



August 2015

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



### In this Issue:

Upcoming Information for You	
What You Should Do Now	
For More Information	3
About Polsinelli's Health Care Practice	4

### In this Series:

[CMS Issues Proposed Rule Reform for Long Term Care Facilities - Part 1 of 4](#)

[Impending Deadline: CMS Issues Proposed Rule Reform for Long Term Care Facilities - Part 2 of 4](#)

[Impending Deadline: CMS Issues Proposed Rule Reform for Long Term Care Facilities - Part 3 of 4](#)

**O**n 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 fourth and final alert in a series of 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 residents' rights in Long Term Care Facilities. The following is an overview of the changes to the residents' rights CMS proposes:

- CMS has proposed to expand the prohibition on employing or engaging individuals who have been found guilty of abuse, neglect or maltreatment to also prohibiting facilities from employing or engaging individuals who have had their professional license disciplined by a state licensing board based on a finding of abuse, neglect, mistreatment or misappropriation of property.
- The rule retains all existing residents' rights but updates the language of those rules and updates the organization of the residents' rights provisions. The changes are designed to improve the logical order and readability of the regulations.



- The language updates are designed to clarify certain aspects of the regulations to comply with current practices. For example:
  - Regulations that discuss notification requirements have been updated to include references to electronic communications.
  - The proposed rule eliminates outdated language, such as “interested family member” and replaces the term “legal representative” with “resident representative.” Importantly, if imposed, the regulation will define the term “resident’s representative” requiring providers to revisit their own documentation, including resident contracts, to ensure their references to a “resident representative” comply with the regulations’ use of the term.
- CMS is proposing to add new requirements to the care planning process and require facilities to incorporate each resident’s personal and cultural preferences in developing goals of care. This proposal, if implemented, will require facilities to document their assessment of these preferences and their efforts to address these preferences in care plans and in the delivery of care and services.
- The proposed rule also recommends changing certain requirements related to protecting residents’ funds and providing more consistent guidance in the threshold amounts that need to be placed in interest-bearing accounts for residents. However, the rules also attempt to limit and reduce the items and services that a facility may charge to residents’ funds. For example, if enacted, the regulations will prohibit a facility from charging residents for special food or meals that are ordered by clinicians or requested for cultural/religious preferences.
- Similarly, the proposed rules attempt to expand the treatments that residents can participate in beyond self-administration of drugs. The rule specifically identifies dialysis as a treatment that residents may be able to participate in. The regulation will impose an additional responsibility on facilities to assess residents and determine what level of resident participation is appropriate given their care and treatment.
- CMS is proposing a regulation to create a more “open” visitation policy in Skilled Nursing Facilities. The proposed rule will give a resident’s representative “immediate access” to the resident, to update visitation requirements to be more consistent with the visitation requirements applicable to hospitals.
- The proposed rules seek to expand the nature and types of communications that a facility must provide residents in a “form and manner” that the resident can access and understand. Currently, the regulations specify what types of information and notices must be provided in a resident’s own language. CMS believes there are other barriers to communication and wants to expand access. Although CMS claims it will provide facilities some flexibility in implementing the new requirement, the nature of the requirement and the options for implementation are still vague.
- In addition to the existing regulations requiring facility’s to post their local and state complaint hotlines, CMS is also proposing that facility’s be required to post contact information for local advocacy groups, state licensure offices, and their Ombudsmen.
- CMS is proposing a new rule that will establish a resident’s right to communicate with individuals inside and external to the facility, including ensuring reasonable access to the internet, TTY and TTD services, stationary, postage, writing implements, and the ability to send mail.





- In an attempt to expand a resident’s right to voice grievances, CMS is proposing new regulations to ensure residents know how to file grievances by requiring the creation, implementation and distribution of a grievance policy.
- The proposed rule also seeks to add language regarding physician credentialing to specify that the physician chosen by the resident must be licensed to practice medicine in the state where the resident resides, and must meet professional credentialing requirements of the facility. Importantly, industry and trade groups have expressed concern that this credentialing requirement has the potential to impose significant costs and burdens on facilities.

### Upcoming Information for You

This is the fourth and final alert in a series of four communications regarding the proposed rule reform for long term care facilities. Additional information outlining other proposed revisions are available on our website: [Part 1](#) | [Part 2](#) | [Part 3](#).

### 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

If you have questions regarding the proposed rule or how it may affect your long term care facility, please contact one of the authors, a member of the Polsinelli’s Health Care practice, or your Polsinelli attorney.

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## About Polsinelli's Health Care Practice

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Recognized as the "Law Firm of the Year" in Health Care for 2015 by *U.S. News & World Report*, Polsinelli is ranked no. 1 by *Modern Healthcare* and no. 2 by The American Health Lawyers Association.\* Polsinelli's highly trained attorneys work as a fully integrated practice to seamlessly partner with clients on the full gamut of issues. The firm's diverse mix of seasoned attorneys well known in the health care industry, along with its bright and talented young lawyers, enables our team to provide counsel that aligns legal strategies with our clients' unique business objectives.

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

## About Polsinelli

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\* BTI Client Service A-Team 2015 and BTI Brand Elite 2015

## About this Publication

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