April 9, 2020

CMS announced additional waivers and clarifications for health care providers during the COVID-19 Public Health Emergency. These new waivers and clarifications are as follows:

Additional Waivers:

- **Responsibilities of Physicians in Critical Access Hospitals ("CAH"s) (42 C.F.R. § 485.631(b)(2))** – CMS is waiving the requirement for CAHs that a doctor of medicine or osteopathy be physically present to provide medical direction, consultation, and supervision for the services provided in the CAH at § 485.631(b)(2). CMS is retaining the regulatory language in the second part of the requirement at § 485.631(b)(2) that a physician be available "through direct radio or telephone communication, or electronic communication for consultation, assistance with medical emergencies, or patient referral."
- **Rural Health Clinics ("RHC"s) and Federally Qualified Health Centers ("FQHC"s)**
    - Certain Staffing Requirements (42 C.F.R. 491.8(a)(6)): CMS is waiving the requirement in the second sentence of § 491.8(a)(6) that a nurse practitioner ("NP"), physician assistant ("PA"), or certified nurse-midwife be available to furnish patient care services at least fifty percent (50%) of the time the RHC and FQHC operates. CMS is not waiving the first sentence of § 491.8(a)(6) that requires a physician, NP, PA, certified nurse-midwife, clinical social worker, or clinical psychologist to be available to furnish patient care services at all times the clinic or center operates.
    - Physician Supervision of Nurse Practitioners in RHCs and FQHCs (42 C.F.R. 491.8(b)(1)): CMS is modifying the requirement that physicians must provide medical direction for the clinic's or center's health care activities and consultation for, and medical supervision of, the health care staff, only with respect to medical supervision of NPs, and only to the extent permitted by state law. The physician, either in person or through telehealth and other remote communications, continues to be responsible for providing medical direction for the clinic or center's health care activities and consultation for the health care staff, and medical supervision of the remaining health care staff.
- **Physician Services in Long-Term Care Facilities**
    - Physician Delegation of Tasks in Skilled Nursing Facilities ("SNF"s) (42 C.F.R. 483.30(e)(4)): CMS is waiving the requirement in § 483.30(e)(4) that prevents a physician from delegating a task when the regulations specify that the physician must perform it personally. This waiver gives physicians the ability to delegate any tasks to a PA, NP, or clinical nurse specialist who meets the applicable definition in 42 C.F.R. 491.2 or, in the case of a clinical nurse specialist, is licensed as such by the state and is acting within the state's scope of practice laws.
    - Physician Visits (42 C.F.R. 483.30(c)(3)): CMS is waiving the requirement at § 483.30(c)(3) that all required physician visits (not already exempted in § 483.30(c)(4) and (f)) must be made by the physician personally. CMS is modifying this provision to permit physicians to delegate any required physician visit to an NP, PA, or clinical nurse specialist who is not an employee of the facility, who is working in collaboration with a physician, and who is licensed by the state and performing within the state's scope of practice laws.
- **Allow Occupational Therapists ("OT"s) to Perform Initial and Comprehensive Assessment for all Patients (42 C.F.R. 484.55(a)(2) and 484.55(b)(3))** – CMS is waiving the requirement that OTs may only perform the initial and comprehensive assessment if occupational therapy is the service that establishes eligibility for the patient to be receiving home health care. The existing

regulations at § 484.55(a) and (b)(2) would continue to apply that OTs and other therapists would not be permitted to perform assessments in nursing only cases.

- **Hospice Aide Training**
    - Hospice Aide Competency Testing Allow Use of Pseudo Patients (42 C.F.R. 418.76(c)(1)): CMS is temporarily modifying the requirement in § 418.76(c)(1) that a hospice aide must be evaluated by observing an aide's performance of certain tasks with a patient. This modification allows hospices to utilize pseudo patients such as a person trained to participate in a role-play situation or a computer-based mannequin device, instead of actual patients, in the competency testing of hospice aides for those tasks that must be observed being performed on a patient.
    - 12-Hour Annual In-Service Training Requirement for Hospice Aides (42 C.F.R. 418.76(d)): CMS is waiving the requirement that hospices must assure that each hospice aide receives twelve (12) hours of in-service training in a twelve (12) month period.

Clarifications:

- **Clarification of CMS's Earlier Waiver of Pre-Admission Screening and Annual Resident Review (PASARR) –** CMS is clarifying its earlier waiver of 42 CFR 483.20(k), which will now permit 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 or intellectual disability should be referred promptly by the nursing home to State PASARR program for Level 2 Resident Review.