



# BURR ALERT

---

## New Requirements of Participation For Skilled Nursing Facilities

By Angie Cameron Smith

January 2017

On October 4, 2016, The Centers for Medicare and Medicaid Services ("CMS") released the final rules regarding the requirements of participation for skilled nursing facilities. One of the most significant changes to the regulations is the new abuse reporting requirements. Pursuant to 42 CFR 483.12, skilled nursing facilities must report any allegation of abuse within two hours of the allegation. Additionally, any neglect, mistreatment, exploitation or injuries of unknown source that results in serious bodily injury must also be reported within two hours to the Alabama Department of Public Health. Although serious bodily injury is not defined by the new rules, this term was used in the Elder Justice Act and was defined as "[i]njury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation." All other allegations of neglect, mistreatment, exploitation or misappropriation of resident property must be reported within 24 hours. There was no change to the submission of the results of the investigation within five working days. This requirement went into effect on November 28, 2016.

Other important changes to the requirements of participation include new sections on Comprehensive Person-Centered Care Planning, Behavioral Health Services, Laboratory, Radiology and Diagnostic Services, Compliance and Ethics Program, and Training Requirements. The changes are being phased in over a three year period, with the first phase taking effect on November 28, 2016. Below is a brief summary of the other changes and timeline for implementation.

- **Definitions** (§ 483.5): Adding definitions for several key terms used throughout the regulations. For the most part, these definitions were previously found in the guidance to surveyors but not in the regulations. The defined terms are abuse, adverse event, exploitation, misappropriation of resident property, mistreatment, neglect, person-centered care, resident representative, and sexual abuse. (November 28, 2016 - "Phase 1")
- **Resident rights** (§ 483.10): Reorganizing and updating the section to include provisions related to electronic communication. (Phase 1 with the exception of (g)(4)(ii)-(v) "providing contact information for State and local advocacy organizations, Medicare and Medicaid eligibility information, Aging and Disability Resources Center and Medicaid Fraud Control Unit" which is November 28, 2017 ("Phase 2")).
- **Admission, Transfer and Discharge Rights** (§ 483.15): Requiring a transfer and discharge to be documented in the medical record and specific information exchanged with the receiving provider or facility when transferred. (Phase 1 with the exception of (c)(2) Transfer/Discharge Documentation, Phase 2)
- **Resident Assessments** (§ 483.20): Clarification of coordination of a resident's assessment with PASSR. (Phase 1)

- **Comprehensive Person-Centered Care Planning** (§483.21): Requiring the development and implementation of a baseline care plan for each resident within 48 hours and adding a nurse aide and food/nutrition staff to the Interdisciplinary team for care plans. (Phase 1 except (a) Baseline care plan (Phase 2); and (b)(3)(iii) Trauma informed care ( November 28, 2018 ("Phase 3"))).
- **Quality of Care** (§483.24): Requiring resident to receive and facility to provide necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being consistent with the comprehensive assessment and plan of care. (Phase 1)
- **Quality of Life** (§ 483.25): Requiring services to be rendered in accordance with professional standards, comprehensive person-centered care plan, and residents' choices. (Phase 1 with the exception of (m) Trauma-informed care (Phase 3)).
- **Physician Services** (§ 483.30): Allowing physicians to delegate dietary orders to qualified dietitians or other clinically qualified nutrition professionals and therapy orders to therapists. (Phase 1)
- **Nursing Services** (§ 483.35): Adding competency requirement for determining sufficiency of nursing staff. (Phase 1 with the exception of *specific usage of the Facility Assessment at 483.70(e)* in the determination of sufficient number and competencies of staff (Phase 2)).
- **Behavioral Health Services** (§ 483.40): Adding a new section to subpart B requiring the facility to provide necessary behavioral health care and services to residents and adding gerontology to list of human science fields from which a bachelor degree could provide the minimum education requirement for a social worker. (Phase 2 with the exception of (a)(1) as it relates to trauma (Phase 3) and (b)(1), (b)(2), and (d) *Comprehensive assessment and medically related social services* (Phase 1)).
- **Pharmacy Services** (§ 483.45): Requiring a pharmacist to review a resident's medical chart during the monthly drug regimen review and revising requirement related to "antipsychotic" to "psychotropic" with definition of "psychotropic." (Phase 2)
- **Laboratory, Radiology and Other Diagnostic Services** (483.50): Clarifying that a physician assistant, nurse practitioner or clinical nurse specialist may order lab, radiology and other diagnostic services in accordance with state law. (Phase 1)
- **Dental Services** (§ 483.55): Prohibiting a SNF from charging a Medicare resident for the loss or damage of dentures determined to be the facility's responsibility and those must be replaced within 3 business days. (Phase II) Also requiring nursing facilities to assist residents who are eligible to apply for dental reimbursement under the state plan. (Phase I)
- **Food and Nutrition Services** (§ 483.60): Requiring facilities to provide "nourishing, palatable, well-balanced diet" that meets the resident's nutritional needs and adding the designation of "Director of Food and Nutrition." (Phase 1 with some exceptions - (a), (a)(1)(iv), (a)(2)(i) and (a)(2)(i)).
- **Specialized Rehabilitative Services** (§ 483.65): Adding respiratory services as a specialized rehabilitative service. (Phase 1)
- **Administration** (§ 483.70): Relocating some portions of this regulation and added a requirement that facilities conduct, document and annually review a facility-wide assessment to determine what resources are necessary to care for the residents. (Phase 1 with the exception of (a) in Phase 2, (a)(3) Antibiotic Stewardship in Phase 2, (b) Infection Preventionist Phase 3 and (c) IP on QAA committee in Phase 3).
- **QAPI** (§ 483.75): Requiring facilities to develop, implement and maintain an effective Quality Assurance and Performance Improvement program. (Phase 3 with some exceptions - (a)(2) (Phase 2), (g)(1)(iv) (Phase 3); (h) (Phase 1); and (i) (Phase 1)).

- **Infection Control** (§ 483.80): Requiring the development of an Infection Prevention Program to include an Antibiotic Stewardship program and designation of an Infection Preventionist. (Phase 1 with the following exceptions: (a) (Phase 2); (a)(3) Antibiotic stewardship (Phase 2); (b) Infection Preventionist (Phase 3); IP participation on QAA (Phase 3)).
- **Compliance and Ethics Program** (§ 483.85): Requiring the operating organization of each facility to have a compliance and ethics program that includes written policies and procedures to reduce criminal, civil and administrative violations. (Phase 3)
- **Physical Environment** (§ 483.90): Any facility constructed, reconstructed or newly certified must not have more than two residents in a bedroom and to have a bathroom equipped with a commode and sink in each room. (Phase 1 except (f)(1) related to call system (Phase 3) and (h)(5) policies regarding smoking (Phase 2)).
- **Training Requirements** (§ 483.95): Adding requirements for an effective training program. (Phase 3 except (c) Abuse, neglect and exploitation training (Phase 1); (g)(1) regarding inservice training, (g)(2) dementia management & abuse prevention training, (g)(4) care of the cognitively impaired (Phase 1); and (h) training of feeding assistants (Phase 1)).

---

If you would like more information, please contact:

[Angie Cameron Smith](#) in Birmingham at 205-458-5209 or [acsmith@burr.com](mailto:acsmith@burr.com)

or the Burr & Forman attorney with whom you regularly work.

*No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.*