What You Need to Know about the End of the PHE

Updated May 9, 2023

What's happening: The federal public health emergency (PHE) that has been in effect since March 14, 2020 for the COVID-19 pandemic will end on May 11, 2023.

- The end of the PHE brings about the end of waivers, protocols, and more issues that impact long term care facilities.

This document highlights key issues and changes Virginia's long term care providers should be aware of on the following topics:

- Medicaid Redeterminations/Terminations (including Virginia-specific information and resource disregard)
- 3-Day Stay and Spell of Illness Waivers
- QSO-23-13-ALL: Guidance for the Expiration of the COVID-19 Public Health Emergency
- CDC and CMS Update COVID-19 Guidance *[Issued May 8, 2023]*
    - Expiration of QSO-20-38-NH (COVID-19 Testing) effective May 11, 2023 and the revision of QSO-20-39-NH (Visitation) effective May 8, 2023
    - Updates to the CDC Interim Infection Prevention and Control recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic
- HHS Announces Expiration of COVID-19 PHE HIPAA Notifications of Enforcement Discretion
- HHS BinaxNOW Program to Continue After PHE Ends
- LTSS Screening Reminders

Medicaid Redeterminations/Terminations

As of April 1, 2023, Virginia Medicaid has begun redetermining eligibility for virtually all Medicaid recipients, on a staggered schedule (referred to as "Medicaid Unwinding").

- Most eligibility-related processes (re-determinations, patient pay adjustments, etc.) were suspended for nearly three years during the COVID pandemic as states were required to maintain Medicaid coverage for all enrollees. As part of legislation passed by Congress in December 2022, the continuous coverage requirement was decoupled from the PHE effective March 31, 2023.

Why it matters: Despite staff turnover in NF and AL business offices, providers need to ensure they have staff members with Medicaid redetermination experience.

- Since redeterminations were not conducted during the PHE, beneficiary information may be out of date (contact information, financial information, etc.).
- If a beneficiary loses Medicaid eligibility, Medicaid payments stop, and beneficiaries have very clear protections in federal law for when these breaks occur despite the loss of Medicaid payments.

It is important for nursing facilities to know:

- Medicaid eligibility lapses result in **no** Medicaid payments.
- Medicaid providers may not bill family members when Medicaid ceases payment.
- Medicaid beneficiaries in nursing homes have specific protections for discharge when Medicaid fails to pay.

AHCA/NCAL has prepared an array of resources on *ahcancalED* to help members manage significant numbers of Medicaid redeterminations

Virginia-specific details: DMAS issued two memos on March 28, 2023 with details about the Medicaid redetermination process.

1. The first memo, *Information on the Eligibility Renewal Process – REVISED*, includes information on how a provider can determine when a Medicaid member is scheduled for their redetermination.
2. The *second memo* is to notify providers about a fraud alert related to eligibility redeterminations.

Of note, as of April 1, 2023, if a provider would like to determine the renewal date for a Medicaid member, the provider can go to the “Member Eligibility Inquiry” page in the Provider Services Solution (PRSS) system.

- The response will show the member’s renewal date as demonstrated by the red box (see image).
- Once the provider has the “case review date”, the provider should review the chart included in the memo to determine when the renewal will occur.

Also of note, on May 2, 2023, CMS approved Virginia’s State Plan Amendment (SPA) to disregard certain resources for various eligibility groups, which would include NF residents, “until the individual’s second Medicaid renewal that follows the end of the COVID-19 public health emergency.”

- This means that when NF residents with accumulated resources beyond the limit are renewed under the unwinding, they will have an additional 12 months to bring resources down to the required level to maintain eligibility.
- VHCA-VCAL will continue to work with DMAS on appropriate guidance and FAQs, but approval of the SPA is the first step toward avoiding a potentially substantial amount of negative eligibility decisions for NF residents. We will share additional information as it becomes available.

QSO-23-13-ALL Ends COVID Staff Vaccine Requirement and Other Protocols

On May 1, 2023, CMS released *QSO-23-13-ALL: Guidance for Expiration of the COVID-19 Public Health Emergency (PHE) on May 11, 2023*.

- The memo, which is applicable to LTC facilities and other provider types, outlines each waiver CMS put into place during COVID-19 and how the end of the PHE will affect those waivers.
- The memo outlines timelines for certain regulatory requirements issued through the PHE.

Reporting to Residents, Representatives, and Families on COVID-19

CMS will exercise enforcement discretion for the requirement to report to residents, their representatives, and families and not expect providers to meet this requirement at this time.

- This pertains to the requirement associated with F885.
- AHCA has advocated for this relief and is clarifying with CMS when this change takes effect.

Staff COVID-19 Vaccine Requirements

CMS will soon end the *interim final rule* issued on November 5, 2021 that required all healthcare staff to be fully vaccinated for COVID-19.

- CMS will provide more information on this at the anticipated end of the PHE.
- CMS urges everyone to stay up to date on their COVID-19 vaccine.

Requirements for Educating about and Offering Residents and Staff the COVID-19 Vaccine

Facilities need to continue to educate and offer residents and staff the COVID-19 vaccine until the interim final rule expires on May 21, 2024.

Requirements for Reporting Related to COVID-19

The requirement to report via NHSN will end on December 31, 2024.

- Reporting requirements will continue until then as a requirement to support national efforts to control the spread of COVID-19.

CMS notes that some reporting, such as COVID-19 vaccine status of residents and staff through NHSN is permanent and will continue indefinitely unless additional regulatory action is taken.

Providers should also be aware that the SNF Quality Reporting Program (QRP) will require reporting of two COVID-19 vaccine related measures:

- COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date (FY24)
- COVID-19 Vaccination Coverage among Healthcare Personnel

Emergency Preparedness

During the PHE, facilities were not required to complete full-scale emergency drills.

- This allowance will expire at the end of the PHE.

3-Day Stay Prior Hospitalization and Spell of Illness

The 3-Day Stay waiver will terminate immediately with the expiration of the COVID-19 PHE on May 11, 2023.

- Beginning May 12, 2023, SNF stays will require a qualifying hospital stay before Medicare coverage.
- With the end of the Spell of Illness waiver, residents will be required to have a 60-day wellness break to begin a new benefit period.
- Read this VHCA-VCAL blog post, *WYNTK: 3-Day Stay Waiver Ending May 11* for more info.

Nurse Aide Training Competency and Evaluation Programs (NATCEP)

All individual waivers granted to states and individual facilities will terminate at the conclusion of the PHE, unless a facility or state has been granted a waiver that expires prior to the end of PHE.

- The Virginia Board of Nursing did **not** apply for a statewide waiver.

Uncertified nurse aides working in a LTC facility covered by a waiver granted to an individual facility will have four months from the date the PHE ends (or from the termination date of the facility's or state's waiver, if earlier) to complete a state approved NATCEP program.

- This **only** applies to those LTC facilities or facilities in states that were granted an extension of the waiver after October 6, 2022.

Preadmission Screening and Annual Resident Review (PASARR)

CMS will begin requiring residents to have a PASARR (completed Level I and, if indicated, Level II) prior to admitting to facilities when the PHE expires.

- This will affect all admissions taking place after May 11, 2023.

Resident Roommates and Grouping

CMS waived the requirements in 42 CFR 483.10(e)(5) and (7) solely for the purposes of grouping or cohorting residents with respiratory illnesses.

- The requirements of this waiver will end with the conclusion of the PHE.

Requirements for COVID-19 Testing

The COVID-19 testing requirements will expire with the end of the PHE.

- However, COVID-19 testing remains important and is a nationally recognized standard to help identify and prevent the spread of COVID-19.
- Facilities should continue to follow CDC guidelines for when to test residents and staff.

Focused Infection Control (FIC) Surveys

Through September 30, 2023 states are still required to survey 20 percent of their nursing homes utilizing FIC surveys.

- Beginning October 1, 2023, states will no longer be required to conduct additional FIC surveys.

CDC and CMS Update COVID-19 Guidance *[Issued May 8, 2023]*

The CDC updated the *Interim Infection Prevention and Control (IPC) Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic* on May 8, 2023.

- The CDC announced in the *May 5, 2023 Morbidity and Mortality Weekly Report* that the COVID community transmission level and COVID-19 Community level metrics will be sunset on May 11, 2023 and be removed from the COVID Data Tracker.

To better align with these updated CDC recommendations, CMS also announced:

- the expiration of *QSO-20-38-NH (COVID-19 Testing)* effective May 11, 2023; and
- the revision of *QSO-20-39-NH (Visitation)* effective May 8, 2023.

Key changes from CDC and CMS include:

1. **Admission testing** is now at the discretion of the facility. Testing for COVID-19 should be conducted by following accepted national standards, such as *CDC recommendations*. Non-compliance related to COVID-19 testing will be cited at F880; F886 will no longer be in effect.

2. **Source control** is recommended:
   - For individuals who have suspected or confirmed SARS-CoV-2 infection or other respiratory infection.
   - For those individuals who had close contact (patients and visitors) or a higher-risk exposure (healthcare personnel) with someone with SARS-CoV-2 infection, for 10 days after their exposure.

3. **CDC also addresses** broader use of source control as described in *CDC's Core IPC Practices* in circumstances including outbreak, facility-wide or based on facility risk assessment and as recommended by public health authorities (e.g., guidance for the community when *COVID-19 hospital admission levels* are high).

Revisions to *QSO-20-39:* *Nursing Home Visitation- COVID-19* provided additional information that during an outbreak investigation, visitation is recommended to occur in the resident's room, and visitors are recommended to wear well-fitting source control (if tolerated) and physically distance if able.

- Visitors are encouraged to stay up to date on their vaccinations.

Consistent with CDC, CMS also noted that facilities should ensure proper visual alerts for visitors to understand IPC best practices and what source control is recommended in the facility, at any time.

- Signage can be obtained from the *CDC website*.

HHS Announces Expiration of COVID-19 PHE HIPAA Notifications of Enforcement Discretion

The HHS Office of Civil Rights (OCR) exercised HIPAA enforcement discretion throughout the PHE to support the health care sector and the public in responding to the pandemic.

- OCR has *announced* that this enforcement discretion will end with the end of the PHE.
- OCR is providing a transition period for health care providers to make any changes to their operations that are needed to provide telehealth in a private and secure manner in compliance with the HIPAA rules.

Why it matters: This policy change will no longer permit providers to use technology such as unsecure iPads, smart phones, or other technology for telehealth services unless they meet the stringent HIPAA patient privacy requirements after August 9, 2023.

The details: OCR is providing a 90-calendar day transition period for covered health care providers to come into compliance with the HIPAA Rules with respect to their provision of telehealth.

- The transition period will be in effect beginning on May 12, 2023, and will expire at 11:59 pm on August 9, 2023.
- OCR will continue to exercise its enforcement discretion and will not impose penalties on covered health care providers for noncompliance with the HIPAA Rules that occurs in connection with the good faith provision of telehealth during the 90-calendar day transition period.

Action for facilities:

- Providers using telehealth services should review and update their policies and procedures, equipment and arrangements related to telehealth services.
    - Specifically, providers should evaluate the equipment and software technology they are using for telehealth services and the arrangements they have with technology vendors, as well as physicians, hospitals, and other providers to update agreements and policies related to telehealth prior to the end of the enforcement discretion transition period on August 9, 2023.

In 2020 and 2021, OCR published four Notifications of Enforcement Discretion in the Federal Register regarding how the Privacy, Security, Breach Notification, and Enforcement Rules ("HIPAA Rules") would be applied to certain violations during the COVID-19 nationwide public health emergency. These Notifications and the effective beginning and end dates are:

- *Enforcement Discretion Regarding COVID-19 Community-Based Testing Sites During the COVID-19 Nationwide Public Health Emergency*: Effective from March 13, 2020, to 11:59 pm May 11, 2023.
- *Enforcement Discretion for Telehealth Remote Communications During the COVID–19 Nationwide Public Health Emergency* ("Telehealth Notification"): Effective from March 17, 2020, to 11:59 pm May 11, 2023.
- *Enforcement Discretion Under HIPAA To Allow Uses and Disclosures of Protected Health Information by Business Associates for Public Health and Health Oversight Activities in Response to COVID-19*: Effective from April 7, 2020, to 11:59 pm May 11, 2023.
- *Enforcement Discretion Regarding Online or Web-Based Scheduling Applications for the Scheduling of Individual Appointments for COVID-19 Vaccination During the COVID-19 Nationwide Public Health Emergency*: Effective from December 11, 2020, to 11:59 pm May 11, 2023.

HHS BinaxNOW Program to Continue After PHE Ends

The US Health and Human Services (HHS) program that distributes Abbott BinaxNOW tests to skilled nursing facilities and assisted living communities will continue after the end of the PHE.

- HHS has not set an end date and is looking for opportunities to continue supporting facilities/communities with testing supplies.

Shift in test type: HHS will be shifting the shipments of point-of-care (POC) Abbott Binax cards to Abbott Binax over-the-counter tests (OTC).

- These two products are nearly identical in use and performance.
- The OTC tests will have at least 60 days until expiration at the time of delivery. The OTCs can be used as point-of-care in sites that have valid CLIA-waivers. Additionally, they can be self-administered by individuals who are capable.

As a reminder, facilities/communities must have an active CLIA waiver to receive shipments. Quantities received are based on CMS estimates of staffing and county positivity rates and allocation quantities.

- Contact *Binax.team@hhs.gov* with any questions about the distribution program.

Long Term Services and Supports (LTSS) Screening Process

Since January 1, 2021, skilled nursing facilities (SNFs) staff have been allowed to conduct LTSS Screenings for non-Medicaid members admitted to SNFs who have a change in financial status and require intermediate care facility level of care.

- See pages 20-21 of the *Screening for LTSS and Supports: HCBS Waivers, PACE and Nursing Facility Medicaid Manual* for the Screening Responsibilities Chart for NFs.
- All SNFs and NFs should have appropriate staff trained to complete the LTSS Screening when required for an individual who resides in a nursing facility. See this *October 20, 2020 Medicaid Bulletin* for more details on the training.

Failure to do so risks not only losing payment, but also the efficiency gained with the circumstances in which the NF can conduct the screening.

It is important that a screening be documented in the electronic record as the electronic Medicaid LTSS Screening (eMLS) system connects to several other Virginia Medicaid systems, which are linked together to verify screening dates and expedite enrollment and payment.

- Documenting the LTSS screening assures the individual and facility are not harmed (i.e., unable to access benefits and face non-payment) because a screening cannot be found.

Bulletin: *Medicaid Long Term Services and Supports Screening (LTSS) Training for Physicians.*

A *Medicaid Bulletin* issued on June 10, 2022 specifies that as of August 1, 2022, physicians (including nurse practitioners and physicians assistants) who have responsibility for reviewing and providing final authorization or denial of Medicaid LTSS Screenings will be required to have completed the Medicaid LTSS Screening Training and enter their unique certification number when approving screenings.

- The screenings will not process in the eMLS system without the certification number. Remember, a screening not fully processed is incomplete and will result in non-payment for NF services.
- Completion of the training is required every three years and physicians will receive emailed notifications prior to the expiration date.