NEW NURSING HOME REFORM – ANALYZING THE CHANGES TO THE LTC REQUIREMENTS OF PARTICIPATION

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Effective Date of Final Rule: 11/28/16

Implementation Dates:
- Phase 1 – 11/28/16
- Phase 2 – 11/28/17
- Phase 3 – 11/28/19

State Operations Manual
- Interpretive Guidance to be revised at a later date
PHASE 1 REQUIREMENTS OF PARTICIPATION – OVERVIEW OF MOST SIGNIFICANT REVISIONS

- Relevant Definitions Added (§483.5); F150
  - Abuse
  - Adverse Event
  - Exploitation
  - Licensed Health Professional
  - Misappropriation of Resident Property
  - Neglect
  - Nurse Aid
  - Person-Centered Care
  - Resident Representation
  - Sexual Abuse
  - Transfer and Discharge
Resident Rights (§483.10(d)); F163

CHOICE OF ATTENDING PHYSICIAN:

- Physician chosen by resident must be licensed to practice medicine.
- Facility right to seek alternative physician if physician chosen by resident refuses to or does not meet requirements specified in this part.
- Facility must discuss the alternative physician participation with the resident and honor the resident’s preferences, if any, among options.
- If resident subsequently selects another physician who meets requirements, facility must honor resident’s choice.
Resident Rights cont’d.

**CHOICE OF ROOMMATE:** (§483.10(e)(5)); F175

- Resident has right to share a room with roommate of choice when practicable, when both residents live in the same facility and both residents consent to the arrangement.

**VISITORS:** (§483.10(f)(4)); F172

- Right to receive visitors of choice at the time of resident’s choosing, subject to resident’s right to deny visitation and in a manner that does not impose on the right of another resident.
Resident Rights cont’d.

GRIEVANCES: (§483.10(j)); F165

- The facility is required to make information available to residents regarding how to file a grievance.

- Facility must establish a grievance policy which must include:
  - Multiple postings regarding right to file a grievance.
  - Identification of and contact information for Grievance Officer.
  - Reasonable expected time frame for completing review of grievance.
  - Resident’s right to obtain a written grievance decision and requirements re: the contents of such written decision.
Resident Rights cont’d.

GRIEVANCES: (§483.10(j)); F165

- Contact info for independent entities with whom grievance may be filed.
- Immediate action to prevent further potential violation of resident rights, as necessary, during investigation and immediately reporting all alleged violations involving neglect, abuse, injuries of unknown source and/or misappropriation of resident property.
- Taking appropriate corrective action if alleged violations of resident right confirmed.
- Must maintain evidence demonstrating results of grievance for three years.
Freedom from Abuse, Neglect and Exploitation (§483.12(a)(3)); F225

- Facility must not employ individuals who have a disciplinary action in effect against their professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property.
Admission, Transfer and Discharge Rights (§483.15)

Transfer and Discharge (§483.15(c)); F201

- Allows facilities to discharge residents who endanger other residents as a result of the “clinical or behavioral status of the resident.”

- Clarifies that nonpayment applies if the resident does not submit the necessary paperwork for third party payment or the third party, including Medicaid or Medicare, denies the claim for payment and the resident refuses to pay for his or her stay.

- If resident appeals a transfer/discharge notice, facility may not transfer/discharge resident while appeal pending, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility.

Notice of Transfer or Discharge – Facility must send a copy of the notice of transfer or discharge to the State Long-Term Care Ombudsman. (§483.15(c)(3)); F203
Admission, Transfer and Discharge Rights (§483.15(a)(2)(iii)); F208

- Facility prohibited form requesting that residents wave any potential liability for lost property
  - Reasonability?
  - Unlimited liability
Comprehensive Person/Center Care (§483.21); F284

Discharge Planning:

- IMPACT ACT – requires post-acute care providers, such as LTC facilities, to report standardized patient assessments data, data on quality measures and data on resource use and other measures.

- Act also requires that standardized patient data, quality measures and resource use measures along with patient treatment goals be taken into account in discharge planning.

- Final Rule requires the development and implementation of an effective discharge planning process to ensure the discharge goals and needs of each resident.
Quality of Care (§483.25(g)); F322 & F325

- Modification to provisions re: nasogastric tubes to reflect current clinical practice.
  - Modification to the requirement for a therapeutic diet to require that the resident is offered a therapeutic diet when appropriate, recognizing that the resident has a right to choose to eat a therapeutic diet or not.
  - The facility must ensure that a resident who has been able to eat enough on his or her own or with assistance is not fed by enteral methods unless the resident’s clinical condition demonstrates that enteral feeding was clinically indicated and consented to by the resident.
Food and Nutrition Services (§483.60)

- Menus shall reflect, based on the facility’s reasonable efforts, the religious, cultural and ethnic needs of the residents, as well as input received from residents and resident groups. (§483.60(c)(4)); F363

- Facility shall develop a policy regarding the use and storage of foods brought to residents by family and visitors to ensure safe and sanitary storage, handling and consumption (§483.60(i)(2)); F371
PHASE 1 REQUIREMENTS OF PARTICIPATION – OVERVIEW OF MOST SIGNIFICANT REVISIONS

Physical Environment (§483.90)

RESIDENT ROOM: (§483.90(e)1)); F457

Two (2) residents per bedroom (applicable to facilities that receive approval of construction or reconstruction plans or are newly certified after 11/28/16).

TOILET FACILITIES: (§483.90(f)); F462

Bathroom to be equipped with at least a toilet and sink in each resident room (applicable to facilities that receive approval of construction or are newly certified after 11/28/16).
TRAINING REQUIREMENTS (§483.95)

- Facility must provide training to staff re: abuse, neglect, exploitation and misappropriation of resident property (§483.95(c)); F226

- Nurse aid training to include dementia management and abuse prevention. (§483.95(g)(2)); F498

- Training of feeding assistants (§483.95(h)); F373
PHASE 2 REQUIREMENTS OF PARTICIPATION – OVERVIEW OF SPECIFIC PROVISIONS TO BE DISCUSSED

- Resident Rights (§483.10(g)(4)(ii-v))
- Freedom from Abuse, Neglect and Exploitation (§483.12(b)(5))
- Admission, Transfer and Discharge Rights (§483.15(c)(2))
- Comprehensive Person-Centered Care Planning (§483.21(a))
- Nursing Services (§483.35; related to facility assessment required at §483.70(e))
- Behavioral Health Services (§483.40) (except (b)(1) and (2) and (d) – Phase 1; and (a)(1) related to residents with a history or trauma and/or post-traumatic stress disorder – Phase 3)
- Pharmacy Services (§483.45(c)(2) and (e))
PHASE 2 REQUIREMENTS OF PARTICIPATION – OVERVIEW OF SPECIFIC PROVISIONS TO BE DISCUSSED CONT.

- Dental Services (§483.55(a)(3)&(4) and (b)(3)&(4))
- Food and Nutrition Services (§483.60 – related to facility assessment required at §483.70(e))
- Administration (§483.70(e))
- QAPI (§483.75(a)(2))
- Infection Control (§483.80(a)(1) related to facility assessment and (a)(3))
- Physical Environment (§483.90(h)(5))
Resident Rights (§483.10(g)(4)(ii-v)); F156

- Resident has right to receive notices orally and in writing in a format and language he/she understands, including:
  - Contact information for State and local advocacy organizations
  - Information re: Medicare/Medicaid eligibility and coverage
  - Contact information for Aging and Disability Resource Center
  - Contact information for Medicaid Fraud Control Unit
SUMMARY OF PHASE 2 ROP

- Freedom from Abuse, Neglect and Exploitation (§483.12(b)(5)); F225

- Ensure reporting of crimes occurring in federally-funded long-term care facilities. Policies/procedures to include:
  
  i. annually notifying covered individuals of obligation to comply with reporting requirements
  ii. posting a conspicuous notice of employee rights
  iii. prohibiting and preventing retaliation
Admission, Transfer and Discharge Rights (§483.15(c)(2)); F202

- Facility must ensure that transfer or discharge is documented in the resident’s medical record and appropriate information is communicated to the receiving health care institution or provider.

- Documentation in resident’s medical record must include:
  - basis for transfer
  - if transfer/discharge necessary for resident’s welfare and needs cannot be met in facility, the specific resident needs that cannot be met, facility attempts to meet resident needs/and services available at receiving facility to meet the needs

- Documentation to be made by resident’s physician or a physician depending upon reason for transfer/discharge

- Information the be provided to receiving provider
Comprehensive Person-Centered Care Planning (§483.21(a)); F279

- Completion of baseline care plan for each resident within 48 hours of resident’s admission.
- Baseline care plan to include:
  - initial goals based on admission orders
  - physician orders
  - dietary orders
  - therapy orders
  - social services
  - PASARR recommendation, if applicable
- Option to complete a comprehensive care plan within 48 hours of admission instead of completing a baseline care plan and then a comprehensive care plan.
- Facility to provide resident/representative with summary of baseline care plan.
Nursing Services (§483.35 related to facility assessment), F353

- Sufficient staffing: Determining sufficient nursing staff based on the number, acuity and diagnosis of the facility’s resident population in accordance with the facility assessment required at (§483.70(e)).
SUMMARY OF PHASE 2 ROP

- Behavioral Health Services (§483.40 except (b)(1)&(2) and (d) - Phase 1; and (a)(1) related to residents with a history of trauma and/or post-traumatic stress disorder – Phase 3)

- Facility must ensure that there are sufficient direct care staff with the appropriate competencies and skills to provide the necessary care to residents with mental illness and psychological disorders.
Pharmacy Services (§483.45(c)(2) and (e); F329 and F428

- Pharmacist to review a resident’s medical chart during each monthly drug regiment review.

Psychotropic Drugs

- Residents who have not used psychotropic drugs are not given these drugs unless medication is necessary to treat a specific condition.

- Residents who use psychotropic drugs receive gradual dose reductions and behavioral interventions unless clinically contraindicated.

- Residents do not receive psychotropic drugs pursuant to a PRN order unless medication is necessary to treat a specific condition.
Psychotropic Drugs Con’t.

- PRN orders for psychototropic drugs to be limited to 14 days.

- If the attending physician or prescribing practitioner believes that it is appropriate to extend the PRN beyond 14 days, he/she should document their rationale in the resident’s medical record and indicate duration for PRN order.

- PRN orders for anti-psychotics cannot be continued beyond 14 days unless the attending physician or prescribing practitioner evaluates the resident for the appropriateness of the medication.
SUMMARY OF PHASE 2 ROP

- **Dental Services (§483.55(a)(3)&(5) and (b)(3)&(4)); F411 and F412**
  - Facility must have a policy identifying those circumstances when the loss or damage of dentures is the facility’s responsibility.
  - Facility may not charge a resident for the loss or damage of dentures determined to be the facility’s responsibility.
  - Must promptly, within 3 days, refer residents with lost or damaged dentures for dental services.
  - If referral does not occur within 3 days, facility must provide documentation of what they did to ensure resident could eat/drink and extenuating circumstances that led to delay.
Food and Nutrition Services (§483.60(a) related to facility assessment); F361

- Facility must employ sufficient staff with appropriate competencies and skills to carry out the functions of food and nutrition service based in part on the number, acuity and diagnosis of the facility’s resident population in accordance with the facility assessment required at (§483.70(e)).
SUMMARY OF PHASE 2 ROP

- Administration (§483.70(e)); F490

- Conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies.

- The facility must review and update the assessment, as necessary, and at least annually.

- The facility must also review and update the assessment whenever there is any change that would require a substantial modification to any part of the assessment.
Facility assessments to address:

- Resident population (that is, number of residents, overall types of care and staff competencies required by the residents, physical environment and any ethnic, cultural or religious aspects)
- Facility’s resources (for example equipment, services provided, overall personnel, etc.), and
- A facility-based and community based risk assessment, utilizing an all hazards approach.
SUMMARY OF PHASE 2 ROP

- QAPI (§483.75(a)(2)); F520

  - Facility must present its QAPI plan to State Survey Agency no later than 1 year after the promulgation of Final Rule. (i.e. by 11/28/17)
Infection Control (§483.80(a)(1) related to facility assessment and (a)(3)); F441

- Facility must establish an infection prevention and control program that must include a system for preventing, identifying, reporting, investigating and controlling infections and communicable diseases for all residents, staff, volunteers, visitors, and other individuals providing services under a contract arrangement based upon the facility assessment in accordance with §483.70(e).

- Facility must establish an antibiotic stewardship program that includes antibiotic use protocols and a system to monitor antibiotic use.
Physical Environment (§483.90(i)(5)); F465

- Establish policies in accordance with applicable Federal, State and local laws and regulations, regarding smoking, smoking areas and smoking safety that also take into account non-smoking residents.
60 days advance written notice of a rate change

Refunds

Transfer/Discharge

Arbitration

Section 1557 of Affordable Care Act
- Nondiscrimination Notice
- Taglines