

# CMS Rolls Back COVID-19 Related Waivers – What that Means for Nursing Aides

## Labor & Employment Law Update

By Suzannah Wilson Overholt on June 3, 2022

Early in the COVID-19 pandemic, CMS enacted several temporary waivers in an effort to give health care providers flexibility to respond to the pandemic. On April 7, CMS announced that it would be phasing out some of these waivers and restoring minimum regulatory requirements to protect residents' health and safety. CMS based its decision on increased vaccination rates for nursing home residents and staff, and nursing homes' improved ability to respond to COVID-19 outbreaks coupled with recent long-term care (LTC) survey findings that "revealed significant concerns with resident care that are unrelated to infection control (e.g., abuse, weight-loss, depression, pressure ulcers, etc.)." As a result, in addition to other requirements, the standards for the training and certification of nurse aides and paid feeding assistants in skilled nursing facilities/nursing facilities (SNFs/NFs) will be restored on June 7, 2022.

CMS had waived the requirement that a SNF or NF not employ anyone as a nursing aide for longer than four months unless they met the training and certification requirements under 42 CFR §483.35(d). The elimination of that waiver effective June 7 means that all nurse aides, including those hired while the waiver was in effect, must become a certified nurse aide within four months, or no later than October 7, 2022, which involves completing 75 hours of training and passing a state certification test.

If a nurse aide is unable to obtain the required certification by October 7, the deadline may be waived if the facility or nurse aide has documentation that demonstrates their attempts to complete the training and testing within the applicable time period. In such circumstances, the aide may be allowed to continue to work while continuing to attempt to become certified as soon as possible. However, the general COVID waiver of this requirement is terminated for all other situations. SNFs/NFs are encouraged to inform their state officials of issues related to obtaining certifications by the deadline. CMS is also restoring the in-service training requirement of a minimum of 12 hours per year, as set forth at 42 CFR § 483.95.

In addition to the waiver regarding nursing aides, CMS is also eliminating the waiver of training requirements for paid feeding assistants. As a result, such individuals must undergo a minimum of eight (8) hours of state-approved

training in certain specified areas, as noted in 42 CFR § 483.160.

Other regulations being restored by CMS include requirements for physician involvement at SNFs/NFs (i.e. prohibiting delegation of certain tasks and requiring physicians to perform visits in person rather than via telehealth), certification of SNF and NF temporary facilities, testing and maintenance of medical equipment, having outside windows or doors in every sleeping room, conducting fire drills, and allowing temporary construction. (A complete list of the regulations that CMS is restoring can be found on the CMS website.) .

Operators of SNFs and NFs should consult with counsel if they have questions about how to comply with any of the statutes and regulations affecting their campuses.

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