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POST-ACUTE EMERGENCY PREPAREDNESS: DO YOU QUALIFY FOR A TESTING AND TRAINING EXEMPTION?

On September 28, 2020, the Quality, Safety & Oversight Group at the Centers for Medicare & Medicaid Services ("CMS") issued a memorandum entitled "Guidance related to the Emergency Preparedness Testing Exercise Requirements- Coronavirus Disease 2019 (COVID-19)" ("QSO Memo") that confirms that certain testing and training exemptions are available based on activation of emergency plans and the declared public health emergency. A future release of the State Operations Manual, Appendix Z will update the CMS guidance from the QSO Memo.

For this article, "nursing homes" refers to skilled nursing facilities (often known as "SNFs") for Medicare and nursing facilities (often known as "NFs") for Medicaid.

2019 FINAL RULE

Previously, on September 30, 2019, CMS issued the "Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Fire Safety Requirements for Certain Dialysis Facilities; Hospital and Critical Access Hospital (CAH) Changes To Promote Innovation, Flexibility, and Improvement in Patient Care" final rule which revised the requirements for emergency preparedness (the "Final Rule").

Revisions in the Final Rule included:

- Removal the requirements for nursing homes to document efforts to contact local, tribal, regional, state and federal emergency preparedness officials, and for nursing homes to document their participation in collaborative and cooperative planning efforts.
- Revision of cycles for review and updates requirements to the emergency preparedness program. Nursing homes are required to review their emergency program annually. All other providers and suppliers are required to review their emergency program biennially.
- Revised training program requirements, specifically, that nursing homes develop and maintain a training program based on the provider's emergency plan annually by requiring nursing homes to provide training annually. All other providers are required to train every two years. after facilities conduct initial training for their emergency program.

The Final Rule allows for an exemption to the testing requirements during or after an actual emergency. If a provider experiences an actual natural or man-made emergency that requires activation of their emergency plan, inpatient and outpatient providers will be exempt from their next required full-scale community-based exercise or individual, facility-based functional exercise following the onset of the actual event.

TESTING EXERCISES

CMS defines the testing exercises required under the emergency preparedness regulations in two categories: (1) full-scale, functional and individual facility-based exercises as the "required" exercises; and, (2) mock disaster drills, table-top exercises or workshops, as the "exercises of choice, which could also include the full-scale functional, and individual facility-based exercises.

CMS further defines the exercises, which include:

- Full-Scale Exercise: A full-scale exercise is an operations-based exercise that typically involves multiple agencies, jurisdictions and disciplines performing functional (e.g., joint field office, emergency operation centers, etc.) and integration of operational elements involved in the response to a disaster event.
- Functional Exercise: These are typically focused on exercising plans, policies, procedures, and staff members involved in management, direction, command and control functions.
- Mock Disaster Drill: These drills are a coordinated, supervised activity usually employed to validate a specific function or capability in a

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single agency or organization. Drills are commonly used to provide training on new equipment, validate procedures or practice and maintain current skills.

- Table-top Exercise: A tabletop exercise is a discussion-based exercise that involves senior staff, elected or appointed officials and other key decision-making personnel in a group discussion centered on a hypothetical scenario.
- Workshop: A workshop, for the purposes of this guidance, is a planning meeting that establishes the strategy and structure for an exercise.

CHANGES SPECIFIC TO TESTING EXERCISE REQUIREMENTS – INPATIENT PROVIDERS

For providers of inpatient services, the testing exercises were expanded to include workshops as an exercise of choice. These providers, which include including nursing homes, inpatient hospice, are still required to conduct two emergency preparedness testing exercises annually.

CHANGES SPECIFIC TO TESTING EXERCISE REQUIREMENTS – OUTPATIENT PROVIDERS

For outpatient providers, which include PACE programs and home health agencies, they must continue to test their program annually, by participating in a community-based full-scale exercise (if available) or conduct an individual facility-based functional exercise every other year. In the opposite years of the full-scale exercise, the outpatient providers are required to conduct a testing exercise of their choice, which may include either a community-based full-scale exercise, an individual functional exercise or a tabletop exercise or workshop that includes a group discussion led by a facilitator.

EXEMPTION BASED ON ACTUAL NATURAL OR MAN-MADE EMERGENCY

The emergency preparedness regulations allow an exemption for providers or suppliers that experience a natural or man-made event requiring activation of their emergency plan.

On Friday, March 13, 2020, the President declared a national emergency (“PHE”) due to COVID-19. As a result, many nursing homes and post-acute providers have activated their emergency plans in order to address surge and coordinate response activities.

The QSO Memo confirms that nursing homes and other post-acute providers that activate their emergency plans are exempt from the next required full-scale community-based or individual, facility-based functional exercise. Nursing homes and other post-acute providers must be able to demonstrate, through written documentation, that they activated their program due to the emergency.

CMS requires facilities to conduct an exercise of choice annually for inpatient providers (like nursing homes) and every two years for outpatient providers (like PACE programs). For the “exercise of choice,” facilities must conduct one of the testing exercises: (1) another full-scale exercise; (2) individual facility-based functional exercise; (3) mock disaster drill; or (4) a tabletop exercise or workshop.

Nursing homes and other post-acute providers may need to conduct an exercise of choice following the current PHE if they were required to conduct such an exercise this year and did not already do so. Facilities may choose to conduct a table-top exercise which could assess the facility’s response to COVID-19 and may include but is not limited to:

- Discussions surrounding the availability of personal protective equipment;
- Isolation and quarantine areas for screening patients; and
- Any other activities implemented during the activation of the emergency plan.

The emergency preparedness provisions require that facilities assess and update their emergency program as needed.

KEY TAKEAWAYS

- Nursing homes and other post-acute providers that activate their emergency plans are exempt from the next required full-scale community-based or individual, facility-based functional exercise.
- Nursing homes and other post-acute providers must continue to analyze their response to and maintain documentation of all drills, tabletop exercises and activation of their emergency plan.
- Nursing homes and other post-acute providers should prepare documentation showing any revisions to the provider's emergency plan as

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a result of the after-action review process.

If you have questions or would like additional information about this topic, please contact:

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