

NJ DOH to Revoke Seven COVID-19 State of Emergency Health Care Facility Waivers

After declaration of a State of Emergency (“SOE”) by the Governor of New Jersey in 2020 to address COVID-19, the New Jersey Department of Health (“NJ DOH”) issued a number of health facility waivers to ease the regulatory burden on providers, who were prioritizing access to care for patients during the unprecedented emergency. Many of those waivers were set to expire at the end of the later of the public health emergency or SOE but, given uncertainty as to the status of the SOE, agencies have been taking their own action to supersede or revoke those regulatory flexibilities afforded facilities and health care practitioners during the pandemic.

Most recently, as per its website, the NJ DOH will revoke seven health facility waivers as of August 13, 2023. They are:

Licensed Inpatient Facilities (3.13.2020)

This waived the requirement that health facilities apply for and obtain temporary waivers for (1) exceeding licensed bed capacity, (2) bed additions requiring prior Certificate of Need approval, (3) physical space requirements and (4) staff qualifications requirements.

Waiver of Credentialing Standards – Acute Care Hospitals (3.26.2020)

This waiver allowed acute care hospitals to substitute the credentialing standards of the hospital’s accrediting body for the requirements at N.J.A.C. 8:43G-16.1(b)-(e).

Blanket Waiver for Home Hospice Programs (4.23.2020)

This was a blanket waiver of any of the Hospice Licensing Standards at N.J.A.C. 8:42C that were more stringent than waivers and guidance issued by CMS during the public health emergency.

Blanket Waiver for Home Health Agency Licensing Standards (4.24.2020)

This was a blanket waiver of any of the Home Health Agency Licensing Standards at N.J.A.C. 8:42 that were more stringent than waivers and guidance issued by CMS during the public health emergency.

Temporary Waiver - Maintenance Requirements for Respiratory Care Equipment (5.8.2020)

This relaxed the requirements of N.J.A.C. 8:43G-31.11, which sets forth certain criteria for the maintenance of respiratory care equipment, including ventilators in hospitals.

Memo: Temporary Feeding Assistant Training (5.21.2020)

This recognized a one-hour temporary feeding assistant training program as a substitute for the 8-hour training course required under the 42 C.F.R. 483.160.

Utilization Criteria for Invasive Cardiac Diagnostic Facilities and Cardiac Surgical Centers (3.4.2021)

This modified the minimum volume utilization requirements for invasive cardiac diagnostic facilities, cardiac surgical centers, and physicians practicing at these facilities and centers under N.J.A.C. 8:33E-1.4 and -2.3.

Upon revocation of these health facility waivers, the regulatory requirements originally in place prior to the COVID-19 emergency shall become effective and facilities seeking flexibilities will be required to follow the usual waiver process. Should you require any guidance about the end of these waivers and how they may impact your facility or any other health care issue, please contact Lisa Albright at lalbright@archerlaw.com or 609-580-3710, or Shloka Joshi at sjoshi@archerlaw.com or 267-817-9248.

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