

## Final CMS Guidance for the Expiration of the COVID-19 Public Health Emergency

**To:** NHPCO Provider & State Members  
**From:** NHPCO Policy Team  
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The long-awaited [CMS memo](#) with final clarifications and details on the status of waivers and their expiration status was posted to the CMS website the evening of May 1, 2023. This alert covers issues of interest to hospice providers, including staff vaccination requirements, emergency preparedness training and testing, and the three-day hospitalization requirement prior to SNF coverage. CMS has also provided an [FAQ for the end of the PHE](#) (May 19, 2023) and a Coronavirus waivers & flexibilities [webpage](#).

The hospice-specific waivers and their status are also included below and are organized in a table, based on when the flexibility expires.

### 1. Staff Vaccination Requirements

CMS stated “On November 5, 2021, the U.S. Department of Health and Human Services’ Centers for Medicare & Medicaid Services (CMS) issued an interim final rule (CMS-3415-IFC) requiring Medicare and Medicaid-certified providers and suppliers to ensure their staff were fully vaccinated for COVID-19 (i.e., obtain the primary vaccination series), which was a critical step to protect patients. On April 10, 2023, the President signed legislation ending the COVID-19 national emergency.”

On May 11, 2023, the COVID-19 public health emergency (PHE) expired. On May 31, 2023, CMS released a [final rule](#), which ended COVID-19 vaccination requirements for all provider types, including hospices, effective on August 5, 2023. Because the PHE expired on May 11, 2023, CMS indicated it would not enforce vaccination requirements upon the rule’s publication through August 4, 2023. CMS additionally published a memo ([QSO-23-02-ALL](#)) documenting the termination of vaccination requirements.

### 2. Emergency Preparedness Training and Testing Program Exemption

The following information supersedes the previously issued QSO-20-41-ALL-REVISED memo for all certified providers/suppliers. CMS regulations for Emergency Preparedness (EP) require the provider/supplier to conduct exercises to test their EP plan to ensure it works and staff are trained appropriately about their roles and the provider/supplier’s processes.

During or after an actual emergency, the EP regulations allow for a one-year exemption from the requirement the provider/supplier perform testing exercises. The exemption only applies to the next required full-scale exercise (not the exercise of choice), based on the 12-month exercise cycle. The cycle is determined by the provider/supplier (e.g., calendar, fiscal, or another 12-month timeframe). The exemption only applies when a provider/supplier activates its emergency preparedness program for an emergency event.

**Providers/suppliers are expected to return to normal operating status and comply with the regulatory requirements for emergency preparedness with the conclusion of the PHE.**

This includes conducting testing exercises based on the regulatory requirements for specific provider/supplier types as follows:

- **Inpatient Providers and Suppliers:** The provider/supplier must conduct a full-scale exercise within its annual cycle for 2023 and an exercise of choice.
- **Outpatient Providers:** The provider/supplier must conduct either a full-scale exercise or an exercise of choice within its annual cycle for 2023, if scheduled to conduct the full-scale exercise within 2023. The provider/supplier must conduct the exercise of choice, if scheduled during the annual cycle for 2023 and resume the full-scale exercise requirement in 2024.

### **3. Three Day Prior Hospitalization Prior to SNF Coverage**

Pursuant to the authority granted under section 1812(f) of the Act, CMS effectively waived the Medicare Part A Skilled Nursing Facility (SNF) coverage requirement a Medicare beneficiary must have a three-day qualifying hospital stay (QHS) to qualify for a covered Part A SNF stay (three day QHS waiver). Additionally, by the same authority under section 1812(f) of the Act, CMS granted certain beneficiaries who exhausted their SNF benefits a one-time renewal of SNF Part A coverage, beginning a new benefit period, without first having the typical 60-day wellness period that must typically occur before a beneficiary to obtain a new benefit period. **These waivers will terminate immediately with the expiration of the COVID-19 PHE. This means all new SNF stays beginning on or after May 12 will require a qualifying hospital stay before Medicare coverage. Additionally, for any new benefit period beginning on or after May 12, the beneficiary will need to have completed a 60-day wellness period.**

#### 4. Hospice Provisions

Hospice Provision	Flexibility Made Permanent	Expected Compliance upon End of PHE	Expected Compliance Date After PHE
<b>Flexibility Made Permanent</b>			
<b>Hospice Aide Competency Testing Allow Use of Pseudo Patients - 42 CFR §418.76(c)(1)</b>	CMS made this flexibility permanent in FY 2022 Hospice Wage Index and Payment Rate Update Final Rule (86 FR 42528 (August 4, 2021)), to allow the use of the pseudo-patient for conducting hospice aide competency evaluations.		
<b>Hospice aide supervision requirements to address situations when deficient practice is noted and remediation is needed related to both deficient and related skills – 42 CFR §418.76(c)</b>	CMS made this flexibility permanent in FY 2022 Hospice Wage Index and Payment Rate Update Final Rule (86 FR 42528 (August 4, 2021)).		
<b>Flexibility Ends at Conclusion of PHE</b>			
<b>Hospice Comprehensive Assessments - 42 CFR §418.54</b>		The waiver of this requirement ends upon the conclusion of the PHE.	
<b>Waive Non-Core Services - 42 CFR §418.72</b>		The waiver of this requirement ends upon the conclusion of the PHE.	

<b>Flexibility Ends at Conclusion of PHE</b>			
<p><b>Hospice Quality Assessment and Performance Improvement (QAPI) - 42 CFR §418.58</b></p> <p>CMS modified the requirements to narrow the scope of the QAPI program to concentrate on infection control issues, while retaining the requirement that remaining activities should continue to focus on adverse events.</p>		<p>The waiver of this requirement ends upon the conclusion of the PHE.</p>	
<b>Compliance Expected 60 Days after Conclusion of PHE</b>			
<p><b>HHA/Hospice Training and Assessment of Aides - 42 CFR §418.76(h)(2) and 42 CFR §484.80(h)(1)(iii)</b></p> <p>CMS waived the requirement for hospices that a registered nurse make an annual onsite supervisory visit (direct observation) for each aide that provides services on behalf of the agency.</p>			<p>Hospices are expected to come into compliance with this requirement during the 60 Days after the conclusion of the PHE, by <b>July 11, 2023</b>.</p>

<b>Compliance Expected at End of First Full Quarter after the Conclusion of PHE</b>			
<p><b>Hospice Annual Training - 42 CFR §418.100(g)(3)</b>  <b>CMS waived the requirement for hospices to annually assess the skills and competence of all individuals furnishing care and provide in-service training and education programs where required.</b></p> <p>Selected hospice staff must complete training and have their competency evaluated by the by the end of the first full quarter after the declaration of the PHE concludes.</p>			<p>Hospices are expected to come into compliance with this requirement during the first full quarter after the conclusion of the PHE, by <b>September 30, 2023.</b></p>
<b>Compliance Expected at End of Calendar Year that the PHE ends</b>			
<p><b>Hospice 12-hour annual in-service training requirement for hospice aides - 42 CFR 418.76(d).</b></p> <p>CMS waived the requirement that home health agencies and hospices must assure that each aide receives 12 hours of in-service training in a 12-month period.</p>			<p>Hospices are expected to come into compliance with this requirement during the remainder of the calendar year that the PHE ends, by <b>December 31, 2023.</b></p>

Compliance Expected at End of Calendar Year that the PHE ends			
<p><b>Hospice Waived requirement for hospices to use volunteers – 42 CFR §418.78(e)</b></p> <p>CMS waived the requirement that hospices must use volunteers (at least 5% of total patient care hours of all paid hospice employees). It is anticipated that hospice volunteer availability and use may still be reduced.</p>			<p>Hospices are expected to come into compliance with this requirement during the remainder of the calendar year that the PHE ends, by <b>December 31, 2023</b>.</p>