

CMS FINALIZES RULE FOR EMERGENCY PREPAREDNESS REQUIREMENTS

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The Centers for Medicare and Medicaid Services (“CMS”) published a final rule for emergency preparedness requirements for Medicare- and Medicaid-participating providers and suppliers in the Federal Register on September 16, 2016. Noting the timeliness of the rule’s publication, which also happens to coincide with peak Atlantic hurricane season, CMS Deputy Administrator and Chief Medical Officer Patrick Conway, M.D., MSc. stated, “Situations like the recent flooding in Baton Rouge, Louisiana, remind us that in the event of an emergency, the first priority of health care providers and suppliers is to protect the health and safety of their patients.”

The rule, which applies to 17 categories of providers and suppliers (referred to in the rule as “facilities,” and listed in the table of contents of the [rule](#) at page 63861), establishes “a comprehensive, consistent, flexible, and dynamic regulatory approach to emergency preparedness and response,” according to the rule’s executive summary. The executive summary also notes that, until this time, facilities have generally been subject to insufficient emergency preparedness requirements or, in the case of some types of facilities, no requirements whatsoever. Facilities must implement the requirements established by the rule by November 15, 2017.

The basic structure of the rule follows that described in the 2013 proposed rule for emergency preparedness requirements, which established four crucial elements for emergency preparedness programs by requiring facilities to:

- Perform a risk assessment using an “all-hazards” approach prior to establishing an emergency plan;
- Develop and implement policies and procedures effectively addressing risks identified in the risk assessment process;
- Develop and maintain a communication plan to coordinate patient care within the facility, across healthcare providers, and with state and local public health departments and emergency management agencies and systems; and
- Develop and maintain an effective training and testing program, which must include initial training as well as drills and exercises to identify gaps and areas of

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improvement.

Among a number of changes from the 2013 proposed rule, the final rule adds a separate standard allowing separately certified healthcare facilities within a healthcare system to elect to be part of a unified emergency preparedness program, allows most facilities to choose the type of exercise they must conduct to meet their second annual testing requirement, and reduces certain staff and patient tracking requirements for certain (but not all) facilities. Responding to concerns from commentators regarding the financial burden these requirements will impose on facilities, CMS made clear that they do not plan to establish any additional payments to help ease the cost of implementation or to reward facilities for doing so, citing CMS authority to create and modify health and safety conditions of participation, a general expectation that all facilities have and develop policies and procedures for patient care, and the belief that emergency preparedness is a good business practice that will overall be beneficial to facilities in the long run.

For the CMS announcement of the rule, see:

<https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2016-Press-releases-items/2016-09-08.html>

For the full text of the rule, see:

<https://www.federalregister.gov/documents/2016/09/16/2016-21404/medicare-and-medicaid-programs-emergency-preparedness-requirements-for-medicare-and-medicaid>