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Long-Term Care Final Rule

OVERVIEW

On September 28th, the Centers for Medicare and Medicaid Services (CMS) issued a final rule that revises the requirements that long-term care facilities must meet to participate in the Medicare and Medicaid programs. The final rule includes new policies regarding resident rights, facility responsibilities, transitions of care, and comprehensive resident-centered care plans. Unlike the annual provider payment update rules issued by CMS, the long-term care final rule will comprehensively update the conditions of participation for long-term care facilities for the first time since 1991.

The rule's provisions will go into effect in three phases:

- Phase 1 – November 28, 2016
- Phase 2 – November 28, 2017
- Phase 3 – November 28, 2019

This document summarizes several major provisions of the final rule and includes a comprehensive implementation timeline. The final rule is available here.

RESIDENT RIGHTS

The final rule includes several modifications that are intended to optimize resident safety and ensure that resident rights are upheld.

Binding Arbitration Agreements

The final rule will prohibit facilities from requiring new residents to sign pre-dispute binding arbitration agreements. Facilities may only enter into a binding arbitration agreement with a resident after a dispute has arisen between the resident and the facility. This provision was not included in the proposed rule, but was added to the final rule after CMS received comments encouraging the prohibition of pre-dispute arbitration agreements. CMS notes that commenters advocating for the prohibition of pre-dispute arbitration agreements included 16 state attorney-generals and 34 U.S. senators.

Implementation Timeline: This provision must be implemented by November 28, 2016.

Visitation

CMS finalized its proposal to establish more open visitation policies. Residents will have the right to receive visitors at the time of the resident's choosing, so long as the visitation does not impose on the rights of another resident. Visitors who will have immediate access to a resident include: the resident's individual physician, the resident's representative, any representative of the protection and advocacy system, and the resident's family or others who are visiting with the consent of the resident. Any individual who provides health, social, legal, or other services to the resident will be provided with "reasonable access" to the resident. The resident retains the right to deny visitation or withdraw consent at any time.

Facilities will be required to inform each resident of their visitation rights and produce written policies regarding the visitation rights of residents. A facility may only deny visitation on the basis of reasonable clinical or safety concerns.

Implementation Timeline: These provisions must be implemented by November 28, 2016.

Abuse, Neglect, and Exploitation

CMS finalized its proposal to prohibit facilities from employing individuals who have had a disciplinary action taken against their professional license by a state licensure body due to abuse, neglect, or harm of residents, or inappropriate use of resident property.

Facilities will be required to educate their staff on activities that constitute abuse, neglect, exploitation, and misappropriation of resident property. Staff must also be educated on the procedures for reporting violations of a resident's rights.

Implementation Timeline: Most of these provisions must be implemented by November 28, 2016. Facilities will not be required to establish policies for the reporting of misconduct until November 28, 2017.

Training Requirements

The final rule requires that facilities implement training programs that include topics on: communication, resident rights, facility obligations, abuse, neglect, exploitation, infection control, and feeding assistance. Training materials must be provided to all new and existing staff, including volunteers and individuals providing services under a contractual arrangement.

Under current law, facilities are required to conduct an annual performance review of every nurse aide and provide in-service education according to the outcome of the performance review. The final rule will require facilities to add dementia management and abuse prevention training to the annual in-service education for all direct care staff.

Implementation Timeline: Abuse, neglect, exploitation, dementia management, and feeding assistance training must be implemented by November 28, 2016. Other training requirements must be implemented by November 28, 2019.

COMPREHENSIVE PERSON-CENTERED CARE PLANNING

Currently, a comprehensive resident assessment must be completed within 14 days of a resident's admission and a comprehensive care plan must be completed within seven days of the finalization of the comprehensive resident assessment. Under the final rule, facilities will be required to ensure that an interdisciplinary team (IDT) develops a baseline care plan for each resident within 48 hours of admission.

Implementation Timeline: The baseline care plan must be implemented by November 28, 2017.

IDT

Under current law, the IDT must include: the attending physician, a registered nurse, the resident's representative, and other appropriate staff. The final rule will add a nurse aide and a member of the food and nutrition services staff to the list of IDT members who are required to develop each resident's care plan. A social worker will not be required to contribute to the development of each resident's care plan, as was originally proposed.

Implementation Timeline: These provisions must be implemented by November 28, 2016.

Discharge Planning

Under the final rule, discharge planning will be a required component of the comprehensive care plan. The IDT will develop a discharge planning process that assesses the resident's potential for discharge, supports the resident's discharge goals, and focuses on the avoidance of factors that may contribute to a preventable re-admission. The discharge summary must include:

- Medication reconciliation;
- A summary of the resident's stay;
- A final summary of the resident's status; and
- The post-discharge plan of care.

Facilities will also be required to implement discharge planning requirements mandated by the Improving Medicare Post-Acute Care Transformation (IMPACT) Act. The IMPACT Act requires long-term care facilities to design each resident's discharge plan according to standardized patient data, quality measures, resource use measures, and the resident's treatment goals and preferences.

Implementation Timeline: These provisions must be implemented by November 28, 2016.

Discharge or Transfer Documentation

CMS finalized its proposal to require that the transfer or discharge of a resident be documented in the clinical record. When a resident is transferred, the following information must be provided to the receiving facility: history of present illness, reason for transfer, and past medical/surgical history. To avoid inappropriate transfer or discharge, CMS will require that the resident's physician document: the originating facility's attempts to meet the resident's needs, the specific resident needs that cannot be met by the originating facility, and the services that will be available to the resident at the receiving facility.

Implementation Timeline: These provisions must be implemented by November 28, 2017.

PHARMACY SERVICES

CMS finalized its proposal to require that a pharmacist review each resident's drug regimen when a resident is new to the facility or returns from another facility. Following this initial assessment, a pharmacist will be required to review each resident's medical chart during a monthly drug regimen review. This deviates from the proposed rule, which required a pharmacist to review each resident's medical record every six months, unless the resident was prescribed certain drugs.

Implementation Timeline: These provisions must be implemented by November 28, 2017.

Psychotropic Drugs

Under the final rule, facilities will be required to ensure that psychotropic drugs are only prescribed to residents who have been diagnosed with a condition for which psychotropic drugs are medically appropriate. Residents that receive psychotropic drugs will be required to receive gradual dose reductions and behavioral interventions in an effort to discontinue the use of such medications, if clinically appropriate.

CMS originally proposed that the use of psychotropic drug should be limited to 48 hours, unless medically appropriate. However, in the final rule, CMS acknowledged that a 48-hour limitation on psychotropic drug prescriptions could be detrimental to the resident's health. As such, this provision will not be implemented.

Implementation Timeline: These provisions must be implemented by November 28, 2017.

BEHAVIORAL HEALTH SERVICES

CMS finalized several new requirements regarding the provision of behavioral health services to nursing facility residents. Facilities will be required to insure that any resident whose comprehensive assessment displays mental or psychological adjustment difficulty receives appropriate treatment.

Facilities will be required to employ staff who are trained to provide direct behavioral health services to residents with mental and psychosocial disorders and residents with a history of trauma and/or post-traumatic stress disorder (PTSD). Facilities will determine their direct care staff needs based on a facility assessment and provide behavioral health training to staff, as necessary.

Implementation Timeline: Most of these provisions must be implemented by November 28, 2017, with the following exceptions:

- Facilities must implement the comprehensive resident assessment by November 28, 2016; and
- Facilities must employ staff who are trained to provide services to residents with a history of trauma and/or PTSD by November 28, 2019.

COMPLIANCE AND ETHICS PROGRAM

CMS added a provision to the final rule that will require facilities to implement a compliance and ethics program. The program must include written compliance and ethics standards aimed at reducing the prospect of criminal, civil, and administrative violations. Organizations with five or more facilities will be required to conduct annual compliance and ethics training for their employees. Organizations with four or fewer facilitates may communicate the compliance and ethics program requirements to employees through the dissemination of reading material or more formal training sessions.

Implementation Timeline: These provisions must be implemented by November 28, 2019.

IMPLEMENTATION DEADLINES

Implementation Phase	Implementation Deadline
Phase 1	November 28, 2016
Phase 2	November 28, 2017
Phase 3	November 28, 2019

Provision	Implementation Phase
Resident Rights	
Binding arbitration agreement	Phase 1
Visitation requirements	Phase 1
Freedom from abuse, neglect, and exploitation	Phase 1
Reporting Misconduct	Phase 2
Training requirements	
Abuse, neglect, and exploitation prevention	Phase 1
Dementia management and abuse prevention	Phase 1
Feeding assistance	Phase 1
All other training	Phase 3
Comprehensive Person-Centered Care Planning	
Baseline care plan requirement	Phase 2
Required IDT members	Phase 1
Discharge planning requirements	Phase 1
Discharge/transfer documentation	Phase 2
Pharmacy Services	
Pharmacist medical chart review	Phase 2
Psychotropic drug requirements	Phase 2
Behavioral Health Services	
Comprehensive resident assessment	Phase 1
Services for resident's with history of trauma and/or PTSD	Phase 3
Compliance and Ethics Program	Phase 3
Facility Assessment	Phase 2