Ending of the COVID-19 PHE Waives & Flexibilities

The COVID-19 Public Health Emergency (PHE) which began in early 2020 will come to an end on May 11, 2023. Throughout the PHE various waivers, regulations, enforcement discretion, and sub-regulatory guidance were utilized to ensure access to care and give health care providers the flexibilities needed to respond to the PHE. Below is a list of the waivers and flexibilities and their status at the end of the PHE.

HOME HEALTH LEGISLATIVE			
Statute or Regulation	**Waiver/Flexibility**	**Status**	**Compliance Date**
1814(a)(2) 42 CzFR 409.42(a)	A beneficiary is considered homebound when their physician advises them not to leave the home because of a confirmed or suspected COVID-19 diagnosis or if the patient has a condition that makes them more susceptible to contract COVID-19. As a result, if a beneficiary is homebound due to COVID-19 and needs skilled services, an HHA can provide those services under the Medicare Home Health benefit.	CMS clarified the definition of "homebound"- allows patients to be considered "homebound" if it is medically contraindicated for the patient to leave the home.	N/A
1814(a)(2)(C)	Face-to-face encounters can be conducted via telehealth.	Omnibus Budget Appropriations Bills for FY2023 extended the originating site and geographic area restriction waiver through December 31, 2024, allowing the F2F to be completed utilizing two-way audio and video telehealth in the patient's home anywhere in the nation that the patient resides.	12/31/2024
1814(a)(2)(C)	Allow NPs and PAs to certify eligibility and order home health services where permitted by the state.	Section 3708 of the CARES Act made a permanent change to permit NPs, PAs, and CNSs to certify and order home health (as permitted under state scope of practice).	N/A
HOME HEALTH REGULATORY			
Statute or Regulation	**Waiver/Flexibility**	**Status**	**Compliance Date**
§409.46(e)	Permit physician-ordered telehealth and remote monitoring visits to count as Medicare home health visits.	This provision is permanent beyond the COVID-19 PHE.	N/A

	Telecommunications technology can include, for example: remote patient monitoring; telephone calls (audio only and TTY); and two-way audio-video technology that allows for real-time interaction between the clinician and patient. **Telehealth visit must be** • **included in the HH POC** • **Cannot replace on site visit** • **Not billable**	**Home health services furnished using telecommunication systems are required to be included on the home health claim beginning July 1, 2023, with the following G-codes.** **G0320: home health services furnished using synchronous telemedicine rendered via a real-time two-way audio and video telecommunications system.** **G0321: home health services furnished using synchronous telemedicine rendered via telephone or other real-time interactive audio-only telecommunications system.** **G0322: the collection of physiologic data digitally stored and/or transmitted by the patient to the home health agency (i.e., remote patient monitoring).**	
§484.55(a)(2) and §484.55(b)(3)	**Waives requirement that rehabilitation skilled professionals may only perform the initial and comprehensive assessment when only therapy services are ordered.** **This temporary waiver allowed any rehabilitation professional (OT, PT, or SLP) to perform the initial and comprehensive assessment for all patients receiving therapy services as part of the plan of care, to the extent permitted under state law, regardless of whether or not the service establishes eligibility for the patient to be receiving home care.**	**Temporary waiver ends with the PHE.** **As part of the CY 2022 Home Health Final Rule (CMS 1747-F), CMS finalized changes to § 484.55(a) and (b)(2) to permanently allow occupational therapists to conduct the initial and comprehensive assessments in certain circumstances.** **§484.55(a)(2) Initial Assessment** **When rehabilitation therapy service (speech language pathology, physical therapy, or occupational therapy) is the only service ordered by the physician or allowed practitioner who is responsible for the home health plan of care, the initial assessment visit may be made by the appropriate rehabilitation skilled professional. For Medicare patients, an occupational therapist may complete the initial assessment when occupational therapy is ordered with another qualifying rehabilitation therapy service (speech-language**	**5/11/2023**

		pathology or physical therapy) that establishes program eligibility. **§484.55(b)(3) Comprehensive Assessment** **When physical therapy, speech-language pathology, or occupational therapy is the only service ordered by the physician or allowed practitioner, a physical therapist, speech-language pathologist, or occupational therapist may complete the comprehensive assessment, and for Medicare patients, determine eligibility for the Medicare home health benefit, including homebound status. For Medicare patients, the occupational therapist may complete the comprehensive assessment when occupational therapy is ordered with another qualifying rehabilitation therapy service (speech-language pathology or physical therapy) that establishes program eligibility.**	
§484.80(h)(1)(iii)	**Waives requirement that a registered nurse or other appropriate skilled professional (physical therapist/occupational therapist, speech language pathologist) make an annual onsite supervisory visit (direct observation) for each aide that provides services on behalf of the agency.**	**Ends with the PHE** **Postponed visits must be completed no later than 60 days after the end of the PHE** **In the QSO-23-13-ALL memo CMS stated it will utilize its enforcement discretion on a case-by-case basis for circumstances beyond the provider's/supplier's control for this 60 day timeframe. This memo provides additional clarification for surveyors based on information previously issued via the CMS press release referencing the provider-specific fact sheets.**	**5/11/2023** **07/10/2023**
§484.80(h)	**Waives requirement that a registered nurse or other appropriate skilled professional (physical therapist/occupational therapist, speech language pathologist) make an onsite visit every two weeks to**	**Waiver ends with the end of the PHE.** **As part of the CY 2022 Home Health Final Rule (CMS 1747-F), CMS finalized the provision for aide supervision for patients receiving skilled care every 14**	**5/12/23**

	evaluate if aides are providing care consistent with the care plan.	**days to now allow for one virtual visit per 60-day episode per patient and only in rare circumstances.** **For patients receiving non-skilled care, the registered nurse must make an onsite, in person visit every 60 days to assess the quality of care and services provided by the home health aide and to ensure that services meet the patient's needs; semi-annually the nurse will make a supervisory direct observation visit for each patient to which the aide is providing services.**	
§484.80(d)	**Postponed the 12-hour annual in-service training requirement for home health aides.**	**Flexibility ends with the PHE** **Postponed training must be completed by the end of the calendar year that the PHE ends.** **(Surveyor determinations of a provider's/supplier's compliance with the following requirements will begin at the end of the calendar year that the PHE ends which is December 31, 2023.)**	**5/11/2023** **12/31/2023**
§484.55(a)	**Permit HHAs to conduct the initial evaluation visit using telehealth and medical record review.**	**Ends with the PHE**	**5/11/2023**
§484.55(b)	**Extends the five-day completion requirement for the comprehensive assessment to 30 days**	**Ends with the PHE**	**5/11/2023**
	Waives the 30-day OASIS submission requirement. **Delayed submission is permitted during the PHE, but the OASIS must be submitted before the final claim is submitted.**	**Ends with the PHE**	**5/11/2023**
§484.55(a) and (b)	**Waiver allows any rehabilitation professional (OT, PT, or SLP) to perform the initial and comprehensive assessment for all patients receiving therapy services as part of the plan of care, to the extent permitted under state law, regardless of whether or not the service establishes eligibility for the patient to be receiving home care**	**Ends with the PHE** **As part of the CY 2022 Home Health Final Rule (CMS 1747-F), CMS finalized changes to § 484.55(a) and (b)(2) to permanently allow occupational therapists to complete the initial and comprehensive assessments for patients in**	**5/11/2023**

		• **therapy-only cases** • **OT is ordered with another qualifying rehab therapy service that establishes program eligibility**	
§484.65(a)-(d)	**Modified the requirements at 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**	**Ends with the PHE**	**5/11/2023**
§484.58(a)	**Waives the requirements to provide detailed information regarding discharge planning, to patients and their caregivers, or the patient's representative in selecting a post-acute care provider by using and sharing data that includes, but is not limited to, (another) home health agency (HHA), skilled nursing facility (SNF), inpatient rehabilitation facility (IRF), and long-term care hospital (LTCH) quality measures and resource use measures.**	**Ends with the PHE**	**5/11/2023**
§484.110(e)	**Extended the deadline for completion of the requirement that HHAs to provide a patient a copy of their medical record at no cost during the next visit or within four business days (when requested by the patient) to ten business days.**	**Ends with the PHE**	**5/11/2023**
§484.22	**Emergency Preparedness (EP) regulations require the provider/supplier to conduct exercises to test their EP plan to ensure that it works and that 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 that 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.** **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.**	**5/11/2023**

HOSPICE LEGISLATIVE			
Statute or Regulation	**Waiver/Flexibility**	**Status**	**Compliance Date**
1814(a)(7)(D)(i)	**Face-to-face encounters can be conducted via telehealth.**	**Omnibus Budget Appropriations Bills for FY2023 extended the originating site waiver through December 31, 2024, allowing the F2F to be completed utilizing two-way audio and video telehealth.**	**12/31/2024**
HOSPICE REGULATORY			
Statute or Regulation	**Waiver/Flexiblity**	**Status**	**Compliance Date**
§418.204(d)	**Temporary regulation was added at §418.204 that specifies that hospices may provide services via a telecommunications system if it is feasible and appropriate to do so to ensure that Medicare patients can continue receiving services that are reasonable and necessary for the palliation and management of a patients' terminal illness and related conditions.** **The use of such technology in furnishing services must be included on the plan of care, meet the requirements at § 418.56, and must be tied to the patient-specific needs as identified in the comprehensive assessment and the plan of care must include a description of how the use of such technology will help to achieve the goals outlined on the plan of care.**	**Temporary regulation ends with the end of the PHE.** **CMS stated the following in the National Office Hours Call on the Ending of the COVID-19 Public Health Emergency on 4/25/2023:** **The regulatory flexibility at 42 CFR 418.204 is explicitly for the provision of routine home care services during the COVID-19 PHE. After the end of the COVID-19 PHE, the expectation is that routine home care hospice services will be provided in-person. There is nothing precluding hospices from using technology to have follow-up communication with the patient and the family as long as the use of such technology does not replace an in-person visit. Additionally, such follow up contact should be documented in the hospice medical record similar to the way telephone calls would be documented and in accordance with the standards of practice and the hospice's own policies and procedures. We cannot enumerate all of the scenarios in which there could be such contact via technology because each patient, family, and situation is different. Decisions about when such follow-up contact using technology is made need to be based on the needs of**	**5/11/2023**

		the patient and family and the hospice's own policies and procedures.	
§418.54(d)	**Timeframes for updating the comprehensive assessment may be extended from 15 to 21 days**	**Ends with the PHE**	**5/11/2023**
§418.76(h)	**Waives the requirement that a nurse conduct an onsite supervisory visit every two weeks to assess the quality of care and services furnished by the aide.**	**NAHC is awaiting further clarification from CMS. It is anticipated that the waiver will end with the PHE.**	
§418.76(h)(2)	**Waives the requirement that a registered nurse make an annual onsite supervisory visit (direct observation) for each aide that provides services on behalf of the agency.** **CMS postponed completion of these visits.**	**Ends with the PHE** **All postponed onsite assessments must be completed no later than 60 days after the expiration of the PHE.** **In the QSO-23-13-ALL memo CMS stated it will utilize its enforcement discretion on a case-by-case basis for circumstances beyond the provider's/supplier's control for this 60 day timeframe. This memo provides additional clarification for surveyors based on information previously issued via the CMS press release referencing the provider-specific fact sheets.**	**5/11/2023** **7/10/2023**
§418.76(c)(1)	**Waives the requirement that a hospice aide must be evaluated by observing an aide's performance of certain tasks with a patient. This modification allowed hospices to utilize pseudo patients, such as a person trained to participate in a role-play situation or a computer-based mannequin device, instead of actual patients, in the competency testing of hospice aides for those tasks that must be observed being performed on a patient.**	**As part of the FY 2022 Hospice Final Rule (CMS-1754-F), CMS finalized the hospice aide requirements to allow the use of the pseudo-patient for conducting hospice aide competency evaluations.** **CMS also finalized the hospice aide supervision requirements to address situations when deficient practice is noted, and remediation is needed related to both deficient and related skills, in accordance with §418.76(c).**	**N/A**
§418.76(d)	**Waive the 12-hour annual in-service training requirement for hospice aides**	**Flexibility ends with the PHE** **Postponed training must be completed by the end of the calendar year that the PHE ends.**	**5/11/2023** **12/31/2023**

		(Surveyor determinations of a provider's/supplier's compliance with the following requirements will begin at the end of the calendar year that the PHE ends which is December 31, 2023.)	
§418.100(g)(3)	**Waive the requirement for hospices to annually assess the skills and competence of all staff furnishing care and provide in-service training and education programs where required.** **CMS postponed completion of these assessments.**	**Ends with the PHE.** **All postponed assessments must be completed by the end of the first full quarter after the expiration of the PHE. (Surveyor determinations of a provider's compliance for the following requirement will begin at the end of the first full quarter after the conclusion of the PHE on September 30, 2023.)**	**5/11/2023** **09/30/2023**
§418.72	**Waive the requirement to provide certain noncore hospice services during the national emergency, including physical therapy, occupational therapy, and speech-language pathology**	**Ends with the PHE**	**5/11/2023**
§418.78(e)	**Waive the 5% level of activity requirement for hospice volunteers**	**Waiver ends with the PHE.** **Per the Hospice Fact Sheet the flexibility is currently set to return to pre-PHE requirements at the end of the calendar year that the PHE ends.** **Per the QSO 23-13-ALL memo CMS stated: It is anticipated that hospice volunteer availability and use may still be reduced.**	**5/11/2023** **12/31/2023**
§418.58	**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**	**Ends with the PHE**	**5/11/2023**
§418.113	**Emergency Preparedness (EP) regulations require the provider/supplier to conduct exercises to test their EP plan to ensure that it works and that 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 that the provider/supplier perform testing**	**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**	**5/11/2023**

	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.	**Outpatient Providers (including freestanding hospices): 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.**	
HOSPICE INPATIENT UNITS			
Statute or Regulation	**Waiver/Flexibility**	**Status**	**Compliance Date**
§418.110(d)	**Alcohol-based Hand-Rub (ABHR) Dispensers: waives the prescriptive requirements for the placement of alcohol-based hand rub (ABHR) dispensers for use by staff and others.** **ABHRs contain ethyl alcohol, which is considered a flammable liquid, and there are restrictions on the storage and location of the containers. This includes restricting access by certain patient/resident population to prevent accidental ingestion. Due to the increased fire risk for bulk containers (over five gallons), those will still need to be stored in a protected hazardous materials area. CMS will end this waiver at the conclusion of the PHE.**	**Ends with the PHE**	**12/31/2023**
§418.110(d)(4)	**Waived some requirements of 2012 LSC, sections 18/19.3.2.6 Facilities should continue to protect ABHR dispensers against inappropriate use as required by 42 CFR §418.110(d)(4) for inpatient hospice**	**Ends with the PHE**	**12/31/2023**
§418.110(d)	**Waived some requirements of 2012 LSC, section 18/19.7.1.6 Fire Drills: Due to the inadvisability of quarterly fire drills that move and mass staff together, CMS instead permitted a documented orientation training program related to the current fire plan, which considers current facility conditions.**	**Waivers were terminated on 6-6-2022 per QSO-22-15-NH & NLTC & LSC.**	**6/6/2022**

	The training will instruct employees, including existing, new or temporary employees, on their current duties, life safety procedures, and the fire protection devices in their assigned area.		
§418.110(d)	**Waived some requirements of 2012 LSC, section 18/19.3.3.2 CMS has been waiving requirements that would otherwise not permit temporary walls and barriers between patients.**	**Waivers were terminated on 6-6-2022 per QSO-22-15-NH & NLTC & LSC.**	**6/6/2022**
	Emergency Preparedness (EP) regulations require the provider/supplier to conduct exercises to test their EP plan to ensure that it works and that 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 that 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** **Inpatient Providers and Suppliers (including hospice inpatient units): The provider/supplier must conduct a full-scale exercise within its annual cycle for 2023 and an exercise of choice.**	**5/11/2023**

HOME HEALTH AND HOSPICE			
Statute or Regulation	**Waiver/Flexibility**	**Status**	**Compliance Date**
HIPAA	Office of Civil Rights (OCR) exercised HIPAA enforcement discretion throughout the COVID-19 PHE on the imposition of penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID–19 nationwide public health emergency.	OCR is continuing to support the use of telehealth after the public health emergency by providing a 90-day transition period for health care providers to make any changes to their operations that are needed to provide telehealth in a private and secure manner in compliance with the HIPAA Rules.	08/09/2023

	OCR will not impose penalties for noncompliance with the HIPAA Rules in connection with the good faith provision of telehealth using non-public facing audio or video communication products during the COVID–19 nationwide public health emergency. This exercise of discretion applies to telehealth provided for any reason, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID–19.		
HIPAA	OCR will exercise its enforcement discretion and will not impose potential penalties for violations of certain provisions of the HIPAA Privacy Rule against covered health care providers or their business associates for uses and disclosures of protected health information by business associates for public health and health oversight activities during the COVID–19 nationwide public health emergency.	Ends with the PHE	5/11/2023
Appeals	Allows Medicare Administrative Contractors (MACs) and Qualified Independent Contractors (QICs) in the Fee For Service program to allow extension to file an appeal Allows Part C and Part D Independent Review Entity (IRE) to allow extensions to file an appeal if there is good cause for the late filing. Allows Part D IRE to allow extensions to file a request for reconsideration.	When the PHE ends, these flexibilities will continue to apply consistent with existing authority and requests for appeals must meet the existing regulatory requirements.	
Medicaid & CHIP	States and territories can request approval that certain statutes and implementing regulations be waived by CMS	Check with your state for status	
State Licensure	Allows licensed physicians and other practitioners to bill Medicare for services provided outside of their state of enrollment.	CMS has determined that when the PHE ends, CMS regulations will continue to allow for a total deferral to state law. Thus, there is no CMS-based requirement that a provider must be licensed in its state of enrollment.	N/A

Cost Report	Allowed additional time to file the cost report	Providers that continue to experience the impacts of the PHE and require additional time to file their cost report may submit a request to their MAC in accordance with 42 CFR 413.24 (f)(2)(ii). The MAC has the authority to grant up to a 60-day extension of the due date for filing a cost report if the provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as the PHE.	N/A

RESOURCES:

COVID-19 Emergency Declaration Blanket Waivers & Flexibilities for Health Care Providers
Home Health Fact Sheet
Hospice Fact Sheet
QSO-23-13-ALL
Code of Federal Regulations