

## **NURSING HOME UPDATE: CMS UPDATES AND EXPANDS SURVEYOR GUIDANCE FOR NURSING HOMES FOR PHASE 2 AND 3 REQUIREMENTS OF PARTICIPATION - KEY AREAS AND TIMELINE**

The Centers for Medicare & Medicaid Services (“CMS”) has given surveyors new rules and updates to allow surveyors to add extra attention and increase oversight in nursing homes regarding the quality of care and quality of life for residents.

On June 29, 2022, the Quality, Safety & Oversight Group at CMS issued a **memorandum** entitled “Revised Long-Term Care Surveyor Guidance: Revisions to Surveyor Guidance for Phases 2 & 3, Arbitration Agreement Requirements, Investigating Complaints & Facility Reported Incidents, and the Psychosocial Outcome Severity Guide” (“CMS Survey Memo”).

The CMS Survey Memo clarifies many Phase 2 and Phase 3 Requirements of Participation regulatory requirements and provides information on how surveyors will review those regulations for compliance and assess citations for failure to comply. The CMS Survey Memo also addresses arbitration requirements with guidance on the new requirements which became effective September 16, 2019.

In addition, CMS revised its guidance to State Agencies, on the steps and procedures they use to review and manage complaints and facility reported incidents.

### **BACKGROUND**

On September 28, 2016, CMS released a complete overhaul of Part 483 to Title 42 of the Code of Federal Regulations, the Requirements for States and Long-Term Care Facilities. CMS’s Final Regulations cover many regulatory requirements for long-term care facilities and create new compliance obligations for providers. The Final Regulations seek to target rehospitalizations, facility-acquired infections, overall quality and resident safety. The date for the implementation of the second phase of the implementation of the Final Regulations was in 2017. The date for the implementation of the third and final phase of the implementation of the Final Regulations was November 29, 2019.

### **TIMING**

Surveyors will begin using the guidance in the CMS Survey Memo to identify and cite noncompliance on October 24, 2022.

### **AREAS WITH SIGNIFICANT UPDATES**

- Phase 3 Elements. The following Phase 3 requirements were included in the CMS Survey Memo:
  - Trauma-informed care.
  - Compliance and ethics.
  - Quality Assurance Performance Improvement.
- Resident Rights:
  - Incorporates guidance related to visitation from memos issued related to COVID and makes changes for additional clarity and technical corrections. The revised guidance stresses the importance of adhering to principles of infection prevention to reduce the risk of infectious disease transmission during visits.
- Abuse and Neglect:
  - Clarifies compliance, abuse reporting, including sample reporting templates, and provides examples of abuse that, because of the action itself, would be assigned to certain severity levels.
- Admission, Transfer and Discharge:
  - Clarifies requirements related to facility-initiated discharges while the resident is in the hospital following an emergency transfer, a facility must have evidence that the resident’s status at the time the resident seeks to return to the facility meets one of the

discharge criteria at §483.15(c)(i).

- Clarifies guidance related to the requirement to provide notice of a transfer or discharge and the information in the notice of transfer and discharge.
- Infection Control:
  - Guidance including implementation items for Phase 3 regulations which require nursing homes to have an Infection Preventionist who has specialized training onsite at least part-time to effectively oversee the facility's infection prevention and control program.
- Mental Health/Substance Use Disorder ("SUD"):
  - Addresses rights and behavioral health services for individuals with mental health needs and SUDs.
- Nurse Staffing (Payroll-Based Journal ("PBJ")):
  - Uses payroll-based staffing data to trigger deeper investigations of sufficient staffing and added examples of noncompliance.
  - CMS direct surveyors to investigate potential noncompliance with CMS's nurse staffing requirements, such as insufficient staffing, lack of a registered nurse for 8 hours each day, or lack of licensed nursing for 24 hours a day.
  - CMS also added guidance on §483.70(q) to provide guidance to surveyors to cite noncompliance with the PBJ reporting requirements.
- Potential Inaccurate Diagnosis and/or Assessment:
  - Addresses situations where practitioners or facilities may have inaccurately diagnosed/coded a resident with schizophrenia in the resident assessment instrument.
- Arbitration:
  - Clarifies existing requirements for compliance when arbitration agreements are used by nursing homes to settle disputes.
  - The arbitration guidance also addresses allowing residents to choose a neutral arbitrator and that facilities must make the final arbitrator's decision available for review by CMS or its designee.
- State Operations Manual Chapter 5:
  - Clarifies timeliness of state investigations and communication to complainants to improve consistency across states.
  - The revised guidance includes ensuring that State Agencies have policies and procedures that are consistent with federal requirements and revises timeframes for investigation, to ensure that serious threats to residents' health and safety are investigated immediately.
  - Guidance also requires that allegations of abuse, neglect, and exploitation are tracked in CMS's system.

## TRAINING ON NEW GUIDANCE

CMS is offering [online](#) training on guidance for surveyors and providers that is available upon release of the CMS Survey Memo.

## CRITICAL ELEMENT PATHWAYS

CMS will update its critical element pathways prior to the October 2022 implementation date.

## PRACTICAL TAKEAWAYS

- Effective October 24, 2022, surveyors will use these guidelines to survey and cite providers;
- Careful review of your PBJ data and process under these guidelines is needed;
- Facilities must train staff on these new guidelines and work to document many of these elements for surveyor review; and
- If you use an arbitration provision in your admission agreement, careful review of those terms and your policies is needed.

If you have questions or would like additional information about this topic, please contact:

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