



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Aging and Long-Term Support Administration
PO Box 45600, Olympia, Washington 98504-5600

May 25, 2023

AL TSA: NH #2023-023
FEDERAL PUBLIC HEALTH EMERGENCY ENDS MAY 11, 2023, INCLUDING
CERTAIN CMS 1135 WAIVERS AND FLEXIBILITIES

Dear Nursing Facility/Home Administrator:

On February 9, 2023, the Department of Health and Human Services (DHHS) and the Centers for Medicare and Medicaid Services (CMS) announced [the end of the Public Health Emergency \(PHE\) for COVID-19 on May 11, 2023](#). This means many CMS 1135 waivers and flexibilities are no longer available beginning May 12, 2023. Please refer to the CMS provider-specific fact sheet about COVID-19 PHE waivers and flexibilities for [Long Term Care Facilities \(Skilled Nursing Facilities and/or Nursing Facilities\): CMS Flexibilities to Fight COVID-19](#) dated May 10, 2023 for details related to waivers.

On May 1, 2023, CMS provided guidance for the expiration of the COVID-19 PHE in [QSO-23-13-ALL](#).

Waivers End May 11, 2023:

- **Alcohol-based hand-rub (ABHR) Dispensers:** During the PHE, CMS waived the prescriptive requirements for the placement of alcohol-based hand rub (ABHR) dispensers for use by staff and others due to the need for the increased use of ABHR for infection control. **This waiver expired May 11, 2023.** For the history on this waiver, refer to [AL TSA: NH #2020-033](#).
- **Preadmission Screening and Resident Review (PASRR):** During the PHE, CMS allowed nursing homes to admit new residents who have not received Level I or Level II Preadmission Screening. These assessments were waived for new residents for 30 days. After 30 days, new residents admitted to NHs with a mental illness (MI) or intellectual disability (ID) should receive the assessment as soon as resources become available. **This waiver expired May 11, 2023.** *In addition, the Department of Social and Health Services (DSHS) emergency rules adopted to comply with the waived CMS requirement expired May 9, 2023. For related information, see [AL TSA NH# 2020-076](#).*
- **Training and Certification of Nurse Aides:** Under the PHE, CMS waived the requirement that nursing homes not employ a nurse aide for longer than four months unless they meet the training and certification requirements under 42 CFR §483.35(d). On April 7, 2022, CMS issued QSO-22-15-NH which terminated this waiver and allowed individual States to apply for a separate time-limited waiver. CMS approved a Washington State waiver request for training and certification of nurse aides. **The state waiver ended May 11, 2023**, with the following re-implementation conditions:
 - Nurse aides hired on or after May 11, 2023, will have up to four months from their date of hire to complete a state approved NATCEP/CEP.

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- Nurse aides hired before May 11, 2023, will have four months from May 11, 2023 (until September 10, 2023) to complete a state approved NATCEP/CEP.
- Refer to [ALTSA NH# 023-012](#) for more details.
- **Resident Roommates and Grouping:** During the PHE, CMS waived specific resident rights requirements under 42 CFR 483.10(e)(5) and (7) solely for the purposes of grouping or cohorting residents with respiratory illness symptoms or a confirmed diagnosis of COVID-19 to separate them from asymptomatic residents or residents who tested negative for COVID-19. **This waiver expired May 11, 2023.**
- **Resident Transfer and Discharge:** During the PHE, CMS waived requirements in 42 CFR 483.10(c)(5) facility to provide advance notification of options relating to the transfer and discharge to another facility; 483.15, (c)(5)(i) and (iv), (c)(9), and (d) the written notice of transfer or discharge to be provided before the transfer or discharge. **This waiver expired May 11, 2023.** *In addition, the DSHS emergency rules adopted to comply with the waived CMS requirement were rescinded effective May 11, 2023, under [WSR 23-11-139](#).*

Continuing Interim Final Rules and Expectations:

- **Required Facility Reporting:**
 - National Health Safety Network (NHSN): During the PHE, CMS adopted an interim final rule with comment period (IFC) requiring nursing homes to report COVID-19 cases via NHSN. Under §483.80(g), nursing homes are required to report COVID-19 cases in their facility to the CDC on a weekly basis. **This reporting requirement is set to expire on December 31, 2024.**
 - Residents/Resident Representatives: Also, under these reporting rules, facilities are required to notify residents, their representatives, and their families of the status of COVID-19 in the facility, which includes any new cases of COVID-19 as they are identified. This information is now available on CMS' [COVID-19 Nursing Home Data Website](#). As a result, **CMS is exercising enforcement discretion and will not expect providers to meet the requirements at 42 CFR 483.80(g)(3).**
 - Civil Money Penalties: In addition, §488.447 provides for imposition of CMPs for noncompliance with §483.80(g) for one year beyond the expiration of the PHE.
- **Vaccination**
 - Staff Vaccination: On November 5, 2021, CMS issued an interim final rule ([CMS-3415-IFC](#)) requiring nursing homes to ensure their staff are fully vaccinated for COVID-19. This requirement will continue unless the IFC is repealed. (see [QSO-23-10-NH](#))
 - Reporting: On November 9, 2021, CMS adopted permanent requirements ([CMS-1747-F](#)) for reporting COVID-19 vaccine status of residents and staff through NHSN.
 - Educating about and Offering Residents and Staff the COVID-19 Vaccine: On May 21, 2021, CMS issued an IFC ([CMS-3414-IFC](#)) requiring nursing homes to educate residents and staff on the COVID-19 vaccine, and offer to

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help them get vaccinated. **This requirement will remain in effect until May 21, 2024, unless additional regulatory action is taken.**

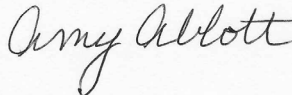
- **COVID-19 Testing for Staff and Residents:** While testing staff and residents under CFR 483.80(h) expired May 11, 2023, CMS still expects facilities to conduct COVID-19 testing in accordance with accepted national standards. Noncompliance with this expectation will be cited at F-880 for failure to implement an effective Infection Prevention and Control Program in accordance with accepted national standards.
- **Telehealth Services:** Please refer to the CMS telehealth page: <https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth>

Additional Resources:

- Waiver and flexibilities are available at <https://www.cms.gov/coronavirus-waivers>
- Additional COVID-19 resources for long-term care facilities are available at <https://www.cms.gov/nursing-homes>

Thank you for your continued commitment to resident health and safety. If you have any questions, please contact Molly McClintock, Nursing Home Policy Program Manager, at (360) 742-6966 or molly.mcclintock@dshs.wa.gov.

Sincerely,



Amy Abbott, Director
Residential Care Services

DSHS: “*Transforming Lives*”