

Coronavirus (COVID-19) Public Health Emergency Termination Compliance Checklist (Hospital and Health Systems)

A Practical Guidance® Checklist by Jeffrey H. Frost, Jackson Walker LLP



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After more than three years, the COVID-19 federal Public Health Emergency (PHE) (effective January 31, 2020) will expire on May 11, 2023. This checklist will assist hospitals and health systems, including critical access hospitals (CAHs), prepare for the return of numerous healthcare regulations that were in place pre-pandemic. This checklist identifies the Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements for hospitals and health systems that were waived or modified by the U.S. Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) during the PHE. It links to those waived and modified regulations with which these providers will now be required to comply no later than May 11, 2023. It also summarizes the waivers and modifications that will continue after the termination of the PHE.

For a full listing of related healthcare content on the COVID-19 pandemic, see the [Coronavirus \(COVID-19\) Resource Kit: Healthcare](#).

For more information on the impact of the COVID-19 pandemic on health law practice, see [Coronavirus \(COVID-19\) Legal Issues for Healthcare Organizations](#). For more information on CMS administrative activity related to COVID-19, see the [Coronavirus \(COVID-19\) Key CMS Regulatory Guidance Tracker](#).

Waiver Authority

Pursuant to Section 1135 of the Social Security Act, 42 U.S.C. § 1320b-5, CMS may waive certain Medicare, Medicaid, and CHIP regulations during a PHE. CMS used these emergency waivers to provide hospitals and health systems flexibilities in meeting certain regulatory requirements to allow for a rapid response to significant patient needs created by COVID-19. With the expiration of the PHE on May 11, 2023, hospitals and health systems that had previously adopted CMS's flexibilities must be prepared to comply with most of the requirements of the Medicare, Medicaid, and CHIP programs that were previously waived or modified. Conversely, they must also be aware of which flexibilities will continue post PHE.

HHS and CMS have provided, respectively, two fact sheets [here](#) and [here](#) that offer guidance to healthcare organizations regarding compliance following the termination of the PHE.

Flexibilities Continuing after May 11, 2023

Not all CMS waivers and modifications will end on May 11, 2023. The CMS flexibilities that will not be immediately affected are as follows:

- **Medicare telehealth flexibilities.** Most Medicare telehealth flexibilities will remain in place through at least December 31, 2024. Specifically, the following flexibilities will remain through the end of 2024:
 - Access to telehealth services in any geographic area in the United States, not just to those in rural areas

- o Patient ability to stay at home for telehealth visits rather than having to travel to a healthcare facility – and–
- o Delivery of certain telehealth visits by audio-only (e.g., by telephone) if unable to use both audio and video (e.g., via smartphone or computer)

Note: Medicaid and CHIP telehealth flexibilities are not tied to the end of the PHE and were offered by many state Medicaid programs before the pandemic. Coverage for telehealth by private insurance plan, if currently being provided, is not required to be extended until December 31, 2024, and will be based on the terms of the private insurance plan.

- **COVID-19 vaccination and treatment access.** HHS will continue to provide access to COVID-19 vaccines and treatments post PHE. Medicare will continue to cover COVID-19 vaccinations under Medicare Part B, without cost sharing, after the PHE expires. Medicaid will cover COVID-19 vaccinations and treatments without cost sharing through September 30, 2024.
- **Buprenorphine access in opioid treatment programs.** The Substance Abuse and Mental Health Services Administration (SAMHSA) will extend this flexibility for one year from the end of the PHE, which will be May 11, 2024.
- **Expanded methadone access.** SAMHSA will also extend this flexibility—take-home methadone doses for opioid use disorder treatment—for one year from the end of the PHE, which will be May 11, 2024.
- **Hospital at home.** The CMS Acute Hospital Care at Home Initiative provided greater flexibility to allow hospitals to expand capacity to provide inpatient care in a patient’s home. Through the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, this initiative has been extended through December 31, 2024.
- **Virtual supervision.** CMS temporarily modified the definition of direct supervision to allow supervising healthcare professionals to be immediately available through virtual presence (e.g., using real-time audio/video technology) instead of requiring their physical presence. This flexibility will expire on December 31, 2023.
- **Certified Registered Nurse Anesthetist (CRNA) scope of practice.** During the PHE, CMS waived the requirement that a CRNA must be under the supervision of a physician, instead permitting CRNA supervision at the discretion of the hospital or ambulatory surgical center (ASC) and state law. This waiver applies to hospitals, CAHs, and ASCs. Although CMS has stated this waiver will end with the PHE, states may apply to waive the requirement.

Flexibilities Terminating on May 11, 2023

During the pandemic, hospitals and health systems changed their practices and processes in reliance on CMS’s waivers. During this same period, the healthcare industry turnover rate was at an all-time high. It is very possible that hospitals and health system leaders who were instrumental in initiating the changes allowed under the waivers are no longer employed by the hospital or health system. Unless there was a coordinated handoff between the prior leaders and their replacements, including a download of waivers being relied upon, new leaders may be unaware of which services are being provided pursuant to waivers. If leaders are uninformed regarding which flexibilities granted under the waivers are being relied upon, when those waivers expire the hospital or health system is at risk of being out of compliance with Medicare, Medicaid, and CHIP requirements.

Preliminary Steps – Developing an Audit Plan

To ensure compliance with Medicare, Medicaid, and CHIP requirements, you should take the following preliminary steps:

- **Create an audit team.** Assign individuals with the task of compiling a list of services and functions that are currently utilizing flexibilities under the waivers. It is likely this assignment will fall to a compliance officer or, potentially, to an in-house counsel. If assigned to a compliance officer, it would be best to have the compliance officer working under the direction of an attorney to maintain attorney-client privilege.
- **Survey organizational leadership.** Use this checklist to survey hospital and health system operational leaders, compliance officers, and counsel to determine what departments are utilizing CMS flexibilities.
- **Assess current and future compliance.** This checklist will help determine your organization’s ability to comply with Medicare, Medicaid, and CHIP requirements after May 11, 2023.
 - o **Ensure input from directors and managers** with direct knowledge of operations in their areas of responsibilities.
 - o **Identify affected areas** that are or will be out compliance following the end of the PHE.
 - o **Identify required changes** needed for compliance.
 - o **Determine the time frame** required to effect necessary changes.

- o **Empower a team** to make the necessary changes within the respective time frame.
- **Evaluate completion of all changes.** In large, complex health systems sometimes changes are communicated and thought to have been implemented only to discover there was a disconnect and the changes ultimately were not made. After the changes have been implemented, **conduct a privileged compliance** review of the changes to ensure all changes were effectively implemented and there is no risk of noncompliance.

Once your plan is in place, follow the below guidance to assess your organization's compliance with healthcare regulations post-termination of the PHE.

Stark Law Waivers Termination

During the PHE, CMS issued waivers to certain provisions of the physician self-referral law (Stark Law), 42 U.S.C. § 1395nn. The Stark Law prohibits physicians from making referrals for specified designated health services (DHS) to entities that the physician or an immediate family member has a financial relationship with unless an exception applies.

These so-called blanket waivers applied to financial relationships and referrals related to the COVID-19 emergency. During the PHE, CMS permitted certain referrals and the submission of related claims that would have otherwise violated the Stark Law. When the PHE ends, these waivers will terminate, and physicians and entities (e.g., hospitals and health systems) must immediately comply with all provisions of the Stark Law.

A full discussion of each of the blanket waivers, including examples, can be found in this [guidance](#) from CMS. For more information on Stark Law generally and the Stark Law blanket waivers specifically, see [Stark Law: Physician Self-Referral Prohibitions](#) and [Coronavirus \(COVID-19\) Blanket Waivers of the Federal Physician Self-Referral \(Stark\) Law](#), respectively.

You should use the following checklist to determine if your hospital or health system utilized any of the following Stark Law waivers as a result of COVID-19?

If you answer "Yes" to any of the questions posed below regarding waived items and services, you should immediately seek legal analysis to determine whether there are other still-available exceptions to the Stark Law that could apply to the relationship or referral, or if the items and services being provided or received need to cease post May 11, 2023.

During the PHE, did your hospital or health system:

- Pay remuneration to a physician above or below the fair market value (FMV) for services personally performed by a physician or immediate family member?

- Pay rental charges to a physician or immediate family member below FMV for lease of office space?
- Pay rental charges to a physician or immediate family member below FMV for lease of equipment?
- Pay remuneration to a physician or immediate family member below FMV for items or services purchased from the physician or immediate family member?
- Receive rental charges paid by a physician or immediate family member below FMV for lease of office space?
- Receive rental charges paid by a physician or immediate family member below FMV for lease of equipment?
- Receive remuneration from a physician or immediate family member below FMV for use of premises or for purchased items or services?
- Pay remuneration to a physician for excessive medical staff incidental benefits?
- Pay remuneration to a physician or immediate family member in form of excessive nonmonetary compensation?
- Pay remuneration to a physician or immediate family member via a loan to the physician or immediate family member either with a below fair market interest rate or on terms otherwise unavailable if not based on physician's referrals or business generated?
- Receive remuneration from a physician or immediate family member via a loan to your hospital or health system either with a below fair market interest rate or on terms otherwise unavailable if not based on your ability to generate business for physician or immediate family member?

During the PHE, did one of your physicians:

- Make a referral that temporarily expanded your facility's capacity above the number of operating rooms, procedure rooms, and beds for which your facility was licensed?
- Make a referral that converted your facility from a physician-owned ambulatory surgical center (ASC) to a hospital?
- Refer a Medicare beneficiary for provision of DHS to a home health agency (HHA) that did not qualify as a rural provider in which the physician or immediate family member had an ownership or investment interest?
- Make a referral for medically necessary DHS furnished by one of your group practices to a patient in a location that did not qualify as the same or centralized building?
- Make a referral for medically necessary DHS furnished by one of your group practices to a patient in physician's private home, an assisted living facility, or independent living facility where physician's practice did not consist of treating patients in private homes?

- Make a referral to an entity with a financial relationship with physician's immediate family member if the referred patient resided in a rural area?
- Make a referral to an entity with a compensation arrangement with physician or immediate family member that did not satisfy writing or signature requirement(s)?

Hospital Conditions of Participation Waivers Termination

During the PHE, CMS issued numerous [waivers](#) to specific requirements of the Medicare Conditions of Participation. At the end of the PHE, CMS will reestablish certain health and safety standards and other financial and program requirements. You should use the following checklist to determine if your hospital or health system employed any waiver or modification of the CMS Conditions of Participation requirements as a result of COVID-19.

If you answer "Yes" to any of the questions posed below regarding waived conditions of participation, you should immediately consult the referenced regulation to determine what steps your facility must take to ensure that it fully complies with the regulation's requirements no later than May 11, 2023.

- **Patients' rights—time to provide copies of medical records.** During the PHE, did your hospital or health system modify its practices regarding time to provide patients copies of their medical records? If so, review 42 C.F.R. § 482.13(d)(2) to ensure compliance post PHE.
- **Patients' rights—patient visitation.** During the PHE, did your hospital or health system modify its practices regarding having written policies and procedures in place addressing patient visitation rights (e.g., regarding those in COVID-19 isolation and quarantine processes)? If so, review 42 C.F.R. § 482.13(h) to ensure compliance post PHE.
- **Patients' rights—seclusion.** During the PHE, did your hospital or health system modify its practices regarding patient seclusion? If so, review 42 C.F.R. § 482.13(e)(1)(ii) to ensure compliance post PHE.
- **Physical environment—buildings and facilities.** During the PHE, did your hospital or health system modify the physical condition of its facility through construction, arrangement, or maintenance (e.g., to adjust scheduled inspection, testing, and maintenance (ITM) frequencies and activities for facility and medical equipment) to allow for increased flexibilities to care for and quarantine patients because of COVID-19? If so, review 42 C.F.R. § 482.41(a), (d) to ensure compliance post PHE.
- **Physical environment—life safety codes.** During the PHE, did your hospital or health system make any changes to its life safety code practices (examples provided below)? If so, review 42 C.F.R. § 482.41(b) to ensure compliance post PHE.
 - o To modify door and window requirements for patient rooms
 - o To expand the number and location of alcohol-based hand-rub (ABHR) dispensers
 - o To conduct fire drills –or–
 - o To construct walls and barriers between patients
- **Physical environment—building safety.** During the PHE, did your hospital or health system make any changes to its Health Care Facilities Code practices? If so, review 42 C.F.R. § 482.41(c) to ensure compliance post PHE.
- **Expanded services—use of provider-based departments.** During the PHE, did your hospital or health system use provider-based departments as temporary expansion sites? If so, review 42 C.F.R. §§ 413.65 and 482.41 to ensure compliance post PHE.
- **Expanded services—long-term care services.** During the PHE, did your hospital or health system expand its long-term care services (swing beds) to provide additional options for patients who no longer required acute care but could not find placement in skilled nursing facilities? If so, review 42 C.F.R. §§ 409.31 and 482.58 to ensure compliance post PHE.
- **Telemedicine.** During the PHE, did your hospital or health system modify or relax the terms of its telemedicine services agreements with distant-site hospitals to increase telemedicine access for your patients? If so, review 42 C.F.R. § 482.12(a)(8)–(9) to ensure compliance post PHE.
- **Verbal orders.** During the PHE, with the exception of immunizations, did your hospital or health system modify or relax its practices regarding use of verbal orders to authorize medicine administration or modify its policies and procedures regarding subsequent written authentication of verbal orders? If so, review 42 C.F.R. § 482.23(c)(3) to ensure compliance post PHE.
- **Reporting requirements.** During the PHE, did your hospital or health system modify its practices regarding the reporting of deaths of patients in intensive care units whose deaths were caused by their disease but who required soft wrist restraints. If so, review 42 C.F.R. § 482.13(g)(1)(i)–(ii) to ensure compliance post PHE.
- **Discharge planning—detailed information sharing.** During the PHE, did your hospital or health system modify its

discharge practices to forgo providing patients with detailed information (e.g., quality measures and resource use measures) to help patients choose a post-acute care provider? If so, review 42 C.F.R. §§ 482.43(a)(8) and 482.61(e) to ensure compliance post PHE.

- **Discharge planning—post-acute care.** During the PHE, did your hospital or health system modify its discharge practices to forgo providing patients with the following post-acute care information? If so, review 42 C.F.R. § 482.43(c) to ensure compliance post PHE.
 - A list of HHAs, skilled nursing facilities (SNFs), inpatient rehabilitation facilities (IRFs), or long-term care hospitals (LTCHs) available to patient
 - A notice regarding patient's freedom to choose among participating Medicare providers and suppliers –and–
 - Identification of a financial interest in any HHA or SNF to which the patient is referred
 - **Medical records.** During the PHE, did your hospital or health system modify its policies and procedures regarding its organization and staffing of the medical records department, its requirements for the form and content of the medical record, and its record retention requirements? If so, review 42 C.F.R. § 482.24(a)–(c) to ensure compliance post PHE.
 - **Utilization review.** During the PHE, did your hospital or health system modify its utilization review (UR) plan including, but not limited to, eliminating its UR plan, UR committee, or both? If so, review 42 C.F.R. §§ 482.1(a)(3) and 482.30 to ensure compliance post PHE.
 - **Quality Assessment and Performance Improvement (QAPI) Program—program effectiveness.** During the PHE, did your hospital or health system make modifications to its policies and procedures regarding its QAPI program, including regarding its scope, effectiveness, and priorities? If so, review 42 C.F.R. § 482.21(a)–(d), (f) to ensure compliance post PHE.
 - **Food and dietetic service—therapeutic diet.** During the PHE, did your hospital or health system modify or eliminate requirements regarding the maintenance and availability of its therapeutic diet manual? If so, review 42 C.F.R. § 482.28(b)(3) to ensure compliance post PHE.
 - **Emergency preparedness—appraisal of off-campus emergencies.** During the PHE, did your hospital or health system forgo developing and establishing policies and procedures for evaluating emergencies at surge facilities? If so, review 42 C.F.R. § 482.12(f)(3) to ensure compliance post PHE.
 - **Emergency preparedness—policies and procedures.** During the PHE, did your hospital or health system modify or decline to develop or implement emergency preparedness policies and procedures? If so, review 42 C.F.R. § 482.15(b) to ensure compliance post PHE.
 - **Emergency preparedness—communication plan.** During the PHE, did your hospital or health system modify or decline to develop or implement an emergency preparedness communication plan? If so, review 42 C.F.R. § 482.15(c)(1)–(5) to ensure compliance post PHE.
 - **Sterile compounding.** During the PHE, did your hospital or health system modify its practices regarding its compounding procedures (e.g., to allow used face masks to be removed and retained in the compounding area to be re-donned and reused during the same work shift)? If so, review 42 C.F.R. § 482.25(b)(1) to ensure compliance post PHE.
 - **Workforce—nursing services.** During the PHE, did your hospital or health system modify its requirements that the nursing staff develop and keep current a nursing care plan for each patient? If so, review 42 C.F.R. § 482.23(b)(4) to ensure compliance post PHE.
 - **Workforce—presence of registered nurse.** During the PHE, did your hospital or health system modify its policies and procedures regarding the presence of a registered nurse in specific outpatient departments? If so, review 42 C.F.R. § 482.23(b)(7) to ensure compliance post PHE.
 - **Workforce—medical staff.** During the PHE, did your hospital or health system allow for physicians whose privileges will expire to continue practicing and for new physicians to be able to practice before full medical staff or governing body review and approval? If so, review 42 C.F.R. § 482.22(a)(1)–(4) to ensure compliance post PHE.
 - **Workforce—physician services.** During the PHE, did your hospital or health system waive requirements that Medicare patients be under the care of a physician? If so, review 42 C.F.R. § 482.12(c)(1)–(2), (4) to ensure compliance post PHE.
 - **Workforce—anesthesia services.** During the PHE, did your hospital or health system modify its requirements regarding physician supervision of anesthesia administration by a CRNA or anesthesiologist's assistant? If so, review 42 C.F.R. §§ 416.42(b)(2) and 482.52(a)(5) to ensure compliance post PHE.
 - **Workforce—respiratory care services.** During the PHE, did your hospital or health system modify your practices regarding written designation of both the requirements that personnel qualified to perform specific respiratory care procedures and the amount of supervision required? If so, review 42 C.F.R. § 482.57(b)(1) to ensure compliance post PHE.
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Critical Access Hospitals Conditions of Participation Waivers Termination

During the PHE, CMS issued numerous [waivers](#) applicable to critical access hospitals (CAHs). These waivers addressed Medicare conditions of participation requirements. Many of these waivers—listed below—will expire on May 11, 2023, with the end of the PHE. You should use the following checklist to determine whether your CAH employed any of these expiring waivers during the PHE, which allowed your CAH to not meet one or more of the CMS conditions of participations standards.

If you answer “Yes” to any of the questions posed below regarding waived CAH conditions of participation, you should immediately consult the referenced regulation to determine what steps your facility must take to ensure that it fully complies with the regulation’s requirements no later than May 11, 2023.

- **Physical environment.** During the PHE, did your CAH modify the physical condition of its facility through construction, arrangement, or maintenance (e.g., to adjust scheduled inspection, testing, and maintenance (ITM) frequencies and activities for facility and medical equipment) to allow for increased flexibilities to care for and quarantine patients because of COVID-19? If so, review 42 C.F.R. § 485.623(a)–(b) to ensure compliance post PHE.
 - **Physical environment—life safety codes.** During the PHE, did your CAH make any changes to its life safety code practices (examples provided below)? If so, review 42 C.F.R. § 485.623(c) to ensure compliance post PHE.
 - To modify door and window requirements for patient rooms
 - To expand the number and location of alcohol-based hand-rub (ABHR) dispensers
 - To conduct fire drills –or–
 - To construct walls and barriers between patients
 - **Expanded services—use of provider-based departments.** During the PHE, did your CAH use provider-based departments as temporary expansion sites? If so, review 42 C.F.R. §§ 413.65 and 485.623(b)–(d) to ensure compliance post PHE.
 - **Expanded services—long-term care services.** During the PHE, did your CAH expand its long-term care services (swing beds) to provide additional options for patients who no longer required acute care but could not find placement in skilled nursing facilities? If so, review 42 C.F.R. §§ 409.31 and 482.58 to ensure compliance post PHE.
 - **Hospital bed count / length of stay.** During the PHE, did your CAH increase its number of beds above 25, increase patient length of stay beyond 96 hours, or both? If so, review 42 C.F.R. § 485.620(a)–(b) to ensure compliance post PHE.
 - **Status and location—rural.** During the PHE, did your CAH establish sites in non-rural areas? If so, review 42 C.F.R. § 485.610(b) to ensure compliance post PHE.
 - **Status and location—off-campus / co-location.** During the PHE, did your CAH establish temporary off-site locations? If so, review 42 C.F.R. § 485.610(e) to ensure compliance post PHE.
 - **Telemedicine.** During the PHE, did your CAH modify or relax the terms of its telemedicine services agreements with distant-site hospitals to increase telemedicine access for your patients? If so, review 42 C.F.R. § 485.616(c) to ensure compliance post PHE.
 - **Verbal orders.** During the PHE, did your CAH modify or relax its practices regarding use of verbal orders to authorize medicine administration or modify its policies and procedures regarding subsequent written authentication of verbal orders? If so, review 42 C.F.R. § 485.635(d)(3) to ensure compliance post PHE.
 - **Discharge planning—detailed information sharing.** During the PHE, did your CAH modify its discharge practices to forgo providing patients with detailed information (e.g., quality measures and resource use measures) to help patients choose a post-acute care provider? If so, review 42 C.F.R. § 485.642(a)(8) to ensure compliance post PHE.
 - **Quality Assessment and Performance Improvement (QAPI) Program—program effectiveness.** During the PHE, did your CAH make modifications to its policies and procedures regarding its QAPI program, including regarding its scope, effectiveness, and priorities? If so, review 42 C.F.R. § 485.641(a), (b), and (d) to ensure compliance post PHE.
 - **Food and dietetic service—therapeutic diet.** During the PHE, did your CAH modify or eliminate requirements regarding the maintenance and availability of its therapeutic diet manual? If so, review 42 C.F.R. § 482.28(b)(3) to ensure compliance post PHE.
 - **Emergency preparedness—policies and procedures.** During the PHE, did your CAH modify or decline to develop or implement emergency preparedness policies and procedures? If so, review 42 C.F.R. § 485.625(b) to ensure compliance post PHE.
 - **Emergency preparedness—communication plan.** During the PHE, did your CAH modify or decline to develop or implement an emergency preparedness communication plan? If so, review 42 C.F.R. § 485.625(c)(1)–(5) to ensure compliance post PHE.
 - **Workforce—nursing services.** During the PHE, did your CAH modify its requirements that the nursing staff develop and keep current a nursing care plan for each patient? If so, review 42 C.F.R. § 482.23(b)(4) to ensure compliance post PHE.
 - **Workforce—presence of registered nurse.** During the PHE, did your CAH modify its policies and procedures
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regarding the presence of a registered nurse in specific outpatient departments? If so, review 42 C.F.R. § 482.23(b)(7) to ensure compliance post PHE.

- **Workforce—nursing care plan.** During the PHE, did your CAH modify its requirements that a nursing care plan must be developed and kept current for each inpatient? If so, review 42 C.F.R. § 485.635(d)(4) to ensure compliance post PHE.
- **Workforce—anesthesia services.** During the PHE, did your CAH modify its requirements regarding physician supervision of anesthesia administration by a CRNA or anesthesiologist's assistant? If so, review 42 C.F.R. § 485.639(c)(2) to ensure compliance post PHE.
- **Workforce—nurse specialist qualifications.** During the PHE, did your CAH modify its requirements regarding minimum personnel qualifications for clinical nurse specialists? If so, review 42 C.F.R. § 485.604(a)(2) to ensure compliance post PHE.
- **Workforce—nurse practitioner qualifications.** During the PHE, did your CAH modify its requirements regarding minimum personnel qualifications for nurse practitioners? If so, review 42 C.F.R. § 485.604(b)(1)–(3) to ensure compliance post PHE.
- **Workforce—physician assistant qualifications.** During the PHE, did your CAH modify its requirements regarding minimum personnel qualifications for physician assistants? If so, review 42 C.F.R. § 485.604(c)(1)–(3) to ensure compliance post PHE.
- **Workforce—staff licensure.** During the PHE, did your CAH modify its requirements regarding staff licensure, certification, and registration? If so, review 42 C.F.R. § 485.608(d) to ensure compliance post PHE.
- **Workforce—physician responsibilities.** During the PHE, did your CAH modify its requirements to permit physicians to not be physically present to provide medical direction, consultation, and supervision for the services provided in the CAH? If so, review 42 C.F.R. § 485.631(b)(2) to ensure compliance post PHE.

Billing Requirements Waivers Termination

In addition to the above, when the PHE terminates on May 11, 2023, certain waived or modified billing requirements will also return to their pre-pandemic status. Hospital and health system coding, billing, and compliance departments should be aware of the reinstatement of the following requirements to bill for the services listed below:

- **Remote Patient Monitoring (RPM).** During the PHE, CMS allowed clinicians to bill for RPM services furnished to new and established patients with both acute and chronic conditions.

- When the PHE ends, clinicians must have established relationships with patients before providing RPM services.
- CMS will continue to allow providers to furnish RPM services to patients with acute and chronic conditions.
- **Housing acute care patients in excluded distinct part units.** During the PHE, CMS allowed acute care hospitals to house acute care inpatients in excluded distinct part units, where the distinct part unit's beds were appropriate for acute care inpatients.
 - When the PHE ends, acute care hospitals can no longer bill for these services.
 - Under the Inpatient Prospective Payment System (IPPS), acute care hospitals cannot bill for acute care inpatients housed in excluded distinct part units.
- **Care for excluded inpatient psychiatric unit patients in the acute care unit of a hospital.** During the PHE, CMS allowed acute care hospitals with excluded distinct part inpatient psychiatric units to move patients from excluded distinct part psychiatric units to acute care beds and units.
 - During the PHE, hospitals were to continue to bill for inpatient psychiatric services under the Inpatient Psychiatric Facility Prospective Payment System (IPF PPS).
 - Hospitals were to annotate the medical record to indicate the patient is a psychiatric inpatient being cared for in an acute care bed, because of capacity or other exigent circumstances related to the PHE.
 - After the PHE ends, hospitals can no longer use this flexibility to house inpatients receiving psychiatric services paid under the IPF PPS and furnished by the hospital's excluded distinct part psychiatric unit in an acute care bed and unit.
- **Flexibility for Inpatient Rehabilitation Facilities (IRFs) regarding the 60% Rule.** During the PHE, CMS allowed IRFs to exclude patients from the freestanding hospital's or excluded distinct part unit's inpatient population for purposes of calculating applicable thresholds associated with IRF payment requirements (the so-called 60% Rule).
 - The IRF must have admitted the patient solely to respond to the COVID-19 pandemic, which the patient's medical record should have identified.
 - When the PHE ends, all inpatients will again be included in the freestanding hospital's or excluded distinct part unit's inpatient population for purposes of calculating the applicable IRF payment thresholds.

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Jeffrey Frost draws on more than 20 years of experience as in-house counsel to advise clients on healthcare regulatory matters, hospital operations, and medical staff issues.

Jeff serves as a trusted advisor to healthcare clients on legal and regulatory matters including complex commercial transactions, mergers and acquisitions, contract negotiations, employment issues, physician litigation, and access to electronic health records. His experience includes advising medical staffs, medical groups, and hospitals on a full range of credentialing, privileging, peer review, and quality assurance topics, as well as assisting hospital administration with governmental investigations, fraud and abuse claims, agency complaints and medical staff hearings.

Prior to joining Jackson Walker, Jeff served as Deputy General Counsel at an integrated health network with 24 acute care hospitals and more than 200 clinics across Northern California.

Because of this experience, Jeff acts as a collaborative business partner who provides practical legal and business solutions on a broad range of healthcare and employment matters.

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