



policy break

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CMS Proposes Rollback of Emergency Preparedness Rules

On September 17, the Centers for Medicare and Medicaid Services (CMS) issued a proposed rule impacting a wide range of Medicare providers that includes revisions to the new emergency preparedness regulations. According to a CMS press release, the proposed rule is part of the agency's efforts to "relieve burden on healthcare providers by removing unnecessary, obsolete or excessively burdensome Medicare compliance requirements for healthcare facilities." The emergency preparedness requirements are targeted for rollback even though they were implemented less than a year ago.

The current emergency preparedness provisions represent years of study and review by federal agencies, nursing home providers, emergency preparedness experts, advocates, and others following the horrendous impact of Hurricane Katrina on vulnerable and frail nursing home residents. In the preamble to the current regulations, CMS states that the regulations are based on lessons learned from the past and today's proven best practices (Federal Register / Vol. 81, No. 180 / Friday, September 16, 2016 / Rules and Regulations 63861). Now, however, CMS is proposing to change the rules based solely on its intent to reduce provider burden.

The following summary of key revisions shows that most changes require providers to do less and give them more flexibility and discretion.

Emergency plan: A facility would only be required to review and update its emergency plan every two years rather than annually. The plan is designed to address the hazards identified through a risk assessment. These risks do not remain static and can change quickly. Waiting for two years to update a plan means it is likely to not reflect important changes in both the facility and its environment. Because the plan guides and directs the facility's response to an emergency or disaster, a flawed, inadequate plan can have catastrophic results for the safety and welfare of residents.

In addition, CMS is proposing to eliminate the requirement that the emergency plan include documentation of efforts to contact local, tribal, regional, State and federal emergency preparedness officials and a facility's participation in collaborative and cooperative planning efforts. These efforts are critical for the emergency plan to succeed, but there is no way to determine if the facility has actually contacted and collaborated with emergency preparedness officials without documentation.

Policies and procedures: The review and update of policies and procedures would be mandated every two years instead of every year. The facility's policies and procedures support the successful execution of its emergency plan. Many factors can cause policies and procedures to become outdated or ineffective, thereby jeopardizing the facility's ability to carry out its plan. A biennial rather than an annual review could easily fail to identify the need for revisions in a timely manner, including changes necessary based on the facility experiencing an emergency or problems during a drill or exercise.

Communication plan: Nursing homes would be mandated to reexamine their communication plan and bring it up-to-date every two years and not annually as currently required. This communication plan ensures that the facility has a system to contact appropriate staff; attending physicians; other long-term care facilities; federal, state, tribal, regional or local emergency preparedness staff; and others to ensure continuation of resident care. Because the individuals and entities included in such a plan can change frequently, failure to update the plan every year could result in faulty and inaccurate information and the inability to reach the people/agencies needed to protect resident health and safety in the event of a disaster.

Training and testing program: Similar to the changes noted above, the training and testing program would have to be reviewed and updated every two years and not yearly. In order to be effective, this program must be modified when gaps, problems or areas for improvement are identified. Delaying necessary changes for two years leaves the facility ill-equipped and improperly prepared for an emergency that can arise at any time.

Training: After providing initial training, the facility would be required to train staff on emergency preparedness at least every 2 years instead of every year. Two years is far too long to go without a refresher training. Annual training better ensures that staff are sufficiently trained, familiar with the policies and procedures, and held responsible for knowing these requirements. Significant turnover rates among both staff and administration in nursing homes also raise concerns about staff readiness if emergency preparedness training is extended to every two years.

A recent article in the *New York Times*, [California Says Nursing Homes Abandoned Elderly During Fire](#), reports an unconscionable situation that illustrates the critical importance of staff preparedness. The article states: "In one nursing home ... the complaint described staff members who had never participated in a fire drill, did not know the evacuation plan, could not find flashlights or batteries when the power went out and did not know where to find the keys to a bus that could have helped in the evacuation. One staff member searched in vain for the keys for an hour, the legal complaint said."

Summary: Although CMS claims these proposals would balance patient safety and quality with broad regulatory relief for providers, Consumer Voice is concerned that the proposed revisions will instead make nursing homes less ready when disaster strikes and subject residents to greater danger.