TULSA WORLD

Business Viewpoint with Philip Hixon: New rules and costs for long-term care

By Philip D. Hixon

Ronald Reagan once declared, "The nine most terrifying words in the English language are: 'I'm from the government, and I'm here to help.'"

Long-term care facilities experience this "help" with increasing frequency. Reimbursement uncertainty arises as the Legislature wrestles with budget challenges in Oklahoma City. Costs increase as federal agencies in D.C. implement new regulations, including the 185-page rule finalized in October 2016 by the Centers for Medicare & Medicaid Services revising the requirements for participation applicable to facilities participating in Medicare and Medicaid.

The 2016 rule is the most significant overhaul to long-term care regulation in decades and is intended to improve resident safety, quality of life and overall care delivery. These goals are laudable, but the Centers estimates that each facility will incur costs of $55,388 annually to comply with the new requirements, excluding costs (in the form of penalties, increased risk exposure, etc.) for a facility's failure to comply.

These changes, many of which include subjective standards, are being implemented in three phases.

Phase 1 went into effect on Nov. 28 and included changes deemed "minor" by the Centers for Medicare & Medicaid Services. Among other things, the Phase 1 requirements expanded the definition of abuse (and consequently facility risk exposure) to include social media use and implemented additional training requirements.

However, staff education does not relieve the facility from enforcing compliance with abuse policies as written. The Centers recently concluded a survey that suggests serious abuse has been under-reported. Facilities can expect to receive increased scrutiny of abuse policy compliance.

Phase 2 will go into effect Nov. 28 and includes a new resident-centered survey process and a laundry list of requirements that the Centers determined would take additional time to develop. On a positive note, the Centers has indicated that it will temporarily restrict enforcement remedies (e.g., civil monetary penalties, denial of payment, termination, etc.) for certain Phase 2 requirements, yet to be identified, opting instead for education and corrective action.

But a delay in enforcement remedies does not relieve a facility's compliance obligations for the Phase 2 requirements and will not provide relief from Phase 1 deficiencies.

Phase 3 will take effect Nov. 28, 2019, and includes full implementation of requirements from prior phases, including implementation of the Quality Assurance and Performance Improvement plan required in Phase 2 and mandates each facility's adoption and implementation of a compliance and ethics program.

The new requirements for participation will squeeze already tight margins for years to come. Long-term care facilities should develop strategies to proactively manage these issues. Noncompliance is an ineffective and, likely, expensive strategy.

Instead, planning, preparation, review and regular monitoring are advisable throughout the multi-year implementation of the new requirements.

By way of example, review abuse prevention and reporting policies and other Phase 1 requirements to confirm internal practices are consistent with written documents. Perform staff in-service training on abuse policies or refresh prior training.

Finalize policies and plans required by Phase 2 and conduct staff in-service training on them. Review materials published on the Centers for Medicare & Medicaid Services website, which will be used by surveyors when evaluating facility compliance. In addition, involving legal counsel in these activities may mitigate the risk of costly deficiencies and potential resident claims.