

COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers



Summary of CMS Waivers for Nursing Homes

On March 28, 2020, CMS announced that numerous waivers of federal regulations are now in effect, retroactive to March 1, 2020, and lasting through the end of the emergency declaration. These are “blanket” waivers, which means that no request or notification of CMS is required. The waivers apply to many different provider types. The purpose of this summary is to identify key nursing home-related waivers.

Additional waivers of federal regulations went into effect after April 21, 2020, lasting through the end of the emergency declaration. These new waivers are **bolded** below.

To access the full set of waived regulations, go to: <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>

TRANSFERS/DISCHARGES/BEDHOLD

Issue	What Waiver Permits	Comments
<p>Transfer/discharge between facilities for purposes of separating and cohorting residents who are COVID+, COVID- and those of uncertain status</p>	<p>Notice of transfer/discharge can be provided as soon as practicable instead of before the transfer/discharge.</p>	<p>This waiver ONLY applies to the following types of transfers or discharges and ONLY if the receiving facility agrees to accept each specific resident (confirmation of acceptance can be verbal - with documentation by transferring facility - or written):</p> <ol style="list-style-type: none"> 1. Transferring residents with symptoms or confirmed diagnosis of COVID-19 to COVID-19 only facility 2. Transferring residents without symptoms or a confirmed diagnosis of COVID-19 to a non-COVID-19 facility 3. Transferring residents without symptoms of COVID-19 to a facility for observation of signs/symptoms of COVID-19 over 14 days. <p><i>If none of these situations applies, the federal nursing home regulations are unchanged.</i></p> <p>Although the notice does not have to be given prior to the move, advocates should urge providers to: make every effort to give residents and their representatives as much advance notification as possible; notify families; prepare residents for the move as much as possible; give residents and families an opportunity to ask questions; provide reassurance</p>

<p>Transfers within the facility</p> <p>These transfers now include the transfer of residents by one facility to another facility that has agreed to care for the residents during the emergency. This is referred to as “under arrangements.” It is considered to be a transfer within the facility because the transferring facility is still considered to be the provider and reimburses the other facility for care.</p>	<p>The transferring facility does not have to give a resident notice before moving them to another room in the facility. A resident cannot refuse such a transfer.</p>	<p>This waiver ONLY applies to transfers in a facility to group or cohort residents with COVID-19 or symptoms and separate them from those with no symptoms or confirmed not to have COVID 19.</p> <p>Advocates should encourage providers to take the steps indicated above.</p>
<p>Bedhold notice</p>	<p>Notice can be given as soon as practicable instead of before and at the time of the transfer.</p>	<p>Some states have extended their bedhold period during this crisis period.</p>
<p>Detailed information sharing for discharge planning for facilities.</p>	<p>LTC facilities do not have to 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.</p>	<p>CMS states that the purpose of this waiver is to give facilities the ability to quickly discharge and move residents among care settings.</p> <p>Facilities can certainly continue to provide this information and assistance if they choose, and advocates should urge them to do so. In addition, advocates can advise residents and their representatives to request a listing of providers and data; it might be provided even with the waiver. In the event the listing is not provided, advocates can provide information about where such data can be obtained.</p> <p>All other required discharge planning requirements are maintained.</p>

TRAINING AND CERTIFICATION OF NURSE AIDES

Issue	What Waiver Permits	Comments
<p>Requirements for working as a nurse aide</p>	<p>Individuals working as nurse aides for more than 4 months do not have to meet the mandated training and certification requirements. They may work as nurse aides after 4 months if the facility determines them to be competent to provide nursing services.</p>	<p>CMS states it is permitting this waiver to help facilities address possible staff shortages.</p> <p>CMS has not waived the requirement that facilities ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents’ needs.</p>

<p>In-Service Training</p>	<p>The requirement for certified nursing assistants to complete at least 12 hours of in-service training annually is waived until the end of the first full quarter after the public health emergency concludes.</p>	<p>Even though the regulation about in-service training has been waived, CNAs must be competent to care for residents' needs.</p> <p>Advocates should encourage residents and families to speak up if they are concerned about the competence of one or more CNAs.</p>
-----------------------------------	--	--

RESIDENT ROOMMATES, GROUPING AND RESIDENT GROUPS

Issue	What Waiver Permits	Comments
Resident roommates	The facility can place residents in rooms without honoring resident choice of roommate.	<p>These requirements are waived ONLY for the purposes of grouping or cohorting residents with symptoms or a diagnosis of COVID-19 and separating them from residents with no symptoms or determined to be COVID-19 negative. These waivers do not apply under any other circumstances.</p> <p>Even though these requirements are waived, advocates can still advise nursing homes to give residents as much notice as possible; do the best they can to give residents some choice of roommate; assure residents the move is only temporary; ensure residents' belongings are transferred with them; and make a special effort to help residents become accustomed to and comfortable in their new room.</p> <p>Despite the fact that residents cannot gather in-person, there are many creative ways to keep a resident council going.</p>
Resident grouping	<p>The facility does not have to give a resident notice or rationale for changing their roommate or moving them to another room in the facility.</p> <p>Residents cannot refuse to move to another room (but only if the move is COVID-19 related).</p>	
Resident groups	Resident groups (councils) cannot meet in-person.	

CARE PLANNING

Issue	What Waiver Permits	Comments
Baseline care plan	The time frame of completion within 48 hours of admission is waived for residents transferred for COVID-related reasons. Receiving facilities must develop the baseline care as soon as practicable.	Both baseline care plans and comprehensive care plans must still be developed.
Baseline care plan	If facilities choose to use the comprehensive care plan as the	

	baseline care plan, the time frame of completion within 48 hours of admission is waived for residents transferred for COVID-related reasons. Receiving facilities must create the baseline care plan as soon as practicable.	
Comprehensive care plan	The time frame of completion within 7 days of the assessment is waived only for residents transferred for COVID-related reasons. The comprehensive care plan must be developed as soon as practicable.	

PHYSICAL ENVIRONMENT

Issue	What Waiver Permits	Comments
Certification and use of non-SNF building by a SNF	A SNF can use a non-SNF building for purposes of isolating residents who are COVID+. The building will be temporarily certified.	These buildings would serve as COVID-19 isolation and treatment locations. CMS will also waive other requirements for opening a facility.
Use of other rooms for resident beds	Rooms not generally used as residents' rooms can be used to accommodate beds and residents. For example, beds could be placed in activities rooms, dining rooms, meeting rooms, etc. as long as residents are safe and comfortable.	This waiver is to assist with isolation and freeing up inpatient hospital beds.

3-DAY HOSPITALIZATION

Issue	What Waiver Permits	Comments
3-day hospital stay required for Medicare SNF coverage	A 3-day stay is not required for Medicare SNF coverage for someone affected by COVID-19.	This waiver increases access to skilled nursing facility care for Medicare beneficiaries needing COVID-related care.

DATA SUBMISSION

Issue	What Waiver Permits	Comments
Minimum Data Set (MDS)	The time frames for completion and submission of Minimum Data Set (MDS) have been waived.	Although the timing has been relaxed, the MDS must still be completed and submitted.
Payroll-Based Journal staffing data	Facilities do not have to submit staffing data through the Payroll-Based Journal – PBJ) for the duration of the emergency.	Facilities must still post nurse staffing data on a daily basis at the beginning of each shift 42 CFR §483.35(g).

PHYSICIAN VISITS AND SERVICES

Issue	What Waiver Permits	Comments
How visits are conducted	Physicians can visit via telehealth instead of in-person	<p>Visits must still be made.</p> <p>If telehealth doctor’s appointments are held, advocates can encourage facility staff to ensure accommodations are made for residents who are hard of hearing, visually-impaired, cognitively-impaired or have other conditions that may make video conferencing challenging.</p>
Physician delegation of visits and tasks	A physician can delegate conducting visits and other tasks that he/she is normally required to carry out personally to the following health care professionals: a nurse practitioner, physician assistant, or clinical nurse specialist who is not an employee of the facility.	<p>The requirements for frequency of physician visits are not waived.</p> <p>The delegated professional must work in collaboration with a physician and be licensed by the State and performing within the state’s scope of practice laws. A task cannot be delegated if the delegation is prohibited under State law or by the facility’s own policy.</p> <p>A physician must still supervise the resident’s medical care, and physician services must continue to be available 24 hours a day in case of emergency.</p> <p>Advocates can advise residents and their representatives that they can always contact the doctor themselves. They can also try requesting that the doctor him or herself conduct the visit. Despite the waiver, the decision is up to the individual physician.</p>

PASARR (PRE-ADMISSION SCREENING AND ANNUAL RESIDENT REVIEW)

Issue	What Waiver Permits	Comments
When PASARR pre-admission screenings are conducted	Screenings do not have to be done prior to admission or within the first 30 days. Assessment can be completed after 30 days and when resources are available.	This frees up hospital beds since individuals will not have to wait for the screening to be completed before they are admitted to a nursing home.

QUALITY ASSURANCE AND PERFORMANCE IMPROVEMENT

Issue	What Waiver Permits	Comments
Quality Assurance and Performance Improvement (QAPI)	The scope of the QAPI program will be narrowed to focus exclusively on adverse events and infection control.	This will help facilities concentrate on aspects of care delivery associated most closely with COVID-19 during this time period.

CLINICAL RECORDS

Issue	What Waiver Permits	Comments
Clinical records	LTC facilities will have ten working days to provide a resident a copy of their records upon request, rather than two working days.	<p>This waiver applies to a resident's request to obtain a copy of their records. It does not apply to a resident's right to access their records, which still must be provided upon request or within 24 hours under certain, limited circumstances.</p> <p>This extension in time means it will take longer for a resident representative to obtain records which can help monitor the resident's condition. If a resident representative is having difficulty learning about the resident's status, he or she can contact the long-term care ombudsman for assistance.</p>

For resources and more information about COVID-19, go to:
<https://theconsumervoice.org/issues/other-issues-and-resources/covid-19>
National Consumer Voice for Quality Long-Term Care
202-332-2275; info@theconsumervoice.org
www.theconsumervoice.org