



SENIOR LIVING

New Final Rule Requirements Move Forward

As reported in “Focusing on Patient Care: The Final Rule” in the December 2016 *Capital Issue*, Centers for Medicare & Medicaid Services (CMS) has recently implemented the second phase (Phase Two) of the 700-page rule for skilled nursing facilities (SNFs), commonly referred to as either “The Final Rule” or the “Requirements of Participation.”

The new rule is a series of guidelines and requirements for long-term care facilities that receive Medicare or Medicaid funding. The guidelines are being implemented in three phases:

- The first phase was initiated on November 28, 2016
- Phase two was implemented on November 28, 2017
- Phase three will be carried out by November 28, 2019

The goal of the new regulations is to continue the advancement of service delivery and safety that has occurred over the past several years. The regulations are also designed to put in place a series of mechanisms designed to achieve improvements in quality of care while simultaneously attempting to reduce burdens on providers.

The first memo regarding Phase Two, “Temporary Enforcement Delays for Certain Phase 2 F-Tags and Changes to Nursing Home Compare,” was released by CMS on November 24, 2017. The second memo was also published on November 24, “Preparation for Launch of New Long-Term Care Survey Process (LTCSP).”

Some of the more notable changes affecting nursing home operators from the memos are as follows:

Health Inspection Star Ratings Freeze

After the new survey process was implemented on November 28, 2017, CMS will not change the current health inspection star ratings on the Nursing Home Compare (NHC) website for any surveys occurring between November 28, 2017 and November 27, 2018. A majority of facilities will be surveyed for compliance with Phase Two requirements using the long term care (LTC) revised survey process. Because of varying standards between those facilities surveyed under the new survey process versus those that were not, CMS froze the health inspection star rating for health inspection surveys and complaint investigations conducted on or after November 28, 2017. The freeze is expected to begin in early 2018 and last approximately one year.

Delay on Certain Enforcement Remedies

To remedy concerns about the implications of the new requirements, CMS will allow an 18-month suspension on the use of civil money penalties (CMPs), discretionary denials of payment for new admissions (DPNAs) and discretionary termination. CMS will use this 18-month freeze to educate surveyors and providers to ensure they understand the health and safety expectations that will be evaluated through the survey process.

Survey Finding Accessibility

The survey outcomes from facilities surveyed under the new process will be published on NHC, but will not be merged into calculations for the Five-Star Quality Rating System for one year. Further, CMS plans to incorporate indicators to NHC that summarize the findings.

Modifications for Five-Star Rating System

Five-star rating changes will only be frozen for any surveys or informal dispute resolutions (IDRs) that are initiated after November 28, 2017. Any survey or IDR that was initiated before November 28, 2017 will continue to impact facility five-star ratings. Survey results, including the number, type and severity of deficiencies, will continue to be posted on NHC. Additionally, in early 2018, CMS plans to recalculate all five-star ratings, excluding the third oldest survey from every rating. Following the recalculation, only the past two surveys will be included in the rating system. CMS advises providers who are impacted by this freeze and involved with accountable care organizations (ACOs) or managed care to provide a copy of this memo to the ACO or hospital.

New Survey Process

As part of the execution of Phase Two, CMS initiated the new survey process on November 28, 2017. The process is scheduled to occur in accordance with a new LTC survey system that is computer-based. CMS is integrating the new regulatory requirements with the traditional and quality indicator survey (QIS) processes.

Going Forward

While there are many concerns and questions regarding the new requirements, CMS appears to be willing to work with facilities as Phase Two goes into effect. More information regarding the new survey process and implementation can be found at <https://www.cms.gov/>.



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