



Edging up

Short takes on emerging industry issues, legislative updates and new services

Should we stay or should we go?

EMERGENCY PREPAREDNESS REQUIREMENTS GET AN UPDATE FOR HEALTHCARE FACILITIES

BY **SUSAN BURNS**

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On a near-daily basis, the news can be fraught with alerts about natural and man-made disasters. For healthcare and long term care organizations, these kinds of events trigger a different level of concern. HR, operations and risk management professionals are faced with challenges in caring for their patients and staff, managing logistics and facilities, ensuring safety and also thinking about how to cover expenses. Comprehensive, effective emergency preparedness and evacuation planning are critical in maintaining order and health. And, just as important — particularly with the latest updates to U.S. Federal Register requirements, which took effect November 29, 2019 — these facilities must ensure compliance and take appropriate actions to preserve reputation in the midst of a crisis.

Historically speaking, today's compliance requirements were triggered by disaster response inadequacies revealed in the midst and aftermath of Hurricane Katrina. Vivid memories of desperate nursing home residents in wheelchairs submerged waist-high in flood waters will forever be etched in our minds, and change was necessitated when an alarming rate of non-compliance was uncovered following the hurricane. The Centers for Medicare and Medicaid Services (CMS) found more than 1,850 incidents of nursing homes that failed to have written emergency evacuation plans between 2011 and 2018. In addition, they found 3,770 nursing home violations of the requirements to inspect power generators weekly and test them monthly, according to a review of CMS' Nursing Home Compare Safety Deficiency data.



With the goal of preventing that level of trauma from ever happening again, CMS implemented measures requiring each long term care and healthcare facility to have an effective emergency preparedness plan and evacuation strategy. In September of 2016, CMS published the Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers Final Rule in the Federal Register. The purpose of the final rule was to establish national emergency preparedness requirements to ensure adequate planning for natural and man-made disasters, as well as coordinate with local, state, tribal, regional and federal emergency preparedness systems. And CMS added heavy consequence to inaction — if a facility was out of compliance, it was at risk of losing reimbursement.

CMS' rule includes four core components:

1. Risk assessment and creation of an emergency plan based on disaster risks and likelihood of occurrence
2. Creation of policies and procedures with an all-hazards approach to emergency preparedness
3. The development of a plan to maintain communication with state and federal authorities
4. The creation and execution of training and testing exercises to verify understanding of changes and/or policies within the new rule

Since its establishment in 2016, providers have struggled with some aspects of CMS' emergency preparedness rule. Paperwork became a burden and a hindrance to progression, prompting re-evaluation in recent years and, ultimately the latest rule change, which came into effect this November. It's part of CMS' "patients over paperwork" initiative — a shift in practice to ensure paperwork doesn't overshadow care — and some requirements have been relaxed in order to decrease the regulatory burden on facilities and individual providers.



In the latest updates to CMS' rule, select emergency preparedness requirements have been reduced for most settings — except long term care facilities. The current mandate requires annual self-review of the provider's emergency program every other year, rather than every year. This biennial requirement also applies to training and testing around emergency preparedness, again with the exception of long term care facilities, which are still required to fulfill these requirements every year. CMS' stance is that the vulnerable populations served by these facilities rely more heavily on staff preparedness; more frequent training and drills aid in familiarity and help reduce fear and panic among these patients and residents.

The latest rule was updated regarding the following testing exercises:

- Providers are allowed to choose the type of test they administer: community-based, full-scale testing or facility-based testing.
- A facility that experiences a real-life event involving the activation of their emergency preparedness plan may use that event to satisfy one of the required exercises.
- A second exercise is still required and cannot be supplemented with a real-life event.

CMS has also lifted some documentation requirements:

- Providers and suppliers no longer need to document efforts to contact local, tribal, regional, state and federal emergency preparedness officials, or document participation in "collaborative and cooperative planning efforts."
- Providers must have a documented process in place that addresses cooperation and collaboration with emergency preparedness officials to maintain an integrated response during a disaster or emergency response.

A risk assessment should still include these foundational elements:

- Maintain an emergency preparedness plan that aligns with the Federal Register rule.
- The decision-maker during the time of emergency must understand all internal and external considerations when determining the correct steps the facility should take.
- Understand all parts of the equation when making decisions, such as items necessary for residents during their stay.
- Communication is essential in maintaining consistent understanding of the steps that will be performed.

Providers are still facing challenges with regard to care, costs and coverage in light of these requirements. Healthcare and long term care facilities sometimes face high staff turnover, so more frequent training is critical. Evaluating a facility is complex — preparation must be made for transportation, housing, food, staffing, medical records, medication, medical equipment and essential communication. Reputational costs should also be kept in mind; comprehensive planning can help ensure safety of patients/residents while also safeguarding your facility's reputation.

Financing is another challenge — how do you pay for the execution of the plan? When seeking reimbursement, there are two critical points to remember:

- Reimbursement requests must be submitted in writing during the policy term in which the evacuation occurred or within any applicable extended reporting period linked to the address covered by the policy.
- Include proof of payment for pertinent evacuation-related costs; provide copies of all receipts for essentials.

Regarding coverage, it's helpful to understand these three key points about evacuation expense reimbursement coverage:

- It is separate from property coverage and is often seen as an endorsement on your general liability or professional liability policy.
- It does not require the occurrence of any property damage to be triggered.
- As reimbursement coverage, evacuation expenses must be paid first and then submitted for compensation.

It's important to plan your work — know your risks, create an emergency plan (and include a "Plan B") and build support — and be ready to work your plan. Following these steps will help you to react quickly, confidently and safely when faced with a crisis and enable you to maintain care and compliance throughout the process.

RESOURCES

DMEC Hospital System Industry Group webinar: "Should We Stay or Should We Go? Considering Care and Costs in the Face of Disasters"

<https://event.on24.com/wcc/r/2147677/85A77AD103D47DC59C288426260EE9>

CMS.gov: Emergency Preparedness Rule

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Emergency-Prep-Rule>

Health News from NPR: "Safely Evacuating The Elderly In Any Emergency Takes Planning And Practice"

<https://www.npr.org/sections/health-shots/2018/12/28/673710296/safely-evacuating-the-elderly-in-any-emergency-takes-planning-and-practice>

Sedgwick connection blog: "Should we stay or should we go? Hurricane preparedness in long term care"

<https://www.sedgwick.com/blog/2018/09/21/should-we-stay-or-should-we-go-hurricane-preparedness-in-long-term-care>

Sedgwick connection blog: "Should we stay or should we go? Considering both care and cost"

<https://www.sedgwick.com/blog/2018/11/04/should-we-stay-or-should-we-go-considering-both-care-and-cost>

California Consumer Privacy Act update

FROM **THE SEDGWICK PRIVACY OFFICE**

The California Consumer Privacy Act (CCPA), which took effect January 1, 2020, provides new privacy rights for California consumers. Sedgwick's privacy office has been working with a cross-functional project team to ensure compliance with the CCPA and the California Attorney General's proposed rules.

Below are some important points related to the CCPA and how it applies to key areas of our business:

- The right of deletion will be limited to claims; there are exceptions for activities such as completing transactions, detecting security incidents, fraud and illegal activity, and to comply with legal obligations
- Sedgwick will have exceptions to the broad definition of "sell, selling, sale and sold" when it relates to individual consent and a "service provider to perform the business purpose"
- Exceptions also include the following – to comply with federal, state or local laws, exercise or defend legal claims, for evidentiary privilege, under the CA Confidentiality of Medical Information and under the California Financial Information Privacy Act governing Sedgwick

In addition, our team is updating specific communications and other materials as necessary. We are also working with industry groups to provide comments on the proposed rules.

After the CCPA was passed, a new initiative called the California Privacy Rights and Enforcement Act was announced and has been submitted for the November 2020 ballot in California. We will continue to monitor these important privacy and security laws as they evolve. If you have any questions, please contact your client services director.

RESOURCES

CCPA (Title 1.81.5, Section 1798.100)
https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB375

CCPA background and rulemaking activities
<https://oag.ca.gov/privacy/ccpa>

California legislative information
<https://leginfo.ca.gov/>

California Consumer Privacy Act update. Brenda Corey, SVP, Compliance and Regulatory. Edge 11.
https://edge.sedgwick.com/issue_011/edging-up/

California Privacy Rights and Enforcement Act announcement. Californians for Consumer Privacy.
<https://www.caprivacy.org/>

Sedgwick helps clients benefit from Oregon reimbursement program

BY **CHERYL DANNEN, MBA**

Strategic Project Manager, Sedgwick

Sedgwick recently began providing administrative services to help clients participate in the Oregon employer-at-injury program (EAIP), which offers reimbursements to employers that provide transitional duty options for injured employees.

The Oregon EAIP reimburses employers 45% of the employee's early return to work gross wages for up to 66 work days within a 24-consecutive-month period. This rate will increase to 50% for dates of injury after January 1, 2020. For employers that wish to participate, Sedgwick completes the administrative steps starting with identifying qualified claims and adding the necessary system fields. Employers provide the required payment details for the state forms including the employee's modified job description, hours and wages paid while working modified duty. Once all the information is gathered, our team completes and submits the forms.

Having the ability to provide these services in-house and manage EAIP details and claims information on the same system increases efficiency for our clients and examiners. Our claims management system includes features to track periods of modified duty and the reimbursements from the state and routes the reimbursements directly to your existing account.

If you have any questions about the EAIP requirements, please contact your client services director at Sedgwick.

RESOURCES

Oregon EAIP

<https://wcd.oregon.gov/rtw/Pages/eaip.aspx>

Oregon Workers' Compensation

Division website

<https://wcd.oregon.gov/Pages/index.aspx>

Insurance repair, Brexit and the elephant

BY **CHRIS CARLTON**

Director, Repair Solutions, Sedgwick

Brexit has caused a lot of discussion around potential impacts, threats and mitigations. Like many organizations, we've been carefully monitoring the situation and talking to our building repair and restoration contractors about their views from the factory floor.

In a recent industry survey, 75% of our building contractors told us they had minimal concerns about the current political situation and the likelihood that it would affect their companies. The positive outlook and level of confidence may be connected to an individual's political views and whether respondents identify as a leaver or remainer. One contractor said, "No matter what happens, we will all survive and thrive from any given situation."

Just under 25% of survey respondents went on to explain the recent issues they've faced involving material availability and shortages. These issues seem to be driven by some national contractors and developers stockpiling bricks, blocks, timber, tiles and, most noticeably, plasterboard. And the large percentage of contractors that were unaffected indicates that this is a regional issue.

However, the main concern expressed by contractors in the insurance building repair industry isn't based on political leadership, Brexit, or materials. The problem on the horizon, and what some may call the elephant in the room, is a shortage of skills. Two-thirds of contractors surveyed shared that this is already a challenge for them. And surveyors aren't the only shortage they've experienced. 100% of the respondents who saw this as a challenge also find it difficult to recruit tradesmen. But is this a Brexit-driven problem? Probably not. One contractor shared, "This has nothing to do with Brexit or anything political for that matter. There is a huge skill shortage across the whole industry, as well as a noticeable skills gap in new trades joining the industry and older trades retiring."

There's some recognition of this in our sector of construction and great work being done by the insurance apprenticeship academy to help develop the skills for the future, with a new program launching shortly. We know that technology is, and will continue to impact everything we do. But with 25 million houses in the U.K. — most of which have been traditionally built, and are likely to suffer peril damage — I can't yet foresee how emerging technologies will replace tradesmen on insurance repair work.

Brexit will come and go but our challenge will continue. We're always going to need plasterers who can complete small patch repairs to finishes after subsidence cracks have been perfected. We're always going to need bricklayers who can cut new sections of brick wall after impact damage. And we'll always need decorators who can re-paper a bedroom after water damage. Our challenge is to position the construction sector as the employment sector of choice, and to attract younger generations who see the potential for meaningful and fulfilling long-term careers. We're in a unique part of the construction industry, with the ability to help people when things have gone wrong with their homes, and help make it right. That's the message to promote if we are going to ensure stability in tomorrow's workforce.

Shaping the future of U.K. flood resilience

BY **IAN GIBBS**

National Technical Manager, Sedgwick

In 2007, catastrophic flooding in the U.K. killed 13 people, saw 420,000 inhabitants left without drinking water and was estimated to have caused nearly £6 billion of damage. This disaster was the trigger for a number of insurance and government-led initiatives, aimed at not only dealing with the aftermath of flooding, but more proactively managing and reducing the risk.

With flooding now a regular occurrence the question is not only how can we prepare for an immediate threat, but also what can be done to address flood trends in the longer term?

For those communities across the U.K. that are at risk of flooding, a Pathfinder project has been established by U.K. Department for Environment, Food & Rural Affairs (DEFRA). The project aims to work with key partners, including local flood authorities, to create professional hubs or demonstration sites. These hubs will provide training and other uptake activities to increase industry and public knowledge to reduce the impacts of flooding.

DEFRA has recently announced that it will provide £2.9 million in funding for this Pathfinder project which will allow these communities to better understand and implement flood resilience measures. The project will run from September 2019 to March 2021. The Pathfinder project will develop three regional hubs across the country to promote and support the uptake of resilience at property level. The successful bids came from York, Northampton and Cornwall and they will be joined by other local authorities to cover a wider geographical area. Each area will receive around £700,000 each to boost research into property resilience measures.

Sedgwick is continuing to be involved in the development of flood resilience under this Pathfinder project and I personally serve on the resilience round table for part of the Pathfinder steering group. This roundtable will work with the projects in Yorkshire, Devon and Cornwall, and Central England to meet the joint objectives and promote property level resilience.

This project, along with the development of the code of practice, fits closely with Sedgwick's strategic goals in making flood resilience a mainstream approach to flood risk. Through our years of experience and insight in managing water-related claims, our Sedgwick team have gained extensive knowledge on the best restoration solutions and how to minimise future threat and cost of flood claims. We work to help our clients deliver advice to their customers, and continue to make resilient repairs part of the flood reinstatement work.

The code of practice is currently being developed by the Construction Industry Research Information Association (CIRIA), as part of the strategy of the resilience round table and will be rolled out early in 2020. It will allow all parties commissioning, delivering and relying on flood resilience to have a clear best practice guide to rely upon.

I'm honoured to serve as part of the Pathfinder round table in finding solutions to address flooding and resilience now and into the future. If you're looking for support through the current flood season, please connect with me at ian.gibbs@uk.sedgwick.com.

*Learn more about the future implementation of resilience in the U.K. in our **2019 autumn issue of Sedgwick News**.*

RESOURCES

2019 autumn issue of Sedgwick News
https://www.sedgwick.com/assets/uploads/documents/1552-Sedgwick-Newsletter_Issue3_OCT19_4.pdf