COMPLIANCE NEWS: CMS UPDATES EPFR STATE OPERATIONS MANUAL

FEBRUARY 12TH, 2019

CMS issued a February 1, 2019 update (Ref: QSO19-06-ALL) to the State Operations Manual (SOM) Appendix Z emergency preparedness interpretive guidance to clarify CMS requirements pertaining to alternate source power and emergency standby systems.

The clarifications (in red) are easy to find within the 56-page document.

In its Memorandum Summary, CMS stated “We are updating Appendix Z of the SOM to reflect changes to add emerging infectious diseases to the definition of all-hazards approach.”

The CMS All-Hazards Approach definition was modified to add the second-to-last sentence below (highlighted in this article):

> All-Hazards Approach: An all-hazards approach is an integrated approach to emergency preparedness that focuses on identifying hazards and developing emergency preparedness capacities and capabilities that can address those as well as a wide spectrum of emergencies or disasters. This approach includes preparedness for natural, man-made, and or facility emergencies that may include but is not limited to: care-related emergencies;

equipment and power failures; interruptions in communications, including cyber-attacks; loss portion or all of a facility; and, interruptions in the normal supply of essentials, such as water and food. ***Planning for using an all-hazards approach should also include emerging infectious disease (EID) threats. Examples of EIDs include Influenza, Ebola, Zika Virus and others.*** All facilities must develop an all-hazards emergency preparedness program and plan.

Additional changes were made to reflect additional guidance within other E-Tags.

This Appendix Z, based upon CMS Emergency Preparedness Final Rule (EPFR), addresses all 17 provider types. Under Tag E-0015, CMS added substantial clarifications. Most of those clarifications now address the use of a portable and mobile generators. Tag E-0041 (addressed later in this article) now also permits portable generators in some cases to meet the subsistence requirements that go beyond traditional codes and standards.

As a reminder, CMS requires the provider types with overnight sleeping (hospitals, critical access hospitals, and long term care facilities) to have permanently-installed emergency power systems as stated below:

> "***If a facility has a permanent generator to maintain emergency power, LSC and NFPA 110 provisions such as generator location, testing, fuel storage and maintenance, etc. will apply and the facility may be subject to LSC surveys to ensure compliance is met. Please also refer to Tag E0041 Emergency and Standby Power Systems for additional requirements for LTC facilities, CAHs and Hospitals.***"

With respect to the CMS EPFR Subsistence Requirements that we have written about previously (most recently in our January 2019 blog article), CMS extended the single sentence below to add additional clarifications (shown in italics):

> "Facilities must establish policies and procedures that determine how required heating and cooling of their facility will be maintained during an emergency situation, as necessary, if there were a loss of the primary power source. ***Facilities are not required to heat and cool the entire building evenly, but must ensure safe temperatures are maintained in those areas deemed necessary to protect patients, other people who are in the facility, and for provisions stored in the facility during the course of an emergency, as determined by the facility risk assessment. If unable to meet the temperature needs, a facility should have a relocation/evacuation plan (that may include internal relocation, relocation to other buildings on the campus or full evacuation). The relocation/evacuation should take place in a timely manner so as not to expose patients and residents to unsafe temperatures."***

Also under the Survey Procedures section of Tag E-0015, CMS clarified that state agency performing CMS surveys must verify there is adequate emergency power to maintain temperatures to protect patient health and safety and for the safe and sanitary storage of provisions.

Under Tag E-0041, CMS made substantial changes to a clarifying note to state:

> "**NOTE:** *H*ospitals, CAHs and LTC facilities ***are*** require***d*** to base their emergency power and stand-by systems on their emergency plan***s and*** risk assessment*s,* and ***including the*** policies and procedures ***for hospitals***. The determination ***of the appropriate alternate energy source*** should be made through the development of the facility's risk assessment and ***emergency plan***. If these facilities determine that ***a permanent*** generator is ***not*** required to meet the emergency power and stand-by systems ***requirements for this emergency preparedness regulation***, then §§482.15(e)(1) and (2), §483.73(e)(1) and (2), §485.625(e)(1) and (2), would not apply. **However, these facility types must continue to meet the existing *emergency power* provisions and requirements for their provider/supplier types under physical environment CoPs or any existing LSC guidance.**"

Also under Tag E-0041, CMS added the following paragraph at the end of the emergency and standby power systems section:

> "***If a Hospital, CAH or LTC facility determines that the use of a portable and mobile generator would be the best way to accommodate for additional electrical loads necessary to meet subsistence needs required by emergency preparedness plans, policies and procedures, then NFPA requirements on emergency and standby power systems such as generator installation, location, inspection and testing, and fuel would not be applicable to the portable generator and associated distribution system, except for NFPA 70 -National Electrical Code. (See E-0015 for Interpretive Guidance on portable generators.)***"

This article addresses some but not all changes. Readers are cautioned to obtain and review the full CMS publication. The CMS SOM Appendix Z update is available here.

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