

DIVISION OF PUBLIC HEALTH (DPH)
AND
DELAWARE EMERGENCY MANAGEMENT AGENCY (DEMA) ORDERS AND WAIVERS
AND
CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS) BLANKET WAIVERS
LONG TERM CARE FACILITIES

GENERAL

- Out of state health care providers, including physicians, pharmacists, respiratory therapists, physician assistants, paramedics, emergency medical technicians, practical nurses, professional nurses, advanced practice registered nurses, and nursing assistants with an active license or certification in good standing in any United States jurisdiction are hereby authorized to provide healthcare services in Delaware.
- All physicians, pharmacists, respiratory therapists, physician assistants, paramedics, emergency medical technicians, practical nurses, professional nurses, advanced practice registered nurses, and nursing assistants who have held an active Delaware license or certification within the last five years, which is now inactive, expired, or lapsed, may provide healthcare services in Delaware, so long as that license was active and in good standing for the duration of the five-year period prior to the date it went inactive, expired or lapsed.
- All out of state mental health providers with an active license in good standing in any United States jurisdiction, including psychologists, mental health counselors, clinical social workers, chemical dependency counselors, and marriage and family therapists are hereby authorized to provide in-person and telemedicine mental health services in Delaware.
- All psychologists, mental health counselors, clinical social workers, chemical dependency counselors, and marriage and family therapists who have held an active Delaware license within the last five years, which is now inactive, expired, or lapsed, may provide mental healthcare services in Delaware, so long as that license was active and in good standing for the duration of the five-year period prior to the date it went inactive, expired or lapsed.
- Students currently enrolled in a Delaware Board of Nursing approved nursing school are hereby authorized to conduct medical examinations and tests, and perform administrative duties, so long as any such student is supervised by a nurse, physician assistant, advanced practice registered nurse, or physician with an active Delaware license.

- Students currently seeking a degree that will meet the requirements of 24 C. § 1720(b)(2) when the degree is conferred, are hereby authorized to conduct medical examinations and tests, and perform administrative duties, so long as any such student is supervised by a physician with an active Delaware license.
- Students currently enrolled in an approved Certified Nursing Assistant certification program are hereby authorized to provide direct patient care, so long as any such student has complete at least 75 clock hours of training and is directly supervised by a certified nursing assistant who holds an active Delaware certification. Any such student who has completed 75 clock hours of training in a certified nursing assistant program is authorized to provide non-direct patient care under the general supervision of a certified nursing assistant who holds an active Delaware certification.
- Any graduate of an approved certified nursing assistant program, who is not yet otherwise certified, is hereby authorized to act as a certified nursing assistant so long as any such person is supervised by a licensed practical nurse, registered nurse, advanced practice registered nurse or physician with an active Delaware license.
- An individual that has completed, and received a certificate of completion from, the 8-hour ACHA/NCAL nurse aide training course is hereby authorized to provide direct patient care, so long as any such individual is directly supervised by a certified nursing assistant who holds an active Delaware certification. Any such individual is authorized to provide non-direct patient care under the general supervision of a certified nursing assistant who holds an active Delaware certification.
- Students currently enrolled in an educational program in occupational therapy or occupational therapy assistant accredited by the Accreditation Council for Occupational Therapy Education are hereby authorized to practice so long as any such student is supervised by an occupational therapist with an active Delaware license.
- Graduates of an educational program in occupational therapy or occupational therapy assistant accredited by the Accreditation Council for Occupational Therapy Education, who are not yet otherwise licensed, are hereby authorized to practice in accordance with provisions, so long as such graduates are supervised by an occupational therapist with an active Delaware license.
- Students currently enrolled in a school approved for the educational preparation of physical therapists or physical therapist assistants by the appropriate accrediting agency recognized by the Council on Post-Secondary Accreditation or the United States Commission of

Education are hereby authorized to practice in accordance with the provisions, so long as students are supervised by a physical therapist with an active Delaware license.

- Graduates of a school approved for the educational preparation of physical therapists or physical therapist assistants by the appropriate accrediting agency recognized by the Council on Post-Secondary Accreditation or the United States Commission of Education, who are not yet otherwise licensed, are hereby authorized to practice in accordance with the provisions, so long as such graduates are supervised by a physical therapist with an active Delaware license.
- Speech language pathology students currently enrolled in a master's degree program or its equivalent, from an accredited college or university with major emphasis in speech-language pathology, communication disorders or speech-language and hearing science is hereby authorized to practice in accordance with the provisions so long as such students are supervised by a speech language pathologist with an active Delaware license.
- Any graduate of a master's degree program or its equivalent, from an accredited college or university with major emphasis in speech-language pathology, communication disorders or speech-language and hearing science, who is not yet otherwise licensed, is hereby authorized to practice in accordance with provisions so long as any such graduate is supervised by a speech language pathologist with an active Delaware license.
- Any out-of-state health care provider, inactive health care provider, or qualified person appointed pursuant to this order shall be considered a public employee under §§4001- 4002 of Title 10.

SNFs/ICFs

- The requirement for a 3-day prior hospitalization for coverage of a SNF stay is waived, 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.
- For certain beneficiaries who recently exhausted their SNF benefits, it authorizes renewed SNF coverage without first having to start a new benefit period (this waiver will apply only for those beneficiaries who have been delayed or prevented by the emergency itself from commencing or completing the process of ending their current benefit period and renewing their SNF benefits that would have occurred under normal circumstances).

- 42 CFR 483.20 is waived to provide relief to SNFs on the timeframe requirements for Minimum Data Set assessments and transmission.
- 42 CFR 483.70(q) is waived to provide relief to long-term care facilities on the requirements for submitting staffing data through the Payroll-Based Journal system.
- 42 CFR 483.20(k) is waived allowing states and nursing homes to suspend Pre-Admission Screening and Annual Resident Review (PASARR) for new residents for 30 days. After 30 days, new patients admitted to nursing homes with a mental illness (MI) or intellectual disability (ID) should receive the assessment as soon as resources become available.
- CMS is waiving Physical Environment requirements at 42 CFR 483.90, specifically the following:
 - Provided that the state has approved the location as one that sufficiently addresses safety and comfort for patients and staff, CMS is waiving requirements under § 483.90 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, which may not be feasible in the existing SNF structure to ensure care and services during treatment for COVID-19 are available while protecting other vulnerable adults. CMS believes this will also provide another measure that will free up inpatient care beds at hospitals for the most acute patients while providing beds for those still in need of care. 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 also waiving requirements under 42 CFR 483.90 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. Rooms that may be used for this purpose include activity rooms, meeting/conference rooms, dining rooms, or other rooms, as long as residents can be kept safe, comfortable, and other applicable requirements for participation are met. This can be done so 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.
- CMS is waiving the requirements at 42 CFR 483.10(f)(5), which 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. Refraining from in-person gatherings will help prevent the spread of COVID-19.

- 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). CMS is waiving these requirements to assist in potential staffing shortages seen with the COVID-19 pandemic.
 - **Please note:** To ensure the health and safety of nursing home residents, CMS is not waiving 42 CFR § 483.35(d)(1)(i), which requires facilities to not use any individual working as a nurse aide for more than four months, on a full-time basis, unless that individual is competent to provide nursing and nursing related services. We further note that we are not waiving § 483.35(c), which requires facilities to ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.
- CMS is waiving the requirement in 42 CFR 483.30 for 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.
- CMS is waiving the requirements in 42 CFR 483.10(e) (5), (6), and (7) 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. This aligns with CDC guidance to preferably place residents in locations designed to care for COVID-19 residents, to prevent the transmission of COVID-19 to other residents.
- CMS is waiving requirements in 42 CFR 483.10(c)(5); 483.15(c)(3), (c)(4)(ii), (c)(5)(i) and (iv), (c)(9), and (d); and § 483.21(a)(1)(i), (a)(2)(i), and (b) (2)(i) (with some exceptions) to allow a long term care (LTC) facility to transfer or discharge residents to another LTC facility solely for the following cohorting purposes:
 - 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;
 - 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

- 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.
- In § 483.10, we are only waiving the requirement, under § 483.10(c)(5), that a facility provide advance notification of options relating to the transfer or discharge to another facility. Otherwise, all requirements related to § 483.10 are not waived. Similarly, in § 483.15, we are only waiving the requirement, under § 483.15(c)(3), (c)(4)(ii), (c)(5)(i) and (iv), and (d), for the written notice of transfer or discharge to be provided before the transfer or discharge. This notice must be provided as soon as practicable.
- In § 483.21, we are only waiving the timeframes for certain care planning requirements for residents who are transferred or discharged for the purposes explained above. Receiving facilities should complete the required care plans as soon as practicable, and we expect receiving facilities to review and use the care plans for residents from the transferring facility, and adjust as necessary to protect the health and safety of the residents the apply to.
 - These requirements are also waived when the transferring residents to another facility, such as a COVID-19 isolation and treatment location, with the provision of services “under arrangements,” 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. In these cases, the transferring LTC facility need not issue a formal discharge, as it is still considered the provider and should bill Medicare normally for each day of care. The transferring LTC facility is then responsible for reimbursing the other provider that accepted its resident(s) during the emergency period.
 - If the LTC facility does not intend to provide services under arrangement, the COVID-19 isolation and treatment facility is the responsible entity for Medicare billing purposes. The LTC facility should follow the procedures described in 40.3.4 of the Medicare Claims Processing Manual to submit a discharge bill to Medicare: <https://www.cms.gov/RegulationsandGuidance/Guidance/Manuals/Downloads/clm104c06.pdf>

The COVID-19 isolation and treatment facility should then bill Medicare appropriately for the type of care it is providing for the beneficiary. If the COVID-19 isolation and treatment facility is not yet an enrolled provider, the facility should

enroll through the provider enrollment hotline for the Medicare Administrative Contractor that services their geographic area to establish temporary Medicare billing privileges.

- We remind LTC facilities that they are responsible for ensuring that any transfers (either within a facility, or to another facility) are conducted in a safe and orderly manner, and that each resident's health and safety is protected. We also remind states that under 42 CFR 488.426(a)(1), in an emergency, the State has the authority to transfer Medicaid and Medicare residents to another facility.
- The requirement that the resident assessment include a screening instrument for mental illness, mental retardation, and developmental disabilities to assess if an individual has an active treatment need for one of these conditions is waived in accordance with the blanket waiver offered by CMS.
- Because Delaware is a low risk state, the minimum requirements for pre-employment tuberculosis (TB) testing require all employees to have a base line two step tuberculin skin test (TST) or single Interferon Gamma Release Assay (IGRA or TB blood test) such as QuantiFeron are waived. **One step is still required upon employment.**
- The requirements for trained feeding assistants are waived. Facilities must provide on-site/on-the-job training to individuals to assist residents with eating. The facilities are not required to utilize the approved training program.
 - A Feeding Assistant may provide nutrition/hydration to a resident only under the supervision of a registered nurse or licensed practical nurse who is present in the unit or on the floor where the task is performed and is readily available to provide assistance to the Feeding Assistant when needed.
 - A Feeding Assistant may provide nutrition/hydration only for those residents who have been assessed and approved by the supervisory nurse for such assistance. The resident assessment shall be based on the needs of, and potential risks to, the resident as observed and documented in the resident's written plan of care and the latest comprehensive assessment of the resident's functional capacity.
 - A Feeding Assistant shall not feed residents who are assessed to have complicated feeding problems such as recurrent lung aspirations, difficulty swallowing, feeding tubes, parenteral/IV feedings, chronic coughing or choking.
- The 80 clock hours of orientation for CNAs/NAs hired to work in a facility is waived. **The facility is required to provide orientation to infection control, emergency procedures within the building, and orientation to the residents they are assigned to care for.**

- The requirement that all written or verbal physician orders be signed by the attending physician or prescriber within 10 days is waived.

ALFs

- ALFs may provide treatment for a disease or condition which requires more than contact isolation - specifically COVID + or symptomatic residents. **This waiver pertains only to those residents who are COVID+ or COVID symptomatic. The facility shall provide needed services by appropriate health care professionals and assure that all of the resident's needs will be met.**
- ALFs may continue to provide services to COVID + or symptomatic residents who may be bedridden for more than 14 days due to the virus. **This waiver pertains only to those residents who are COVID+ or COVID symptomatic. The facility shall provide needed services by appropriate health care professionals and assure that all of the resident's needs will be met.**
- Because Delaware is a low risk state, the minimum requirements for pre-employment tuberculosis (TB) testing require all employees to have a base line two step tuberculin skin test (TST) or single Interferon Gamma Release Assay (IGRA or TB blood test) such as QuantiFeron are waived. **One step is still required upon employment.**