Health Law Daily Wrap Up, CONDITIONS OF PARTICIPATION—CMS
LETTERS: Exemption available for emergency preparedness plan requirement, (Sept. 29, 2020)

Health Law Daily Wrap Up

Click to open document in a browser

By Cathleen Calhoun, J.D.

What can be skipped due to the COVID-19 public health emergency and what facilities qualify for the exemption?

CMS has issued guidance for surveyors, providers, and suppliers, on meeting the emergency preparedness testing requirements in light of the COVID-19 Public Health Emergency (PHE), including information on an exemption for one of the exercise requirements. The guidance also provides detailed scenarios that outline the exact emergency preparedness exercise that may be exempted based on the previous test done by a facility (CMS Letter, QSO-20-41-ALL, September 28, 2020).

**Rule.** Medicare and Medicaid providers are required to plan for disasters and emergencies by developing plans and coordinating with federal, state tribal, regional, and local emergency preparedness systems. CMS emergency preparedness requirements include risk assessment, planning, developing policies and procedures, creating a communication plan, and training and testing. 17 types of providers must meet the CMS emergency preparedness requirements. Last year, CMS published a Final Rule (84 FR 51732, September 30, 2019) that revised the requirements. CMS’ revisions included:

- removing the requirements for facilities to document efforts to contact local, tribal, regional, State, and Federal emergency preparedness officials, and for facilities to document their participation in collaborative and cooperative planning efforts
- revising cycles for review and updates requirements to the emergency preparedness program. Specifically, all applicable providers and suppliers review their emergency program biennially, except for Long Term Care (LTC) facilities, that still must review their emergency program annually
- revising training program requirements, specifically, that facilities develop and keep a training program based on the facility’s emergency plan annually by requiring facilities to provide training biennially (every 2 years) after facilities conduct initial training for their emergency program, except for LTC facilities, that are still required to supply training annually. Added training is required, however, when an emergency plan is significantly updated.

**Exemption.** 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 March 13, 2020, a national emergency was declared due to COVID-19, resulting in many providers and suppliers activating their emergency plan. When a facility activates its emergency plan to escalate and coordinate response activities, those facilities are exempt from the next required full-scale community-based or individual, facility-based functional exercise. As a result, facilities that activated their emergency plan after the COVID-19 national emergency declaration are exempt from the next required emergency preparedness exercise, but they must be able to show with written documentation that the plan was activated, according to CMS.

ReportsLetters: CMSLetters CMSNews CoPNews Covid19