



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

November 19, 2018

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-3346-P
Baltimore, Maryland 21244

**Re: Opposing Weakening of Emergency Preparedness Regulations;
CMS-3346-P; Proposed Changes to 42 C.F.R. § 483.73**

Dear Administrator Verma:

The Consortium for Citizens with Disabilities (CCD) appreciates the opportunity to provide comments on the proposed changes to the emergency preparedness regulations for providers, suppliers and facilities serving people with disabilities. [The Consortium for Citizens with Disabilities \(CCD\)](http://www.c-c-d.org/) is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. We have over 100 organizations who work with and for the safety of people with disabilities living both in the community and in institutions. To learn more about CCD go here: <http://www.c-c-d.org/>

As discussed in more detail below, we believe that the proposed changes would be an unnecessary step backwards. The current requirements represent lessons learned from Hurricane Katrina and subsequent disasters, and are based on the input of people with disabilities, federal agencies, providers, suppliers and facilities serving people with disabilities, emergency preparedness experts, advocates, and others. The current regulations have been in effect for less than a year, so it is premature to make any changes at this time.

In addition, the reasons for the revision are insufficient. CMS proposes to change the requirements not on the basis of recommendations from emergency management experts, but to “relieve burden” on providers, suppliers and facilities serving people with disabilities. In this case, the “burden” is limited and the benefit is significant. The areas of the rule that would be changed - the emergency plan, the communication plan, facility policies and procedures, training, and testing - are the essential parts of a facility’s emergency preparedness program. Reducing the frequency of review and updates would weaken these elements and jeopardize safety for individuals served and staff.

CMS Proposes: Emergency Plans Reviewed Every Two Years, Rather than Annually

Under CMS’s current proposal, providers, suppliers and facilities serving people with disabilities would be required to review and update their emergency preparedness plan every two years, rather than annually. See Proposed 42 C.F.R. § 483.73(a). Review every other year is

insufficient. The plan is designed to address hazards identified through a risk assessment; these risks can evolve quickly. Likewise, a facility's plan must address the population served. This may change greatly from year to year, as it includes the number of individuals served as well as their physical, mobility, mental health, intellectual, sensory and cognitive abilities, and overall health. Other significant aspects of a facility, such as staffing levels, are similarly subject to change.

CMS Proposes: No Required Documentation of Efforts to Contact Local Agencies

CMS proposes to eliminate the requirement that the providers, suppliers and facilities serving people with disabilities document their efforts to contact local, tribal, regional, State and federal emergency preparedness officials and the provider's participation in collaborative and cooperative planning efforts. We recognize that the contact and cooperation would continue to be required, but without documentation. Based on our experience and observation, however, documentation is necessary to ensure that certain actions have been taken. The documentation requirement is a relatively small price to pay for greater accountability.

CMS Proposes: Policies and Procedures Reviewed Every Two Years, Rather than Annually

As is the case with emergency plans (see above), two years is too long between reviews. Many factors can cause policies and procedures to become outdated or ineffective, thereby jeopardizing the provider's ability to carry out its plan. For example, policies and procedures must address the safe evacuation of individuals being served, which includes notification, transportation and evacuation locations. The companies with which providers, suppliers and facilities serving people with disabilities have made arrangements for transportation during an emergency could easily go out of business in less than two years, while variables such as openings and closings of shelters, hospitals, medical facilities in the area, and community centers may alter evacuation locations. Failure to review and update the policies and procedures to reflect these changes means that there may not be sufficient transportation to evacuate all individuals being served or incorrect information about where to take them when disaster strikes.

CMS Proposes: Communication Plan Reviewed Every Two Years, Rather Than Annually

The communication plan is a vital component of a facility's emergency program. The plan allows the facility to coordinate with others and to adjust dynamically to changes brought on by an emergency. It is how facility staff know whom to contact, what their contact can do, how to reach them, and when to do so. Given a communication plan's tremendous importance, the time frame for re-examining and updating the plan should not be extended to two years. The time expenditure of reviewing the plan will be relatively small, particularly when compared to the importance of having up-to-date information.

The communication plan ensures that the provider has a system to contact all relevant parties: appropriate staff; other facilities; federal, state, tribal, regional or local emergency preparedness staff; and others. Because the individuals and entities included in such a plan can change frequently, failure to update the plan at least every year could result in faulty and inaccurate information, and the inability to reach the people/agencies needed to protect the health and safety of individuals served in the event of a disaster.

CMS Proposes: Training and Testing Program Reviewed Every Two Years, Rather Than Annually

The emergency plan, communication plan, and policies and procedures cannot just be words on paper. The training and testing program ensure that staff are familiar with and know how to carry out these plans and policies/procedures.

We urge CMS to maintain the requirement for annual review and updating of the training and testing program. In order to be effective, staff must be up-to-date on what to do in an

emergency. As described above, emergency plans, communication plans, and policies and procedures should be reviewed on an annual basis. By necessity, the training and testing program should be reviewed on the same schedule, to ensure that staff is prepared to care for individuals served and conduct the necessary coordination with other businesses and agencies.

CMS Proposes: Emergency Preparedness Training Every Two Years, Rather Than Annually

We strongly oppose revising the emergency preparedness rule to permit staff training to be conducted every two years instead of every year. Although initial training would continue to be required, training, to be effective, must include update sessions in order to maintain a high level of competency. It is unrealistic to expect staff to remember emergency procedures that may have been taught almost two years previously. As noted in the June 2015 issue of Occupational Health & Safety: "... people lose emergency skills quickly unless they are refreshed and repeated at regular intervals.... When the goal is readiness to save lives, it is essential that employees engage in regular training where the core principles of basic training are continually repeated and revisited."

An annual training requirement is consistent with other federal training requirements for providers, suppliers and facilities serving people with disabilities. Certified nurse aides must receive annual in-service training that includes resident abuse prevention and dementia management. Since disasters and other emergencies create situations where all staff must draw on and apply knowledge and skills, there is no reason to have less frequent training for emergency-related issues.

Also, for example, nursing homes often have high rates of staff turnover. Turnover rates for clinical care in nursing homes ranges from 55-75%, and the turnover rate for certified nurse aides reaches nearly 100% in some cases. There is often frequent turnover in leadership and management positions as well. Annual emergency preparedness training is thus necessary to ensure that staff is properly coordinated.

CONCLUSION

Although CMS claims the current proposals would balance patient safety and quality with broad regulatory relief for providers, we believe that the burden on providers is minimal, particularly compared with the importance of emergency preparedness. The current standards should be maintained. They establish commonsense measures that give providers, suppliers and facilities serving people with disabilities flexibility to tailor the emergency program to their needs, while protecting the health and safety of the individuals they serve.

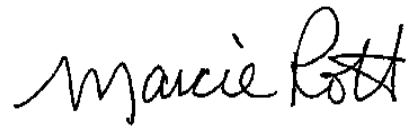
Please contact Dara Baldwin, Senior Public Policy Analyst National Disability Rights Network (NDRN) at: dara.baldwin@ndrn.org or 202-408-9514 ext. 102.

Sincerely,

CoChairs of the Emergency Management Ad Hoc Committee



L. Dara Baldwin, Senior Public Policy Analyst
National Disability Rights Network (NDRN)



Marcie Roth, CEO
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