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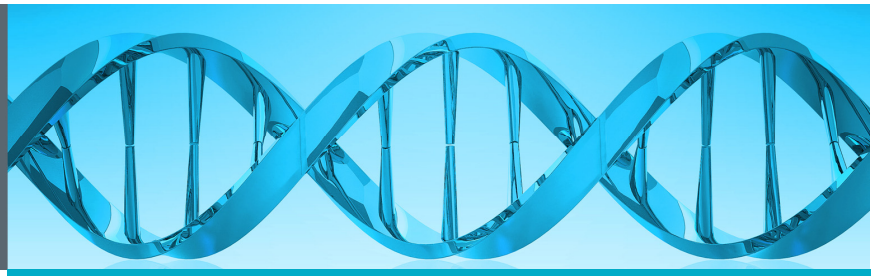

August 2015

Impending Deadline: CMS Issues Proposed Rule Reform for Long Term Care Facilities – Part 3 of 4

In this Issue:

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On July 16, 2015, the Federal Register published Centers for Medicare and Medicaid Services' (CMS) proposed rule to reform the requirements for Long Term Care Facilities participating in Medicare and Medicaid. CMS will be accepting comments to the proposed rules for 60-days. **The 400-page proposed rule recommends the biggest overhaul to nursing home requirements since 1991.**

This alert is the third in a series of four communications regarding the proposed rule impact on Long Term Care Facilities. Long term care providers and other interested entities should carefully review the proposed rule and submit any comments to CMS/HHS by 5:00 pm EST on September 14, 2015.

Summary of Proposed Changes to Administrative Requirements for Long Term Care Facilities

The proposed rule introduces a number of revisions and new sections relating to the clinical requirements in Long Term Care Facilities. The following is an overview of the changes to the administrative requirements CMS proposes:

Governing body. To address CMS's concern that a facility's governing body may not remain cognizant of facility operations and management, CMS is proposing requirements that (i) a facility administrator report and be accountable to the facility's governing body and (ii) the governing body be responsible and accountable for the facility's Quality Assurance and Performance Improvement program (discussed later in this alert).

Annual facility assessment. CMS proposes to establish a new requirement for an annual facility assessment, which CMS modeled after existing common business practices for strategic planning and capital budget planning. The annual assessment would address:

1. The facility's resident population, such as the numbers and overall acuity of the resident population as well as the facility's resident capacity and care required by its residents;
2. Staff competencies, physical environment, equipment, and services necessary to provide the level and types of care needed for the facility's resident population;
3. Any ethnic, cultural, or religious factors that could affect the care provided by the facility;
4. The facility's resources, such as buildings, vehicles, medical and non-medical equipment;
5. Specific services provided, like physical therapy, pharmacy, and other rehabilitation therapies;
6. The facility's personnel, education, training, and competencies related to resident care;
7. Contracts, memorandums of understanding, and other third party agreements to provide services or equipment to the facility; and,
8. Health information technology resources, such as systems for electronically managing patient medical records and electronically sharing information with other organizations.

Clinical records. CMS proposes to amend its current requirements regarding clinical records to better conform to the requirements of the Health Insurance Portability and Accountability Act (HIPAA) regulations. Independent of CMS regulations, facilities must already be in compliance with HIPAA regulations. This proposed rule, however, further stresses the importance CMS places on maintaining the privacy of health information. CMS is also proposing a minor revision to clarify that a resident's clinical record must contain the resident's comprehensive plan of care as well as progress notes from physicians and other licensed professionals.

Transfer agreements. Under the proposed rule, a practitioner, other than the attending physician, may determine that a hospital transfer is medically appropriate in an emergency situation, in accordance with facility policy and consistent with state law. CMS also proposes to specify what information the facility must exchange with the hospital upon transfer.

Arbitration agreements. For facilities that ask residents to accept binding arbitration in the event a dispute arises between the facility and resident, CMS proposes certain requirements aimed to ensure the facility explains the agreement to the residents, the residents understand the agreement, the resident enters the agreement voluntarily, any arbitration sessions be conducted by a neutral arbitrator in a convenient location, and the agreement does not discourage residents from communication with government officials. A facility would not be able to condition a resident's admission on signing a binding arbitration agreement.

Quality Assurance and Performance Improvement (QAPI) Program. Implementing a QAPI Program is a major change introduced in the proposed rule and is required by the Affordable Care Act. CMS' proposal retains and builds upon existing Quality Assessment and Assurance (QAA) requirements. QAPI Programs would be data-driven programs that focus on systems of care, outcomes, and services for residents and staff. As part of the program's implementation, CMS would require facilities to present a QAPI plan to surveyors at annual recertification surveys and maintain documentation of its ongoing QAPI Program. CMS sets forth several other requirements for QAPI Programs in the proposed rule, such as:

1. The program must be ongoing, comprehensive, and address the full range of care and services provided by the facility through utilizing the best available evidence to determine and measure indicators of quality and facility goals;
2. The facility must establish and implement written policies and procedures for feedback, data collections systems, and monitoring, including adverse event monitoring;
3. The facility must take actions aimed at improvement performance, track performance, and measure its success; and,
4. The facility must set priorities for its performance improvement activities that focus on high-risk, high-volume, or problem-prone areas, track and analyze medical errors and adverse resident events, and conduct distinct performance improvement projects that reflect the scope and complexity of the facility's resources.

Importantly, CMS also proposes to grant State or Federal surveyor access to certain information related to adverse events, corrective actions or performance improvement activities, and other information considered to be necessary by surveyors in assessing compliance with QAPI Program requirements.

Infection Control. In an effort to strengthen current requirements for infection control in facilities, CMS proposes that a facility's infection prevention and control program be updated to:

1. Include a system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, visitors, and other agents;
2. Include an antibiotic stewardship program, which includes both antibiotic use protocols and a system to monitor antibiotic use;
3. Require the facility to periodically review and update its program;
4. Require analysis of a facility's resident population;
5. Designate infection prevention and control officers, who must be a member of the facility's QAA committee, and integrate the officers into the facility's QAPI program;
6. Establish written policies and procedures for the program; and,
7. Provide the infection prevention and control officers and facility staff with education or training related to the program.

Compliance and ethics program. Under the proposed rule, facilities must have in place compliance and ethics programs that are effective in preventing and detecting criminal, civil, and administrative violations and in promoting quality of care consistent with regulations developed by HHS, as required by the Affordable Care Act. CMS sets forth several requirements of a compliance and ethics program in the proposed rule.

Physical environment. CMS proposes various changes to provisions governing a facility's physical environment, such as requiring regular safety inspections of beds. Further, CMS proposes to prohibit bedrooms that accommodate more than two residents, unless the facility is currently Medicare or Medicaid certified or state and local authorities have approved the construction or reconstruction plans of the facility prior to the date this regulation goes into effect. CMS also proposes to require each resident room to have its own full bathroom for facilities that receive approval of construction or reconstruction plans by state and local authorities or are newly certified to participate in Medicare or Medicaid, should the rule go into effect.

Training requirements. Lastly, CMS proposes to add a new section setting forth training requirements for all new and existing staff, contractors, and volunteers of the facility. Elements of a training program would require training on: effective communication; resident's rights; abuse, neglect, and exploitation; QAPI; infection control; and, compliance and ethics.

Upcoming Information for You

This alert is the third in a series of four communications regarding the proposed rule reform for long term care facilities. Additional information outlining proposed revisions for Resident Rights will be provided in the final communication.

What You Should Do

Long Term Care Facilities and other interested entities should review the e-alerts, carefully review the proposed rule and submit any comments to the proposed rule to CMS/HHS by 5:00 pm EST on September 14, 2015. Comments may be submitted electronically here or by regular mail to CMS/HHS, Attn: CMS-3620-P, P.O. Box 8010, Baltimore, MD 21244.

For More Information

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**Modern Healthcare* and *AHLA Connections* (June 2015).

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