

Summary of Emergency Preparedness Provisions in 2018 CMS Proposed “Burden Reduction” Rule

In September 2016, CMS released a final rule that established new emergency preparedness requirements for hospitals, critical access hospitals (“CAHs”), and fifteen other provider types. The rule added regulations to existing Conditions of Participation (“CoPs”) and Conditions for Coverage (“CfCs”) that these providers must meet in order to participate in Medicare and Medicaid. The rule requires providers to develop an emergency preparedness plan, policies and procedures, a communication plan, and a training and testing program. The requirements of the September 2016 final rule went into effect on November 15, 2017.

In a proposed rule published in the Federal Register on September 20, 2018, CMS is proposing several changes to the emergency preparedness provisions of the CoPs and CfCs for hospitals and other providers that collectively could reduce the regulatory burden associated with complying with CMS’s emergency preparedness requirements. Below is a summary of such proposed changes:

Periodic Review of Emergency Preparedness Programs

Under current CMS regulation, hospitals and other providers are required to develop and to maintain or implement (1) an emergency preparedness plan, (2) emergency preparedness policies and procedures, (3) an emergency preparedness communication plan, and (4) an emergency preparedness training and testing program—all of which must be reviewed and updated at least annually. **In the proposed rule, CMS proposes requiring hospitals and other providers to review and update their emergency preparedness plan, policies and procedures, communication plan, and training and testing program at least every two years, instead of annually.**

Documentation of Efforts to Cooperate with Emergency Preparedness Officials

Under current CMS regulation, hospitals and other providers are required to include in their emergency preparedness plans a process for cooperating and collaborating with local, tribal, regional, state, and federal emergency preparedness officials’ efforts to maintain an integrated response during a disaster or emergency situation. In addition, hospitals and other providers are required to document their efforts to contact such officials and to document any participation in such cooperation and collaboration. **In this proposed rule, CMS proposes eliminating this documentation requirement but retaining the requirement that hospitals and other providers have a process for cooperation and collaboration with emergency preparedness officials.**

Periodic Staff Training on Emergency Preparedness Programs

Under current CMS regulation, hospitals and other providers are required to provide initial training in emergency preparedness policies and procedures to all new and existing staff and to provide additional training at least annually. **In this proposed rule, CMS does not propose changing the initial training requirement but does propose (1) requiring hospitals and other providers to provide emergency preparedness training at least every two years, instead of annually, and (2) requiring hospitals and other providers to conduct training when the hospital’s or other provider’s emergency preparedness policies and procedures are “significantly updated.”**

Annual Emergency Preparedness Exercises

Under current CMS regulation, hospitals and other providers are required to conduct two exercises annually to test their emergency preparedness plans. One of these annual exercises must be a full-scale exercise that is community-based or facility-based. The other annual exercise must be a second full-scale exercise or a tabletop exercise. **In this proposed rule**, CMS does not propose changing the requirement that hospitals and other providers conduct two exercises annually, **but for the annual exercise where the provider may choose between a second full-scale exercise or a tabletop exercise, CMS proposes to expand the exercise options to a second full-scale exercise, a tabletop exercise, or a *mock disaster drill*.**