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CMS Publishes Reform of Requirements for Long-Term Care Facilities Final Rule

The Centers for Medicare & Medicaid Services (CMS) released the final rule "Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities" on September 28, 2016. This is the first significant revision of the requirements for long term care facilities to participate in Medicare and Medicaid since 1991. CMS is adding new requirements, eliminating duplicative or unnecessary provisions and reorganizing others. The requirements apply to Medicare and Medicaid certified long term care facilities. This final regulation will be effective in 60 days which is November 28, 2016.

The requirements will be implemented through a 3-year phase in following the effective date of the final rule.

- The regulations included in Phase 1 must be implemented by the effective date of the final rule which is November 28, 2016.
- The regulations in Phase 2 include brand new requirements and those provisions that required more complex revisions and must be implemented by November 28, 2017.
- The third Phase includes all the remaining requirements that were not implemented in Phases 1 and 2 and must be implemented by November 28, 2019

CMS expects that this final Phase will allow for the complete set of revised requirements to be incorporated into the practices of LTC facilities and sufficiently enforced through the updated survey process.

Summary of Key Provisions:

Basis and Scope

- CMS added the statutory authority citations for sections of the Social Security Act to include the compliance and ethics program, quality assurance and performance improvement (QAPI), and reporting of suspicion of a crime requirements to this section. (Phase 1)

Definitions

- Adds definitions for abuse (includes language for social media), adverse event, exploitation, misappropriation of resident property, mistreatment, neglect, person-centered care, resident representative and sexual abuse to this section. (Phase 1)

Resident Rights

- CMS is retaining all existing residents' rights and updating the language and organization of the resident rights provisions to improve logical order and readability, clarify aspects of the regulation where necessary, and updating provisions to include advances such as electronic communications. (Phase 1)
- Requires that facilities provide residents with access to their medical records in a format requested, readily produced even if EMR, or provided in readable hard copy. (Phase 1
- Providing contact information for State and local advocacy organizations. (Phase 2)

Freedom from Abuse, Neglect and Exploitation *New Title*

- Facilities cannot employ individuals who have had a disciplinary action taken against their professional license by a state licensure body as result of a finding of abuse, neglect, mistreatment of residents or misappropriation of their property. (Phase 1)
- Reporting Crimes, rules and processes. (Phase 2)
- Coordination with QAPI (Phase 3)

Admission, Transfer and Discharge

- Requires that a transfer or discharge be documented in the medical record and prior notice be documented which includes a copy of this written notification shared with the Long Term Care (LTC) Ombudsmen. (Phase 1)
- Requires specific information to be provided to the receiving provider and to provide sufficient preparation and orientation to the resident for the transfer to ensure a safe and orderly transfer or discharge from the facility. (Phase 2)
- Requires that for residents who are transferred to another SNF or who are discharged to a HHA, IRF, or LTCH, the discharging facility present information that could assist the patient and their resident representatives in selecting a post-acute care provider by using data that includes, but is not limited to SNF, HHA, IRF, or LTCH standardized patient assessment data, data on quality measures, and data on resource use to the extent the data is available. (Phase 2)

- Facility must develop and implement a discharge planning process that applies to both SNF and NF patients. (Phase 2)

Resident Assessments

- Clarifying what constitutes appropriate coordination of a resident's assessment with the Preadmission Screening and Resident Review (PASARR) under Medicaid (Phase 1)

Comprehensive Person-Centered Care Planning *NEW SECTION*

- Requires facilities to develop and implement a discharge process that focuses on resident's goals and prepares residents to be active partners in post-discharge care, in effective transitions, and in the reduction of factors leading to preventable re-admissions. They are also implementing the discharge requirements mandated by the IMPACT Act by revising, or adding where appropriate, discharge planning requirements for LTC facilities. (Phase 1)
- Requires Nurse Aide and a member of the food and nutrition services staff to the required members of the Interdisciplinary team that develops the comprehensive care plan. (Phase 1)
- Requiring facilities to establish and implement a baseline care plan for each resident within 48 hours of admission and provide a summary of it to patients. (Phase 2)
- Trauma-Informed Care to ensure survivors receive culturally competent care to mitigate triggers that may re-traumatize. Trauma survivors, including veterans, survivors of large scale natural human-caused disasters, Holocaust survivors and survivors of abuse are among those who may be residents of LTC facilities. (Phase 3)

Quality of Care

- Requires a new provision that residents with limited mobility receive appropriate services and equipment to maintain or improve mobility unless reduced mobility is unavoidable based on the resident's clinical condition. (Phase 1)

Quality of Life

- Based on the comprehensive assessment of a resident, CMS is requiring facilities to ensure that residents receive treatment and care in accordance with professional standards of practice, the comprehensive person-centered care plan, and the residents' choice. (Phase 1)

Physicians Services

- Allows the attending physician to delegate therapy orders to therapists and dietary orders to qualified dietitians or other clinically qualified nutrition professionals. CMS modified the proposal rule to limit this authority to the attending physician who is responsible for the care of the resident and who should be aware of the full spectrum of issues and concerns regarding the resident. (Phase 1)

Nursing Services

- CMS is adding a competency requirement for determining the sufficiency of nursing staff, based on a facility assessment, which includes but is not limited to the number of residents, resident acuity, range of diagnoses, and the content of the individual care plans. (Phase 1)
- Specific usage of the facility assessment in determination of sufficient number and competencies of staff. (Phase 2)

Behavioral Health Services *NEW SECTION*

- Adds a new section that focuses on the requirement to provide the necessary behavioral health care and services to residents, in accordance with their comprehensive assessment and plan of care. (Phase 1)
- Adding "gerontology" to the list of possible human services fields from which a bachelor degree could provide the minimum educational requirement for a social worker.

Pharmacy Services

- Requires facilities to develop and maintain policies and procedures for the monthly drug regimen review (DRR), which include but are not limited to, timeframes for the various steps in the process and procedures a pharmacist must take when he or she believes immediate action is required to protect the resident. (Phase 1)
- Requiring that a pharmacist review a resident's medical chart during each monthly DRR.
- The Pharmacist is to perform a DRR for each resident at least once a month. The pharmacist would be required to review the resident's medical record concurrently with the DRR when:
    1. The resident is new to the facility
    2. A prior resident returns or is transferred from a hospital or other facility
    3. During each monthly drug regimen review when the resident has been prescribed or is taking a psychotropic drug, antibiotic, or any drug the QAA committee has requested be included in the pharmacist's monthly drug review. (Phase 2)

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Laboratory, Radiology, and other diagnostic Services *NEW SECTION*

- New Section but not new rules.
- Clarifies that a physician assistant, nurse practitioner or clinical nurse specialist may order laboratory, radiology and other diagnostic services for residents in accordance with state law, including scope of practice laws. (Phase 1)
- Allows other practitioners (ordering physician, physician assistant, nurse practitioner, or clinical nurse specialist) to receive laboratory, radiology and other diagnostic results if these practitioners ordered the tests. (Phase 1)
- Requires that facilities promptly notify the ordering practitioner of results that fall outside of clinical reference ranges with facility policies and procedures for notification of a practitioner or per the ordering physician's orders. (Phase 1)

Dental Services

- Prohibits facilities from charging Medicare residents for the lost or damage of dentures (Phase 2).
- The facility must have a policy identifying those instances where loss is the facility's responsibility. (Phase 2)

Food and Nutrition Services

- Requires facilities to provide a nourishing, palatable, well balanced diet that meets his or her daily nutritional and special dietary need, taking into consideration the preferences of each resident.
- Requires facilities to employ sufficient staff, including the designation of a director of food and nutrition service, with the appropriate competencies and skills to carry out the functions of the dietary services as linked to Facility Assessment (Phase 2).
- Dietician and Director of Food and Nutrition services background requirements (Phase 2)

Specialized Rehabilitative Services

- Adds respiratory services to those services identified as specialized rehabilitative services. (Phase 1)

Administration

- Bans nursing facilities from requiring that patients sign a pre-dispute arbitration agreement as a condition of admission. Facilities cannot require patients to sign post-dispute arbitration agreements as a condition of continuing to stay at the facility. Also, any arbitration agreements that are utilized by patients and the facility, the facility must retain a copy of the signed agreement and the final decision for 5 years and be available for inspection upon request by CMS. (Phase 1)
- Requires facilities to conduct, document, and annually review a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies. Facilities are required to address in the facility assessment the facility's resident population (number of residents, overall types of care and staff competencies required by the residents, and cultural aspects), resources, and a facility-based and community-based risk assessment. (Phase 2)

Quality Assurance and Performance Improvement (QAPI) *NEW SECTION*

- Requiring all LTC facilities to develop, implement, and maintain an effective comprehensive, data driven QAPI program that focuses on systems of care, outcomes of care and quality of life.
- Requires QAPI plan submitted to the State Agency or federal surveyor, at the first annual recertification survey 1 year after the effective date of these regulations. (Phase 2)
- Requires full QAPI program in place on an ongoing basis, with no fixed start or end date. (Phase 3)

Infection Control

- Requires facilities to develop an Infection Prevention and Control Program (IPCP) that includes an Antibiotic Stewardship Program. (Phase 2)
- Requires a designated Infection Preventionist (IP) with specialized training that works at least part time at the facility. (Phase 3)

Compliance and Ethics *NEW SECTION*

- New requirement for the operating organization for each facility to have in effect a compliance and ethics program that has established written compliance and ethics standards, policies, and procedures that are capable of reducing the prospect of criminal, civil and administrative violations. (Phase 3)

Physical Environment

- Requires facilities that are constructed, re-constructed, or newly certified after the effective date of this regulation to accommodate not more than two residents in a bedroom. (Phase 1)
- Requires facilities that are constructed, or newly certified after the effective date of this regulation to have a bathroom equipped with at least a commode and sink in each room. (Phase 1)
- Smoking policies required. (phase 2)
- Call system from each resident's bedside. (Phase 3)

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Training Requirement *NEW SECTION*

- New requirement that sets forth all the requirements of an effective training program that facilities must develop, implement and maintain for all new and existing staff including contract staff and volunteers. (Phase 1 and 3)
  - °Abuse, neglect and exploitation training (Phase 1)
  - ° In-service training, dementia management & abuse prevention training (Phase 1)
  - ° Care of the cognitively impaired training (Phase 1)

Summary of Phase Implementation

Phase One: November 28, 2016

- Resident Rights – Except providing contact information on advocacy groups.
- Abuse Neglect Exploitation (new title) – Except Reporting Crimes
- Admission/Transfer/discharge Rights – Except specific Transfer/Discharge Information at transfer
- Assessment
- Comprehensive Person Centered Care Planning – Now a Section - Except Trauma-informed care
- Quality of Life – Except Trauma-informed care
- Physician Services
- Quality of Care – Except Trauma Informed care
- Nursing Services – Except use of Facility Assessment to determine staffing
- Behavioral Health Services - New Section – only Medically Related SS in phase 1 matching current rules
- Pharmacy Services – Except Medical Chart Review as part of DRR and Psychotropic Drug
- Laboratory, Radiology, and Other Diagnostic – New Section – not new rules
- Dental Services – Except charging for dentures and referral requirements
- Food and Nutrition – Except Staff credential changes and staffing based in Facility Assessment
- Specialized Rehab
- Administration – Except Facility Annual Assessment
- QAPI – New Section – Only current QAC rules implemented phase 1
- Infection Control – Except Antibiotic Stewardship and Infection Prevention and Control Officer
- Physical Environment – Except call system and smoking
- Training Requirements – New Section – Only implement Abuse, Dementia and Feeding Ass't Training in phase 1

Phase Two: November 28, 2017

- Resident Rights – Provide contact information on advocacy groups.
- Abuse, Neglect, Exploitation - Reporting Crimes procedures
- Admission/Discharge/Transfers - Transfer/Discharge Transfer information
- Person-Centered Care plan - Baseline Care Plan within 48 hours
- Nursing Services - Use Facility Assessment to determine staffing
- Behavioral Health Services – fully implemented
- Pharmacy - Monthly Medical Chart Review with DRR and Psychotropic Drug
- Dental Services – charging for dentures and referrals
- Administration – Annual Facility Assessment and QAPI Plan provided to surveyors during annual survey
- Infection Control – Antibiotic Stewardship
- Physical Environment – Smoking policies

Phase Three: November 28, 2018

- Comprehensive Person Centered Care Planning - Trauma informed Care
- Quality of Life – Trauma informed Care
- QAPI – fully implemented
- Infection Control - ICPO designated and member of QAPI
- Compliance and Ethics Rules
- Physical Environment – Call system from each resident's bedside
- Training Requirements – fully implemented

To read the complete Final Rule go to http://polaris-group.com/

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Contributors:
Debora Glatfelter, RN, RAC-CT
Victor Kintz, MBA, CHC, LNHA, RAC-CT, CCA
Marty Pachciarz, RN, RAC-CT
Cynthia Wilkins, RN, MSN, LNHA
Wendy Erickson, BSN, RN, RAC-CT, CCA

Editor:
Chuck Cave, BS, CHC

Production Manager:
Mica Meadows