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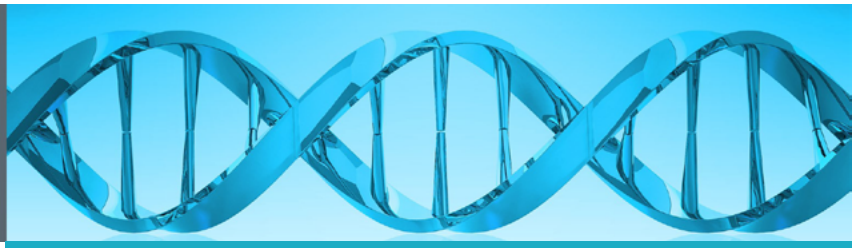

October 2016

Catching Up With the Times: CMS Reforms Long-Term Care Facility Requirements

Part 3 of 4

In this Issue:

On October 4, the Centers for Medicare and Medicaid Services (CMS) published the biggest overhaul to federal long-term care regulations since 1991, and impacted facilities can immediately take steps to ensure they're prepared for changes in areas including quality assurance, self-assessment, hiring and reporting.

The lengthy Final Rule reforms the requirements for long-term care facilities participating in Medicare and Medicaid. CMS will implement the new and revised regulations in three phases, with Phase 1 regulations having an implementation date as early as Nov. 28, 2016 and Phase 3 three years later on Nov. 28, 2019.

To see a copy of the Final Rule, click here.

Executive Summary of Changes to Administrative Requirements for Long Term Care Facilities (Part 2 of 2)

- **Freedom from Abuse, Neglect, and Exploitation – 42 C.F.R. §483.12**
  - **Hiring**

CMS made two key changes to the hiring prohibition. First, it expanded the hiring prohibition to include not only individuals with a finding entered against them into a state nurse aid registry but also licensed professionals who have a disciplinary action in effect by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents, or misappropriation of resident property. Additionally, to address concern the employment prohibition could disqualify potential employees for life, even

in circumstances where the individual can show successful rehabilitation, CMS revised the employment prohibition to pertain to disciplinary actions currently in effect. This change will allow skilled nursing facilities to exercise discretion with regard to preliminary disciplinary actions. Where a facility is aware of previous disciplinary action against a licensed professional, the facility may make its hiring decision based upon the specific nature of the circumstances in keeping with their responsibility to protect the health and safety of residents.

Implementation Date: This rule will be implemented in Phase I on the effective date of the rule, which is Nov. 28, 2016.

Recommended Action Item: Facilities should review their hiring policies and procedures to ensure it includes checking the state licensure database in the state where the facility is located as well as any states where the prospective employee is known to have been licensed for any actions against such prospective employee.

- **Reporting**

The new rules also require skilled nursing facilities to develop and implement written policies and procedures to ensure reporting of crimes in compliance with section 1150B of the Social Security Act. Under the new rule, all allegations of abuse must be reported immediately, but not later than two hours after the allegation is made. Allegations of neglect or exploitation must be reported to the facility administrator immediately, but not later than two hours after forming the suspicion, if the events that cause the suspicion result in serious bodily injury, or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury.

Implementation Date: This rule will be implemented in Phase 2, which is Nov. 28, 2017.

Recommended Action Item: Facilities should review their policies and procedures for reporting abuse, neglect and exploitation to ensure they comply with the reporting requirements in 42 C.F.R. §483.12. Staff should be trained to identify activities that constitute abuse, neglect, exploitation and misappropriation of resident property and procedures for reporting incidents of abuse, neglect, exploitation, or misappropriation of resident property.

- **Administration – Self-Assessment - 42 C.F.R. §483.70(e)**

CMS issued a new rule requiring facility to perform an annual self-assessment. The self-assessment will provide a tool for facilities, which will allow them to assess and analyze its resident population and resources, so it can competently determine the resources necessary to care for its resident population. Additionally, it will provide a record for future staff and management to understand the reasoning behind staffing and other resource decisions. Finally, it will create a reference point when deficiencies are noted or when adverse events occur.

The facility assessment is composed of three parts and must include the following:

1. Resident Population

   a. Number of residents;

   b. Facility resident capacity;

   c. Care required by resident population, considering the types of diseases, conditions, physical and cognitive disabilities, and overall acuity present within the population;

   d. Staff competencies necessary to provide the level and type of care needed for the resident population;

e. Physical environment, equipment and services necessary to care for the population; and

f. Any ethnic, cultural, or religious factors that may potentially affect the care provided by the facility, including but not limited to, activities and food and nutrition services.

2. Resources, including but not limited to:

a. Buildings and other physical structures and vehicles;

b. Medical and non-medical equipment;

c. Services provided, e.g., physical therapy, pharmacy, and specific rehabilitation therapies;

d. Personnel, including managers, employed and contracted staff, and volunteers, as well as their education and/or training and any competencies related to resident care;

e. Contracts, memorandums of understanding or other agreements with third parties to provide services or equipment to the facility during both normal operations and emergencies; and

f. Health information technology resources, such as systems for electronically managing patient medical records, and electronically sharing information with other organizations.

3. Facility-Based and Community-Based Risk Assessment, Utilizing an All Hazards Approach

Once the facility completes its assessment, changes in resident population should not necessitate changes in the facility assessment unless the facility admits residents requiring substantially different care, e.g., morbidly obese residents requiring special bariatric equipment. If the facility begins to admit residents with substantially different care needs, the facility would need to update its assessment to identify the care needs of those patients to ensure its staff has the relevant competencies and it obtains the required resources.

Implementation Date: This rule will be implemented in Phase 2, which is Nov. 28, 2017.

Recommended Action Item: Facilities with existing self-assessment programs should review their programs to verify compliance with the new rules. All facilities should carefully read the rule and begin updating their self-assessment program or developing a new assessment program if needed, to fully comply with all aspects of Section 483.70(e).

- **QAPI - 42 C.F.R. §483.75**

The Affordable Care Act requires all skilled nursing facilities and nursing facilities to implement a Quality Assurance/ Performance Improvement (QAPI) program by Nov. 28, 2017. The purpose of the QAPI program is to: (1) focus on systems of care, outcomes, and services for residents and staff; (2) monitor and evaluate performance of all services and programs of the facility, including services provided under contract or arrangement; and (3) define, implement maintain, and address priorities. Each facility must maintain documentation and demonstrate evidence of its QAPI program. Facilities must submit their QAPI plans to the State Agency or federal surveyor at the first annual recertification survey after Nov. 28, 2017 and at each annual recertification survey and upon request to the State Agency or federal surveyor at any other survey or to CMS upon request.

- **Design and Scope**

The QAPI program must be designed to be ongoing, comprehensive and address the full range of care and services provided by the facility. When implemented, it should address all systems of care and management practices, including clinical care, quality of life, and resident choice. It should utilize the best available evidence to define and measure indicators of quality and facility goals that reflect processes of care and facility operations shown to be predictive of desired resident outcomes. Finally, the QAPI program should reflect the complexities, unique care and services provided by the facility.

- **Feedback, Data Systems and Monitoring**

As part of the QAPI process, the program must provide feedback, data systems and monitoring. Facilities must maintain effective systems, governed by appropriate policies and procedures, which include how the facility would identify, collect and use data from all departments, including how information would be used to identify high risk, high volume or problem prone areas, and opportunities for improvement. The policies and procedures must also describe the methodology and frequency for developing, monitoring and evaluating performance indicators. Finally, the system, policies and procedures must include a process for identifying, reporting, analyzing, and preventing adverse events or near misses. This includes methods by which the facility obtains information on adverse events and potential adverse events from residents, family and direct care/direct access staff, and how the facility addresses and investigates the adverse event and provides feedback to those individuals.

- **Systematic Analysis & Systemic Action**

Facilities must take actions aimed at performance improvement, and after implementing those actions, measuring the success of those actions and tracking performance to ensure improvements are sustained. Policies must be developed and implemented to address how the facility will:

1. Use a systematic approach to determine underlying causes of problems impacting larger systems;
2. Develop corrective actions designed to effect change at the system level to prevent quality of care, quality of life or safety problems; and
3. Monitor the effectiveness of its performance improvement activities to ensure improvements are sustained.

- **Performance Improvement Activities**

The QAPI program must establish priorities for performance improvement activities that focus on: (1) patient safety; (2) coordination of care; (3) autonomy; (4) choice; and (5) high risk, high volume, and/or problem prone areas identified as a result of the facility assessment. Performance improvement activities must track medical errors and adverse resident events, analyze their causes, and implement preventative actions and mechanisms that include feedback and learning throughout the facility. Additionally, each facility must implement at least one project annually that focuses on high risk or problem prone areas identified through QAPI data collection and analysis.

- **Governance and Leadership Responsibilities**

Each facility must ensure through its governing body or executive leadership that an ongoing QAPI program is defined, implemented and sustained during transitions in leadership and staffing and the QAPI program is adequately resourced, including ensuring staff time, equipment and technical training as necessary. As a result, the governing body or executive leadership must ensure the QAPI program identifies and prioritizes problems and opportunities that reflect organizational processes, functions and services provided to residents based upon performance indicator data, resident and staff input and other information. Further, corrective actions must address gaps in systems, quality, rights, choice and respect, and clear

expectations must be set around safety, quality, rights, choice and respect.

- **Quality Assessment & Assurance Committee**

The Quality Assessment & Assurance (QAA) committee consists of a minimum of six individuals, including but not limited to: Director of Nursing Services; Medical Director or his or her designee; infection control and prevention officer (ICPO); and at least three other facility staff members, at least one of whom must be the facility administrator, owner, board member, or other individual in a leadership role. The QAA reports to the facility's governing body, or designated persons functioning as a governing body, on its activities, including implementation of the QAPI program. The QAA committee is responsible for coordinating and evaluating QAPI program activities, including performance improvement projects; developing and implementing appropriate plans of action to correct identified quality deficiencies; and reviewing and analyzing data collected under the QAPI program and from pharmacists resulting from monthly drug regimen review and resulting reports.

- **Compliance**

To demonstrate compliance with QAPI, facilities must provide access to systems and reports demonstrating systematic identification, reporting, investigation, analysis and prevention of adverse events. Documentation must demonstrate the development, implementation and evaluation of corrective actions and process improvements. Other documentation considered necessary by state or federal surveyors in assessing compliance must also be provided.

- **Sanctions**

Importantly, good faith attempts by the QAA Committee to identify and correct quality deficiencies will not be used by state and federal surveyors as a basis for sanction. However, a surveyor will not be precluded from citing an identified concern based upon a review of materials or on observations separate and apart from an assessment of QAPI compliance. CMS understands discerning when and how a deficiency is identified is a concern to facilities. Therefore, CMS will continue to educate surveyors on the parameters of the sanction provision and the need to not inappropriately request or use QAPI documentation.

Implementation Dates: Most of this final rule will be implemented in Phase 3, which is November 28, 2019. However, CMS will implement specific sections of this Final Rule in Phase 1 and Phase 2. They include:

Phase 1 - Nov. 28, 2016

- Section 483.75(g)(1) – QAA Committee, with the exception of subparagraph (iv), the addition of the ICPO, which will be implemented in Phase 3; and

- Section 483.75(i) – Sanctions

Phase 2 - Nov. 28, 2017

- Section 483.75(a)(2) – Initial QAPI Plan provided to State Agency Surveyor at annual survey

Recommended Action Item: Facilities should review their processes and practices to ensure the programs and priorities align with those set forth in the regulation. This information should be used to develop a QAPI program to improve those processes and practices. Facilities should review (1) QAA committee composition to ensure it meets the minimum requirements; and (2) QAPI reporting to ensure it demonstrates systemic identification, reporting, investigation, analysis and prevention of adverse events.

Upcoming Information For You

This alert is the third in a series of four communications regarding the Final Rule. Throughout October, Polsinelli will provide detailed information about the new and revised long-term care regulations through one additional alert and three webinars to complement the alerts.

Please join us on October 26, 2016 at 12:00 PM for the second of our three webinars that will provide a more in-depth analysis of these three aspects of the Final Rule, discuss how the Final Rule will affect your facility's operations, and identify steps you should take to prepare for implementation of the Final Rule. See more here.

For More Information

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