

CMS Overhauls Regulatory Requirements for Long-Term Care Facilities

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On October 4, 2016, the Centers for Medicare and Medicaid Services (“CMS”) published a final rule comprehensively updating and revising federal regulations that apply to long-term care facilities (“LTC Facilities”) participating in Medicare and Medicaid. This is the first comprehensive update of these regulations (located at 42 C.F.R. part 483, subpart B) since 1991.

CMS said the revisions were necessary in part because the LTC Facility patient population has changed, becoming more diverse and clinically complex. In addition, CMS noted that extensive, evidence-based research conducted over the past two to three decades has enhanced the industry’s knowledge about resident safety, health outcomes, individual choice, and quality assurance and performance improvement.

The final regulations will be implemented in three phases. Regulations included in Phase 1 will be implemented by November 28, 2016. Regulation included in Phase 2 will be implemented by November 28, 2017 and regulations included in Phase 3 will be implemented by November 28, 2019.

The final rule revises regulations impacting a wide variety of areas, including: resident rights; abuse, neglect and exploitation; admissions and transfers; resident assessments; person-centered care planning; quality of care; physician services; laboratory, radiology, and other diagnostic services; administration; quality improvement; compliance and ethics programs; physical environment; infection control; and training requirements.

Some key provisions include:

- **Arbitration Agreements.** A prohibition on the use of pre-dispute binding arbitration agreements. LTC Facilities that participate in Medicare or Medicaid can no longer enter into pre-dispute binding arbitration agreements with their residents or their representatives. Similarly, a LTC Facility cannot require a resident to sign a post-dispute arbitration agreement as a condition of the resident’s continuing to stay at the facility. After a dispute arises, the resident and the LTC Facility may voluntarily enter into a binding arbitration agreement if both parties agree. The final rule does not

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affect existing arbitration agreements or render them unenforceable.

- Person-Centered Care Planning. LTC Facilities are required to develop and implement a baseline care plan for each resident within 48 hours of their admission, which includes the instructions needed to provide effective and person-centered care that meets professional standards of quality care. The baseline interim care plan must include, at a minimum, the initial resident goals based on admission orders, physician orders, dietary orders, therapy and social services and pre-admission screening and resident review process recommendations. Discharge assessment and planning must be included in the comprehensive care plan.
- Compliance and Ethics Program. The final rule requires the operating organization for each facility to have a compliance and ethics program with written compliance and ethics standards, policies and procedures. The final rule included a set of requirements that all operating organizations must meet, regardless of size. Operating organizations that have five or more LTC Facilities must meet additional requirements. The final rule requires all operating organizations to have the required compliance and ethics program in place within one year of the effective date of the final rule.
- Training Requirements. LTC Facilities must develop, implement, and maintain an effective training program for all staff, independent contractors, and volunteers. The training topics include: communications training; resident rights training; abuse, neglect, and exploitation training; quality assurance and performance improvement training; compliance and ethics training; and nurse aide in-service training –dementia and abuse.

A copy of the final rule is available here:

<https://www.gpo.gov/fdsys/pkg/FR-2016-10-04/pdf/2016-23503.pdf>