

# Insights

## **CMS Finalizes Emergency Preparedness Rule for Health Care Facilities**

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September 26, 2016

On September 8, 2016, the Centers for Medicare and Medicaid Services (“CMS”) finalized the Emergency Preparedness Rule (Final Rule”) for health care facilities. CMS has given significant attention to the Final Rule in light of the many major disasters that have occurred in the last ten years and addressed the need for continuing access and quality of health care during such emergencies.

While hospitals and some other facilities have long been subject to emergency preparedness requirements through accreditation standards, the Final Rule will be included in Conditions of Participation. As a result, all health care facilities that participate in Medicare and Medicaid must comply with the Final Rule, regardless of accreditation standards.

The Final Rule becomes effective on November 16, 2016 but health care facilities have until November 15, 2017 to comply with the requirements. The Final Rule applies to seventeen (17) different types of health care facilities, including:

- Religious Nonmedical Health Care Institutions
- Ambulatory Surgical Centers
- Psychiatric Residential Treatment Facilities
- Programs of All-Inclusive Care for the Elderly
- Hospitals
- Transplant Centers
- Long Term Care Facilities
- Hospices
- Home Health Agencies
- Comprehensive Outpatient Rehabilitation Facilities
- Critical Access Hospitals
- Clinics, Rehabilitation Agencies or Public Health Agencies as Providers of Outpatient Physical Therapy and Speech-Language Pathology Services
- Community Mental Health Centers

- Organ Procurement Organizations
- Rural Health Clinics and Federally Qualified Health Clinics
- End Stage Renal Disease Facilities
- Intermediate Care Facilities for Individuals with Intellectual Disabilities

The Final Rule is designed to address three key concepts that CMS considers essential to maintaining access to health care during a disaster, including (1) safeguarding human resources; (2) maintaining business continuity; and (3) protecting physical resources. While the specific requirements for each type of facility may vary, the three concepts are achieved through four common core elements of each program. The general requirements of each element include:

- Risk Assessment and Emergency Planning – Facilities are required develop and implement an emergency preparedness plan using an “all hazards approach.” Plans developed under this approach address the risks of all types of hazards, as well as hazards and disasters specific to the location and type of provider.
- Policies and Procedures – Facilities must create necessary policies and procedures to implement the plan created from the Risk Assessment and Emergency Planning element, while ensuring that the policies and procedures are compliant with state and federal laws.
- Communication plan – Facilities are required to develop a communication plan with a system for contacting appropriate staff, patients’ treating physicians, and other necessary persons that complies with federal and state law.
- Training and Testing – Facilities must conduct initial and annual refresher training on the emergency plan and procedures for new and existing staff, as well as annual testing of the policies and procedure with staff. The training must be updated at least annually.

Facilities impacted by the Final Rule should begin taking steps to ensure compliance with the requirements by 2017. While all seventeen types of facilities listed above are impacted by the Final Rule, the requirements may vary. Facilities should review the Conditions of Participation for the requirements specific to their facility. The Final Rule may be accessed [here](#).

If you have any questions or require additional information regarding the Final Rule or related compliance efforts, please contact Maggie Little at [mlittle@kdlegal.com](mailto:mlittle@kdlegal.com) or by telephone at (317) 238-6355, or Susan Ziel at [sziel@ihsconsultinggroup.com](mailto:sziel@ihsconsultinggroup.com) or by telephone at (317) 819-7704.

[1] “Medicare and Medicaid Programs: Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers,” 81 Fed. Reg. 63860 (Sept. 16, 2016).