



3-Day Stay vs. Benefit Period Waiver Explainer

There has been a great deal of confusion around the Qualifying Hospital Stay and Benefit Period waivers since they were enacted by the Department of Health & Human Services (HHS) in March 2020. We have created this explainer to help members make sense of the information and make the most of these waivers.

Both waivers will end with the termination of the public health emergency (PHE) on May 11, 2023. To utilize these waivers, the eligible SNF stay must begin on or before May 11, 2023. Waivers will not apply for any SNF stays beginning on or after May 12, 2023.

Waiver Descriptions

Qualifying Hospital Stay waiver: Also called the 3-day stay waiver, this waiver relates to the 3-day hospital stay that is required in order to qualify for skilled nursing facility (SNF) services under the Medicare Part A benefit.

Benefit Period waiver: Sometimes referred to as the 100 days extension, this waiver relates to the maximum 100 days of SNF care covered by Medicare Part A for qualified beneficiaries. In considering this waiver, it is also helpful to remember the 60-day wellness period that is required to begin a new benefit period.

How the Waivers Came About

When the HHS Secretary declared a public health emergency due to COVID-19, it allowed HHS to exercise certain flexibilities under sections 1135 and 1812(f) of the Social Security Act. CMS was able to issue federal blanket waivers to assist with continued access to care for Medicare beneficiaries despite the public health emergency.

What the Waivers Mean

Qualifying hospital stay waiver: For the duration of the waiver (**which will end with the PHE on May 11, 2023**), CMS has waived the requirement for a 3-day inpatient hospital stay in order to be eligible for SNF services under the Medicare A benefit. A beneficiary (resident or patient) who otherwise qualifies for SNF services is eligible even if:

- The beneficiary had an inpatient hospital stay that was less than 3 days.

- The beneficiary had a hospital stay under observation status.
- The beneficiary only visited the ER.
- The beneficiary had no hospital visit at all.

The official language of this waiver states that the waiver applies to beneficiaries who “experience dislocation or are otherwise affected by the emergency”. CMS clarifies that the beneficiary’s status of being “affected by the emergency” exists nationwide under the public health emergency. In other words, neither the beneficiary, nor the hospital or SNF need to be located in a particular area or experiencing COVID-19 surges in order for a beneficiary to take advantage of this waiver. That said, CMS states that this waiver should be used judiciously.

When the PHE ends on May 11, 2023, this waiver will be terminated. Beneficiaries must begin an eligible SNF stay on or before May 11, 2023 in order to utilize this waiver. The waiver will not apply for SNF stays that begin on or after May 12, 2023. For these SNF stays, a prior 3-day inpatient hospital stay will be required.

Benefit period waiver: For the duration of the waiver (which will end with the PHE on May 11, 2023), CMS has waived the requirement for a beneficiary to begin a new benefit period in order to receive additional SNF services beyond the 100-day limit. The previous benefit period and the new benefit period are generally marked by a 60-day period of wellness. Under this waiver, beneficiaries who previously exhausted their benefit period may be eligible for a new benefit period (a new 100 days) without that 60-day wellness period.

In order to be eligible for this waiver, the beneficiary must have been prevented or delayed in ending their current benefit period and beginning a new benefit period as a direct result of the public health emergency. Additionally, the need for ongoing skilled care must be related to the public health emergency. An example of this might be a beneficiary who was receiving rehab therapy under the SNF benefit, then became ill with COVID-19 and required a respirator and feeding tube. Because the beneficiary’s respirator and feeding tube is a direct result of COVID-19, the beneficiary would be eligible for an extra 100 days through this waiver.

CMS states that a beneficiary’s need for ongoing skilled care is considered to be emergency-related *unless* it is “altogether unaffected” by the COVID-19 emergency. One way to sort this out is to compare the course of treatment that the beneficiary is receiving with the course of treatment the beneficiary *would have* received if there was no COVID-19 emergency. If there is any difference, then the treatment is affected by the emergency.

When the PHE ends on May 11, 2023, this waiver will be terminated. Beneficiaries must begin an eligible SNF stay on or before May 11, 2023 in order to utilize this waiver. The waiver will not apply for SNF stays that begin on or after May 12, 2023. For these SNF stays, the beneficiary will require a 60-day wellness period to begin a new benefit period (100 days).

For both waivers, questions about required documentation should be referred to the Medicare Administrative Contractor (MAC). A list of MACs by region can be found [here](#).

Resources

More information on federal blanket waivers impacting nursing homes and the end of the PHE can be found [here](#).

Detailed information about the Qualifying Hospital Stay and Benefit Period waivers including billing information begins around page 12 [here](#) (page numbers are subject to subsequent article updates by CMS).