

MDS Alert

Regulations: Brace Yourself For Game-Changing LTC Reform Final Rule

Stop using pre-dispute binding arbitration agreements, or face surveyors' ire.

The long-term care industry has enjoyed 25 years without major reforms, but that all just changed. The **Centers for Medicare & Medicaid Services (CMS)** has issued a monster of a final rule that will transform regulations for LTC facilities.

New Regulations Focus on Resident Care & Safety

In the Oct. 4 Federal Register, CMS published a final rule that makes sweeping changes to the long-term care (LTC) industry standards, focusing on enhancing care and safety for LTC facility residents. The final rule is more than 700 pages and is effective as of Nov. 28, 2016. Due to the wide breadth of this rule, CMS is phasing-in implementation over the course of the next three years.

Background: This final rule is the first comprehensive update since 1991, according to CMS. CMS first announced that it would revise the LTC facility standards at the White House Conference on Aging in 2015, which marked the 50th anniversary of Medicare and Medicaid. The proposed rule appeared shortly thereafter.

In addition to updating safeguards and promoting LTC best practices, the rule also incorporates protections mandated under the Affordable Care Act. CMS considered nearly 10,000 public comments on the proposed rule before issuing the final version.

Get Ready for 7 Major Changes

The changes contained in the final rule aim to:

1. Strengthen the rights of LTC facility residents, including **prohibiting the use of pre-dispute binding arbitration agreements;**
2. Ensure that LTC facility staff members are properly trained on **caring for residents with dementia and preventing elder abuse;**
3. Ensure that facilities take into consideration residents' health when **making decisions on the kinds and levels of staffing needed** to properly care for residents;
4. Ensure that **staff members have the right skill sets and competencies** to provide person-centered care to residents, and that the care plans developed for residents will take into consideration their **care goals and preferences;**
5. **improve care planning, including discharge planning** for all residents with involvement of the facility's interdisciplinary team and consideration of the caregiver's capacity, giving residents information they need for follow-up after discharge, and ensuring that instructions are transmitted to any receiving facilities or service providers;
6. **allow dietitians and therapy providers the authority to write orders** in their areas of expertise when a physician delegates the responsibility and state licensing laws allow; and
7. Update the LTC facility's **infection prevention and control program**, including requiring an infection prevention and control officer and an antibiotic stewardship program that includes **antibiotic use protocols and a system to monitor antibiotic use.**

Pay Attention to Noteworthy Reforms

Although the final rule contains hundreds of new regulations, a handful of items are especially interesting. These include new provisions that require facilities to provide more staff training and limit discharges of residents who are awaiting Medicaid payments, as well as that prohibit "hospital dumping."

Another key change is the new limitation on facilities' use of arbitration provisions in nursing facility admission contracts, noted attorney **Jeffrey Marshall** of **Marshall, Parker & Weber LLC** in a recent analysis (www.paelderlaw.com/government-updates-rules-for-long-term-care-facilities/). "Effective Nov. 28, 2016, any [LTC] facility that receives federal funding is barred from requiring residents to agree to resolve disputes through private arbitration as a condition of admission to the facility."

Dig Deep to Pay Compliance Costs

Bad news: Unfortunately, all these changes won't be cheap for LTC facilities. CMS estimates that these changes will cost an average of \$62,900 per facility in the first year and \$55,000 in each subsequent year, according to an Oct. 10 analysis (www.healthlawpolicymatters.com/2016/10/10/cms-releases-final-rule-overhauling-long-term-care-facility-requirements/) by attorneys **Lauren Moldawer** and **Cassandra Paolillo** of **Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C.**

The three-year phase-in schedule should help to ease financial burdens. Regulations included in Phase 1 have an implementation deadline of Nov. 28, 2016, while those in Phase 2 have an implementation deadline of Nov. 28, 2017 and Phase 3's implementation is due on Nov. 28, 2019.

"The three phases have been categorized based on CMS's assessment of each revision's complexity and the extent to which interpretive guidance and survey processes will need to be revised," Moldawer and Paolillo wrote.

Resources: To view the final rule, "Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities," go to www.federalregister.gov/documents/2016/10/04/2016-23503/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities. You can also read a CMS blog posting on the final rule at <https://blog.cms.gov/2016/09/28/commitment-to-person-centered-care-for-long-term-care-facility-residents/>.