

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

Summary of Major Provisions of the New Federal Regulations for Nursing Homes

Following are highlights from the summary of provisions from the Medicare and Medicaid Programs: Reform of Requirements for Long-Term Care Facilities, the new federal minimum standards for nursing homes published on October 4, 2016.

Note: All language below is quoted from the document released by CMS the week prior to official publication, which included a summary of the new regulations, responses to the comments received to the regulations proposed by CMS in 2015 and the new regulatory language itself. This document is available on our website, www.nursinghome411.org, where we will continue to post additional news, resources and information on the new regulations as they are implemented in the coming months and years. The federal website for the regulations is <https://www.federalregister.gov/documents/2016/10/04/2016-23503/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities>.

Basis and scope (§483.1)

We have added the statutory authority citations for sections 1128I(b) and (c) and section 1150B of the Social Security Act (the 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.

Resident rights (§483.10)

We are 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.

Freedom from abuse, neglect, and exploitation (§483.12)

We are requiring facilities to investigate and report all allegations of abusive conduct. We also are specifying that facilities cannot employ individuals who have had a disciplinary action taken against their professional license by a state licensure body as a result of a finding of abuse, neglect, mistreatment of residents or misappropriation of their property.

Admission, transfer, and discharge rights (§483.15)

We are requiring that a transfer or discharge be documented in the medical record and that specific information be exchanged with the receiving provider or facility when a resident is transferred.

Resident assessments (§483.20)

We are clarifying what constitutes appropriate coordination of a resident's assessment with the Preadmission Screening and Resident Review (PASARR) program under Medicaid. We are also adding references to statutory requirements that were inadvertently omitted from the regulation when we first implemented sections 1819 and 1919 of the Act.

Comprehensive Person-Centered Care Planning (§483.21) *New Section*

We are requiring facilities 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.

We are adding a 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.

We are requiring that facilities develop and implement a discharge planning process that focuses on the resident's discharge 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. We are also implementing the discharge planning requirements mandated by The Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) by revising, or adding where appropriate, discharge planning requirements for LTC facilities.

Quality of care (§483.24)

We are requiring that each resident receive and the facility provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident's comprehensive assessment and plan of care.

Quality of Life (§483.25)

Based on the comprehensive assessment of a resident, we are 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' choices.

Nursing services (§483.35)

We are 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 individual care plans.

Behavioral health services (§483.40)

We are adding a new section to subpart B 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.

Pharmacy services (§483.45)

We are requiring that a pharmacist review a resident’s medical chart during each monthly drug regimen review.

We are revising existing requirements regarding “antipsychotic” drugs to refer to “psychotropic” drugs and define “psychotropic drug” as any drug that affects brain activities associated with mental processes and behavior. We are requiring several provisions intended to reduce or eliminate the need for psychotropic drugs, if not clinically contraindicated, to safeguard the resident’s health.

Laboratory, radiology, and other diagnostic services (§483.50) *New Section* We are clarifying that a physician assistant, nurse practitioner or clinical nurse specialist may order laboratory, radiology, and other diagnostic services for a resident in accordance with state law, including scope-of-practice laws.

Dental services (§483.55)

We are prohibiting SNFs and NFs from charging a Medicare resident for the loss or damage of dentures determined in accordance with facility policy to be the facility’s responsibility, and we are adding a requirement that the facility have a policy identifying those instances when the loss or damage of dentures is the facility’s responsibility. We are requiring NFs to assist residents who are eligible to apply for reimbursement of dental services under the Medicaid state plan, where applicable.

We are clarifying that with regard to a referral for lost or damaged dentures “promptly” means that the referral must be made within 3 business days unless there is documentation of extenuating circumstances.

Food and nutrition services (§483.60)

We are requiring facilities to provide each resident with a nourishing, palatable, well-balanced diet that meets his or her daily nutritional and special dietary needs, taking into consideration the preferences of each resident. We are also requiring facilities to employ sufficient staff, including the designation of a director of food and nutrition service, with the appropriate competencies and skills sets to carry out the functions of dietary services while taking into consideration resident assessments and individual plans of care, including diagnoses and acuity, as well as the facility’s resident census.

Administration (§483.70)

We require 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 (that is, number of residents, overall types of care and staff competencies required by the residents, and cultural aspects), resources (for example, equipment, and overall personnel), and a facility-based and community-based risk assessment.

Binding Arbitration Agreements: We are requiring that facilities must not enter into an agreement for binding arbitration with a resident or their representative until after a dispute

arises between the parties. Thus, we are prohibiting the use of pre-dispute binding arbitration agreements.

Quality assurance and performance improvement (QAPI) (§483.75)

We are 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.

Compliance and ethics program (§483.85) *New Section*

We are requiring 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 in accordance with section 1128I(b) of the Act.

Physical environment (§483.90)

We are requiring facilities that are constructed, re-constructed, or newly certified after the effective date of this regulation to accommodate no more than two residents in a bedroom.

We are also requiring 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.

Training requirements (§483.95) *New Section*

We are adding a new section to subpart B that sets forth all the requirements of an effective training program that facilities must develop, implement, and maintain for all new and existing staff, individuals providing services under a contractual arrangement, and volunteers, consistent with their expected roles.