

## **CMS Rescinds Emergency Waivers, including of Training and Certification Requirements for Nurse Aides**

On April 7, 2022 the Centers for Medicare and Medicaid Services (CMS) issued a memo ([QSO-22-15-NH & NLTC & LSC](#)) rescinding several temporary emergency waivers issued in response to the COVID-19 Public Health Emergency with the intent to provide health care providers with extra flexibility in responding to the pandemic. CMS has acknowledged that the waiver of minimum standards for quality may have resulted in negative outcomes and put residents at risk. During the pandemic, MDS data<sup>1</sup> and, according to CMS, findings from onsite surveys, have shown significant decline in residents' condition, including weight loss, increase in pressure ulcers, use of antipsychotic drugs, depression, and abuse.

Consumer Voice has been particularly concerned about waivers related to the training and certification requirements for nursing assistants. Federal law requires nursing assistants to complete a minimum of 75 hours of training, and pass a certification exam, within four months of beginning work in a nursing facility. The CMS emergency waiver allowed facilities to hire individuals who were not certified, and with as little as 8 hours of training, to provide care to residents. Inadequate staff training puts both residents and staff at risk of harm.

In rescinding the waivers, CMS indicates that it still expects providers to continue taking actions to reduce the likelihood of COVID transmission and to follow all existing requirements. Additionally, facilities are encouraged to use all available resources to support residents and staff in getting the COVID vaccine. While the emergency blanket waivers are ending, CMS has indicated that states and individual facilities may request a regulatory waiver for an issue unique to their facility or location.

The following are some of the key blanket waivers ending 60 days (June 6, 2022) from publication of the CMS memo:

- **Nurse Aide Training and Certification** – a nursing facility may not employ anyone for longer than four months unless they meet the training and certification requirements under [42 CFR 483.35\(d\)](#).

Staff hired under the blanket waiver must complete a state approved Nurse Aide Competency Evaluation Program (NATCEP) that includes training areas defined at [42 CFR 483.152\(b\)](#) to become a certified nurse aide, pass a written or oral exam, and demonstrate skills learned.

- **In-Service Training for Nursing Assistants** – nursing assistants must receive at least 12 hours of in-service training annually. [42 CFR 483.95\(g\)\(1\)](#)
- **Paid Feeding Assistants** – must complete a State-approved training course that includes a minimum of 8 hours of training as specified at [42 CFR 483.160](#), and be supervised by a Registered Nurse (RN) or Licensed Practical Nurse (LPN).

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<sup>1</sup> See <https://theconsumervoice.org/uploads/files/issues/suffering-in-lockdown.pdf>

The following are key emergency blanket waivers ending 30 days (May 7, 2022) from publication of the memo:

- **Resident Groups** – must be permitted to meet, in-person. [42 CFR 483.10\(f\)\(5\)](#)
- **Physician Visits and Delegation of Tasks** – requires in-person physician visits, and limits the tasks that can be delegated to a physician assistant, nurse practitioner, or clinical nurse specialist in accordance with [42 CFR 483.30](#).
- **Clinical Records** – upon request of the resident, a nursing facility must provide a resident a copy of their records within two working days. [42 CFR 483.10\(g\)\(2\)\(ii\)](#)

For a full list of blanket waivers that are ending, review [CMS Memo QSO-22-15-NH & NLTC & LSC](#).



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