



## **Long-Term Care Facilities Subject to New Medicare Requirements for Participation Must Comply with Staffing, Training, and Facility-Wide Assessment Requirements**

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On October 4, 2016, the Centers for Medicare & Medicaid Services (CMS) issued a final rule which represents the most sweeping changes in twenty-five years regarding the requirements for participation for long-term care (LTC) facilities to qualify to participate in the Medicare and/or Medicaid programs. According to CMS, the policies in the rule are meant to reduce unnecessary hospital readmissions and infections, improve quality of care, and strengthen safety measures for residents residing in long-term care facilities. The regulations became effective on November 28, 2016, and included three implementation phases, with the final phase to be implemented by November 28, 2019. The changes address a number of aspects of long-term care, including nursing home staffing and training and a comprehensive facility-wide assessment of facility resources.

The facility-wide assessment will be implemented as part of Phase 2 of the implementation phase-in period. To stay in compliance with the new regulations, LTC facilities must implement an assessment which addresses the following required elements by November 28, 2017:

Facility resident population, including the number of residents, resident capacity, care required by the population considering the types of diseases, conditions, disabilities, and overall acuity present within the population;

- Staff competencies necessary to provide the level and types of care needed;
- Physical environment, equipment, and services needed to care for the population;
- Any ethnic, cultural, or religious factors that may potentially affect the care provided by the facility, such as activities and food and nutrition services;
- The facility's resources, including buildings and other physical structures;
- Services provided;
- Personnel, including managers, employed and contracted staff members, and volunteers;
- Education and/or training and competencies of personnel;
- Contracts, memorandums of understanding, or other agreements with third parties to provide services or equipment to the facility; and
- Health information technology resources, such as systems for electronically managing patient medical records and electronically sharing information.

CMS requires LTC facilities to create and implement resident-centered and specific care plans designed to "maintain the resident's highest practicable physical, mental, and psychosocial well-being."<sup>1</sup> These new requirements to perform a facility-wide assessment are designed to enable each LTC facility to thoroughly assess the resident population and resources needed to provide necessary care at a macro level. In addition, the final rule notes that a requirement to document the facility-wide assessment will provide a record for future management to understand the reasoning for decisions made on staffing and other resources.

The final rule also sets forth the requirements for an effective LTC training program. This program must be developed, implemented, and maintained by LTC facilities for all new and existing staff, individuals providing services under a contractual arrangement, and volunteers. The training program should include all of the following elements:

<sup>1</sup> Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities, 81 Fed. Reg. 68688, 68689 (Oct. 4, 2016).

- Train staff members on the rights of the resident and the responsibilities of a LTC facility to properly care for its residents;
- Educate staff on activities that constitute abuse, neglect, exploitation, and misappropriation of resident property, including outlining procedures for reporting incidents of abuse, neglect, exploitation, or the misappropriation of resident property;
- Provide mandatory Quality Assurance and Performance Improvement (QAPI) training that outlines the elements and goals of the facility's QAPI program;
- Ensure staff are effectively educated on infection control policies and procedures;
- Each operating organization must include a compliance and ethics program, which must explain in a practical manner the requirements under the compliance and ethics program (if the operating organization operates 5 or more facilities, it must include mandatory training annually);
- Staff should receive dementia management and abuse prevention training;
- The 12 hours of annual in-service training for Nursing Aides must include dementia management and abuse prevention, training on care of the cognitively impaired, and address areas of weakness as determined by the facility-wide assessment;
- The facility must only employ paid feeding assistants if they have successfully completed a state approved training program; and
- Provide behavioral health training to the entire staff, based on the facility-wide assessment.

Most of these training requirements are being implemented as part of Phase 3 of the phase-in period, with an implementation date by November 28, 2019. The following training requirements were implemented as part of Phase 1 of the phase-in period, with an implementation date by November 28, 2016: (1) the abuse, neglect, exploitation, and misappropriation training; (2) the requirement that feeding assistants successfully complete a state approved training program; and (3) the in-service training requirements for Nursing Aides.

LTC facilities should be aware of the requirements and implementation deadlines for these new changes. Skilled nursing facilities must undergo extensive survey requirements and are subject to a number of potential penalties, including civil monetary penalties, for failure to comply with the requirements of participation. Failure to comply with these changes could also result in potential exclusion from the Medicare and/or Medicaid programs. As such, failure to keep up-to-date and in compliance with these new changes could have costly consequences. For more information on the implementation deadlines, please click [here](#) to access an informational table on the phase-in dates and compliance requirements prepared by the American Health Care Association. A webinar on the Final Rule presented by Alan C. Horowitz, on February 8, 2017, "CMS Final Rule: Requirements for Participation (RoP): The Good, the Bad and the Ugly" can also be accessed by clicking [here](#).

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