov/health_care/medicaid/program/update/2020/index.htm.