



GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

519 Eighth Avenue, 16th Floor, New York, NY, 10018
Phone: 212-643-2828 Fax: 212-643-2956 www.gnyhcfa.org



Memo 20-27

To: Administrator, DNS, Medical Director, Infection Preventionist and QA Committee

From: Mary Gracey-White RN, Director of Regulatory Compliance

Date: August 7, 2020

Re: PBJ Data Submission, Executive Orders and 1135 Updates

As outlined in GNYHCFA Memo 20- 22 the CMS waiver for PBJ staffing data submission has ended. Facilities are required to report Quarter 2 (April-June 2020) staffing data by August 14, 2020. We recommend you do not wait until August 14th to allow time for validation of your staffing reports as well as allowing for any technical issues.

In addition, we are providing the most recent updates to CMS 1135 regulatory waivers as well as updates to NYS Executive Orders.

EXECUTIVE ORDER 202.55 – in effect through September 4, 2020

The Governor has extended Executive Orders involving Nursing Home Testing.

- Executive Order 202.30 requires all personnel in Nursing Homes and adult Care Facilities to be tested twice a week. Positive tests results must be reported to the Department by 5:00PM the day following receipt of the result. Additionally, Article 28 general hospitals must perform a COVID-19 diagnostic test and obtain a negative result prior to discharging a patient to a nursing home.
- Executive Order 202.40 amended the testing mandate. Facilities located in regions who have entered the re-opening Phase 2, may test personnel once a week.
- The EO is in effect until September 4, 2020. You can find the executive order attached.

Additionally, the Executive Order extends the below:

- [EO #202.1](#) has been extended, permitting physicians and certified nurse practitioners to issue non-patient specific regimen to nurses or individuals suspected of suffering from COVID-19



GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

infection, for purposes of testing, or to perform such tasks that are necessary to provide care for individuals diagnosed or suspected of suffering from COVID-19 infection

- **EO #202:** has been extended, permitting Temporary Suspension and Modification of Education law to permit unlicensed individuals, upon completion of training deemed adequate by the Commissioner of Health, to collect throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing; and to the extent necessary to permit non-nursing staff, upon completion of training deemed adequate by the Commissioner of Health, to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a **licensed or registered nurse**.
 - Temporary Suspension and Modification of Education law and Regulations to permit **individuals who meet the federal requirements for high complexity testing** to perform testing for the detection of SARS-CoV-2 in specimens collected from individuals suspected of suffering from a COVID-19 infection.
 - Temporary Suspension and Modification of Education law and Regulations to permit **physicians** and certified **nurse practitioners** to issue a non-patient specific regimen to nurses or any such other persons authorized by law or by executive order to collect throat or nasopharyngeal swab specimens from individuals suspected of suffering from a COVID-19 infection, for purposes of testing, or to perform such other tasks as may be necessary to provide care for individuals diagnosed or suspected of suffering from a COVID-19 infection.

Executive Order 202.55.1 - – in effect through September 4, 2020

The Governor has extended Executive Orders 202.48, EO 202.49 and 202.50, allowing an assortment of health care professionals that are licensed in another state or not registered in New York, so long as they are in good standing, to practice in New York.

- Specifically, 202.50 calls for the Temporary Suspension and Modification of Education law and Regulations to allow **physicians** licensed and in current good standing in any state in the United States to practice medicine in New York State without civil or criminal penalty related to lack of licensure.
 - Temporary Suspension and Modification of Education law and Regulations to allow **physicians** licensed and in current good standing in New York State but not registered in New York State to practice in New York State without civil or criminal penalty related to lack of registration.
 - Temporary Suspension and Modification of Education law and Regulations to allow **registered nurses, licensed practical nurses, and nurse practitioners** licensed and in current good standing in any state in the United States to practice in New York State without civil or criminal penalty related to lack of licensure.
 - Temporary Suspension and Modification of Education law and Regulations to allow **physician assistants** licensed and in current good standing in any state in the United States to practice in New York State without civil or criminal penalty related to lack of licensure.



1135 WAIVERS

The following information provides updates to the 1135 waivers, specifically for skilled nursing facilities. All information was found through open source research by Centers For Medicare & Medicaid Services (CMS) found [here](#).

COVID-19 Emergency Declaration Blanket Waivers in Place:

3-Day Prior Hospitalization: CMS is waiving the requirement for a 3-day prior hospitalization for coverage of a SNF stay which provides temporary emergency coverage of SNF services without a qualifying hospital stay, for those people who experience dislocations, or are otherwise affected by COVID-19.

Reporting Minimum Data Set: CMS is waiving the requirement to provide relief to SNFs on the timeframe requirements for Minimum Data Set assessments and transmission.

Waive Pre-Admission Screening and Annual Resident Review (PASARR): CMS is waiving the requirement to allow nursing homes to admit new residents who have not received Level 1 or Level 2 Preadmission Screening. Level 1 assessments may be performed post-admission. On or before the 30th day of admission, new patients admitted to nursing homes with a mental illness (MI) or intellectual disability (ID) should be referred promptly by the nursing home to State PASARR program for Level 2 Resident Review.

Physical Environment:

- Provided that the state has approved the location as one that sufficiently addresses safety and comfort for patients and staff, CMS is waiving requirements to allow for a non-SNF building to be temporarily certified and available for use by a SNF in the event there are needs for isolation processes for COVID-19 positive residents.
- CMS will waive certain conditions of participation and certification requirements for opening a NF if the state determines there is a need to quickly stand up a temporary COVID-19 isolation and treatment location.
- CMS is waiving requirements to temporarily allow for rooms in a long-term care facility not normally used as a resident's room, to be used to accommodate beds and residents for resident care in emergencies and situations needed to help with surge capacity. As long as it is not inconsistent with a state's emergency preparedness or pandemic plan, or as directed by the local or state health department.

Resident Groups: CMS is waiving the requirement to ensure residents can participate in-person in resident groups. This waiver would only permit the facility to restrict in-person meetings during the national emergency given the recommendations of social distancing and limiting gatherings of more than ten people.



GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

Training and Certification of Nurse Aides: CMS is waiving the requirements at 42 CFR 483.35(d) (with the exception of 42 CFR 483.35(d)(1)(i)), which require that a SNF and NF may not employ anyone for longer than four months unless they met the training and certification requirements under § 483.35(d).

Physician Visits in Skilled Nursing Facilities/Nursing Facilities: CMS is waiving the requirement that physicians and non-physician practitioners to perform in- person visits for nursing home residents and allow visits to be conducted, as appropriate, via telehealth options.

Resident Roommates and Grouping: CMS is waiving the requirements solely for the purposes of grouping or cohorting residents with respiratory illness symptoms and/or residents with a confirmed diagnosis of COVID-19 and separating them from residents who are asymptomatic or tested negative for COVID-19. This action waives a facility's requirements, under 42 CFR 483.10, to provide for a resident to share a room with his or her roommate of choice in certain circumstances, to provide notice and rationale for changing a resident's room, and to provide for a resident's refusal a transfer to another room in the facility.

Resident Transfer and Discharge: CMS is waiving requirement to allow a long-term care (LTC) facility to transfer or discharge residents to another LTC facility solely for the following cohorting purposes:

1. Transferring residents with symptoms of a respiratory infection or confirmed diagnosis of COVID-19 to another facility that agrees to accept each specific resident, and is dedicated to the care of such residents;
2. Transferring residents without symptoms of a respiratory infection or confirmed to not have COVID-19 to another facility that agrees to accept each specific resident, and is dedicated to the care of such residents to prevent them from acquiring COVID-19; or
3. Transferring residents without symptoms of a respiratory infection to another facility that agrees to accept each specific resident to observe for any signs or symptoms of a respiratory infection over 14 days.

Exceptions: These requirements are **only** waived in cases where the transferring facility receives confirmation that the receiving facility agrees to accept the resident to be transferred or discharged. Confirmation may be in writing or verbal. If verbal, the transferring facility needs to document the date, time, and person that the receiving facility communicated agreement.

Physician Services: CMS is providing relief to long-term care facilities related to provision of physician services through the following actions:

- *Physician Delegation of Tasks in SNFs*
- *Physician Visits*
- *Note to Families*

Quality Assurance and Performance Improvement (QAPI): CMS is modifying certain requirements, which require long-term care facilities to develop, implement, evaluate, and maintain an effective, comprehensive, data-driven QAPI program. Specifically, CMS is modifying §483.75(b)–(d) and (e)(3) to



the extent necessary to narrow the scope of the QAPI program to focus on adverse events and infection control.

In-Service Training: CMS is modifying the nurse aide training requirements, which requires the nursing assistant to receive at least 12 hours of in-service training annually. In accordance with section 1135(b)(5) of the Act, CMS is postponing the deadline for completing this requirement throughout the COVID-19 PHE until the end of the first full quarter after the declaration of the PHE concludes.

Detailed Information Sharing for Discharge Planning for Long-Term Care Facilities: CMS is waiving the discharge planning requirement, which requires LTC facilities to assist residents and their representatives in selecting a post-acute care provider using data, such as standardized patient assessment data, quality measures and resource use. CMS is maintaining all other discharge planning requirements.

Clinical Records: CMS is modifying the requirement which requires long-term care (LTC) facilities to provide a resident a copy of their records within two working days (when requested by the resident). Specifically, CMS is modifying the timeframe requirements to allow LTC facilities ten working days to provide a resident's record rather than two working days.

Paid Feeding Assistants: CMS is modifying the requirement regarding required training of paid feeding assistants. Specifically, CMS is modifying the minimum timeframe requirements in these sections, which require this training to be a minimum of 8 hours. CMS is modifying to allow that the training can be a minimum of 1 hour in length.