



## Medicare & Medicaid Programs; Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Efficiency and Transparency

By Janet K. Feldkamp



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On July 16, 2019, The Centers for Medicare and Medicaid Services (CMS) announced a proposed rule, “*Medicare & Medicaid Programs; Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Efficiency and Transparency*” (CMS-3347-P), which will reform the Phase 3 Requirements of Participation. The proposed rule would remove Requirements of Participation that are unnecessary, obsolete, or excessively burdensome on long-term care (LTC) facilities and nursing homes.

The rule is part of the agency's five-part approach to ensuring a high-quality LTC facility system that focuses on:

- solidification of requirements for such facilities,
- working with states to enforce statutory and regulatory requirements,
- increasing transparency of facility performance,
- and promoting improved health outcomes for facility residents

Many of the proposed provisions would simplify or streamline the Medicare health and safety standards long-term care facilities must meet in order to serve their residents.

Some of the significant proposed revisions and changes to the Requirements of Participation are included in the chart on the next page.

CMS looks forward to feedback on the proposed rule and will accept comments until **September 16, 2019**. Comments may be submitted electronically [here](#).

Although many of the proposed modifications are revisions to current regulations, facilities should be cognizant that many other Phase 3 portions of the Requirements of Participation have changes that effect facility operations.

For more information on this topic, please contact a member of Benesch's [Health Care & Life Sciences Practice Group](#).

§483.10 Resident Rights	<ul style="list-style-type: none"> <li>• Only requiring facilities to provide patients with PCP contact information on admission, with any change, or upon request.</li> <li>• Revisions to the grievance policy requirements, including a reduction in the amount of time that facilities must retain evidence (from 3 years to 18 months).</li> </ul>
§483.15 Admission, Transfer, and Discharge Rights	<ul style="list-style-type: none"> <li>• Revision to the requirement for facilities to send discharge notices to State LTC Ombudsman by applying this requirement to “facility-initiated involuntary transfers and discharges” only.</li> </ul>
§483.25 Quality of Care	<ul style="list-style-type: none"> <li>• Clarity on the appropriate use of bed rails in facilities, and eliminating references to the “installation” of bed rails. These revisions would provide clarity and address stakeholder concerns regarding the purchase of beds with bed rails already in place with no practical means of removal.</li> </ul>
§483.35 Nursing Services	<ul style="list-style-type: none"> <li>• A proposed reduction in the timeframe that LTC facilities are required to retain posted daily nursing staffing data from 18 months to 15 months, or as required by state law.</li> </ul>
§483.45 Pharmacy Services	<ul style="list-style-type: none"> <li>• Proposed removal of the existing requirement that PRN or as needed, prescriptions for anti-psychotics cannot be renewed unless the attending physician or prescribing practitioner evaluates the resident for the appropriateness of that medication.</li> </ul>
§483.60 Food and Nutrition Services	<ul style="list-style-type: none"> <li>• Proposed revision to the qualifications requirements for a Director of Food and Nutrition Services position, specifically, that at a minimum an individual designated as the director of food and nutrition services would receive frequently scheduled consultations from a qualified dietitian or other clinically qualified nutrition professional; and would either have 2 or more years of experience in the position of a director of food and nutrition services, or have completed a minimum course of study in food safety that includes topics integral to managing dietary operations.</li> </ul>
§483.70 Administration	<ul style="list-style-type: none"> <li>• Proposed clarification that that data collected under the facility assessment requirement can be utilized to inform policies and procedures for other LTC requirements.</li> <li>• Proposed revision to the requirement for the review of the facility assessment from annually to biennially.</li> <li>• Proposed removal of the unnecessary requirement that requires each facility to conduct and document a facility-wide assessment for both day to-day operations and emergencies. The emergency preparedness requirements are very detailed and discuss the full range of requirements for a facility to have an emergency plan, conduct a risk assessment, have policies and procedures, a communication plan, and conduct training and testing.</li> </ul>
§483.75 Quality Assurance and Performance Improvement	<ul style="list-style-type: none"> <li>• Proposed revision to the requirement the requirement for facilities to implement a Quality Assurance and Performance Improvement (QAPI) program by removing prescriptive requirements to allow facilities greater flexibility in tailoring their QAPI program to the specific needs of their individual facility.</li> </ul>
§483.80 Infection Control	<ul style="list-style-type: none"> <li>• Proposed removal of the requirement that the infection preventionist (IP) work at the facility “part-time” or have frequent contact with the infection prevention and control program (IPCP) staff at the facility. We will instead require that the facility must ensure that the IP has sufficient time at the facility to meet the objectives of its IPCP.</li> </ul>
§483.85 Compliance and Ethics Program	<ul style="list-style-type: none"> <li>• Proposed removal of many of the requirements from this section not expressly required by statute. Proposed revisions include removing the requirements for a compliance officer and compliance liaisons and revising the requirement for reviewing the program from annually to biennially.</li> </ul>
§483.90 Physical Environment	<ul style="list-style-type: none"> <li>• Proposed allowance of older existing LTC facilities to continue to use the 2001 Fire Safety Equivalency System (FSES) mandatory values when determining compliance for containment, extinguishment, and people movement requirements.</li> <li>• Proposed revision to require regular inspection of all bed frames, mattresses, and bed rails to identify potential hazards.</li> <li>• Proposed revision to the requirements that newly constructed, re-constructed, or newly certified facilities accommodate no more than two residents in a bedroom and equip each resident room with its own bathroom that has a commode and sink.</li> </ul>

**Additional Information**

For more information, please contact a member of Benesch's Health Care & Life Sciences Practice Group.

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