



## HEALTHCARE PROVIDERS, THE END IS NEAR: CMS ISSUES GUIDANCE FOR EXPIRATION OF COVID-19 PUBLIC HEALTH EMERGENCY

May 4, 2023

By: Amanda M. Wilwert and Nancy E. Musick

On May 1, 2023, the Centers for Medicare and Medicaid Services (“CMS”) issued guidance, in the form of a memorandum to state survey agency directors, for the expiration of the COVID-19 public health emergency. The public health emergency will end on May 11, 2023. During the public health emergency, CMS issued temporary emergency waivers to give healthcare providers increased flexibility to focus on patient needs and the efficient use of limited resources while reducing COVID-19’s spread. Now that the public health emergency is ending, CMS is phasing out the waivers. The CMS guidance provides a timeline on when the waivers will expire and reminders about the requirements providers will have to follow.

The CMS memo addresses provider categories such as long-term care providers, community mental health centers, hospitals, ambulatory surgery centers, critical access hospitals, intermediate care facilities for individuals with intellectual disabilities, rural health clinics, and federally qualified health clinics. While the memo describes all of the waivers that apply to each provider type, we have highlighted a few key expiring waivers here:

### **Long-Term Care Providers (Skilled Nursing Facilities and/or Nursing Facilities)**

- **Nurse Aide Training.** During the public health emergency, long-term care providers could employ nurse aides that had not yet completed all training and certification requirements. Beginning on May 11, 2023, providers have four months to ensure that all of their nurse aides have completed a state-approved nurse aide training or certification program.

## Ambulatory Surgical Centers

- **Temporary Hospital Conversion.** The waiver that allowed an ambulatory surgical center to temporarily enroll as a hospital and provide hospital services ends on May 11, 2023. An ambulatory surgical center that has temporarily provided hospital services may voluntarily terminate its hospital status or elect to go through the hospital enrollment process with CMS.

## Critical Access Hospitals

- **Personnel Qualifications/Staff Licensure.** The waivers allowing critical access hospitals to employ clinical nurse specialists, nurse practitioners, physician assistants, and other licensed staff that only met state licensure requirements, but not federal certification requirements, expire on May 11, 2023.

## Hospitals/Ambulatory Surgical Centers/Critical Access Hospitals

- **Physical Environment.** Waivers that gave providers more flexibility for how to use hospital space are ending. For example, waivers that allowed providers to use alternative space for patient care; waived inspection, testing, and maintenance requirements; allowed temporary walls or barriers between patients; and allowed patient sleeping areas without an outside window or door all expire on May 11, 2023.

These are only a few examples of the expiring waivers described by the CMS memo. Providers should carefully review the CMS memo and ensure they are in compliance before the waivers expire. The full CMS memo is available here.

### FOR MORE INFORMATION

If you have questions or want more information regarding the CMS memo, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. Foulston's healthcare lawyers maintain a high level of knowledge regarding federal and state regulations affecting the healthcare industry. At the same time, our healthcare practice group's relationship with Foulston's other practice groups, including the taxation, general business, labor and employment, and commercial litigation groups, enhances our ability to consider the legal ramifications of any situation or strategy. For more information, contact Amanda Wilwert at 913.253.2181 or [awilwert@foulston.com](mailto:awilwert@foulston.com), or Nancy Musick at 913.253.2140 or [nmusick@foulston.com](mailto:nmusick@foulston.com). For more information on the firm, please visit our website at [www.foulston.com](http://www.foulston.com).

Established in 1919, Foulston Siefkin is the largest Kansas-based law firm. With offices in Wichita, Kansas City, and Topeka, Foulston provides a full range of legal services to clients in the areas of administrative & regulatory; antitrust & trade regulation; appellate law; banking & financial services; business & corporate; construction; creditors' rights & bankruptcy; e-commerce; education & public entity; elder law; employee benefits & ERISA; employment & labor; energy; environmental; ERISA litigation; estate planning & probate; family business enterprise; franchise & distribution; government investigations & white collar defense; governmental liability; government relations & public policy; healthcare; immigration; insurance regulatory; intellectual property; litigation &

# FOULSTON

ATTORNEYS AT LAW

disputes; long-term care; mediation/dispute resolution; mergers & acquisitions; Native American law; oil, gas & minerals; OSHA; privacy & data security; private equity & venture capital; product liability; professional malpractice; real estate; renewable energy, storage, and transmission; securities & corporate finance; startup/entrepreneurship; supply chain management; tax-exempt organizations; taxation; trade secret & noncompete litigation; and water rights.

## ADDITIONAL RESOURCES

Sign up to receive healthcare law issue alerts straight to your inbox [here](#).

---

*This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship.*

## PRACTICE AREAS

---

- Healthcare
- Long-Term Care