

Reform of Requirements for Long Term Care Facilities *Key Areas of Concern*

Below is a brief summary of the topics within the CMS [proposed rule](#) that are of specific concern to AHCA. These provisions will affect a care center's day-to-day operations and its patients the most.

General: (pp. 42169-42173)

There are numerous changes and increased requirements in the proposed rule. Some of these are:

- Quality Assurance and Performance Improvement (QAPI) plan development
- Compliance and Ethics program
- More extensive Infection Control requirements
- A required facility assessment that will be used to determine "sufficient staff"
- Requirements related to behavioral health services
- Determining competency of staff
- Credentialing of residents' attending physicians
- Employees and contracted direct care, nursing service and food and nutrition service staff are expected to meet competency, knowledge and skill requirements
- Additional training requirements for all new and existing staff, individuals providing services under contractual arrangement, and volunteers, consistent with their expected roles
- Utilization of culturally competent, trauma-informed approaches to care for patients/residents

AHCA concerns: There are many new requirements all at one time. These must be phased-in over five years with compliance required one year post phase-in of individual requirements. The cost of implementation is not covered by Medicaid or Medicare.

Behavioral Health Services:

Staff must be competent in caring for individuals with any behavioral health issues (including substance abuse), based on the "facility assessment" and the residents/patients who are cared for in the center. (p.42202-42203; 42224-4222; 42260-42261)

AHCA concerns: What standards will be applied to determine this competence? What standard will be used to define "behavioral health issues?"

Transitions of Care:

Transfer or discharge must be documented in the resident's clinical record and appropriate information communicated to any receiving setting, including home with home health services, hospice setting, assisted living, etc. Documentation includes 18 specific items that must be included. (p. 42255)

When the resident is being transferred for the resident's safety and welfare, in addition to the previously mentioned 18 items that must be documented, the center must document the specific resident needs it cannot meet, the center's attempts to meet the needs, and the services available at the receiving facility that will meet the resident's needs. (p. 42189-42190; 42255)

AHCA concerns: This may result in the need for additional staff resources within a center that are not covered by Medicare or Medicaid.

Pharmacy Services: (p. 42261)

The term "antipsychotics" is changed to "psychotropic drugs" which includes "1) Antipsychotic, (2) anti-depressant, (3) antianxiety, (4) hypnotic, (5) opioid analgesic, and (6) any other drug that results in effects similar to the drugs listed above." That is, any drug that affects brain activities associated with mental processes and behavior. All psychotropic drugs must be considered for gradual dose reduction (GDR).

PRN orders for psychotropic drugs are limited to 48 hours and cannot be continued beyond that time unless the resident's physician or primary care provider documents the rationale for this continuation in the resident's clinical record.

AHCA concerns: Expanding the definition of antipsychotics to psychotropic drugs is too broad, because it includes drugs such as narcotics and antidepressants which requires GDR for all that meet the new definition of psychotropics.

Limiting PRN orders for only 48 hours for all psychotropic is inappropriate, particularly for pain medications.

Requiring behavioral interventions first may be inappropriate for a person being treated for seizures or severe pain.

Physician Services:

A physician, physician assistant or clinical nurse specialist must conduct an in-person evaluation of a patient before an unscheduled transfer to the hospital when the transfer is not an emergency. (p. 42259)

AHCA concerns: This could be difficult for centers based on location particularly for rural areas and the expectation the physician is always available in a realistic time frame for this evaluation may harm patients who need to go to hospital.

Nursing Services:

Center must ensure that licensed nurses have the specific competencies and skill sets necessary to care for residents' needs. [Competency is the measurable or observable knowledge, skills and behaviors critical to successful job performance.]

Center may not use on any basis (employee, contract, agency) any person who does not meet competency requirements.

AHCA concerns: Competency of nursing staff is very important. However, requiring the center to be responsible for the competency of contract staff is unreasonable and should be the responsibility of the contractor. This requirement is already addressed by the regulation at F281 requiring individuals meet accepted standards of clinical practice. This should be dropped.

Compliance and Ethics Program:

Every center must have a compliance and ethics program in place one year after adoption of these rules. The program must have certain specified components.

In operating organizations that have five or more centers, there must be a designated compliance officer for whom the program is a major responsibility. Each center must have a compliance liaison. The officer must report directly to the operating organization's governing body. (p. 42219-42221; 42267)

AHCA concerns: This will require extensive efforts on the part of centers and must be phased in over several years. It will take resources away from caring for residents.

New staffing requirements:

Center must designate an Infection Prevention and Control Officer (IPCO) with specialized training in infection prevention and control beyond their initial professional degree. The IPCO must have this as their primary responsibility. (p. 42266)

Facility must include a “qualified mental health professional” in the interdisciplinary team when developing a care plan for residents diagnosed with mental health conditions or prescribed psychotropic drugs. [Note: the term in quotations is not defined in the rule and there is no definition recognized by the Federal Government] (p. 42193)

Center must include a chaplain or other spiritual care provider for inclusion in the interdisciplinary team based on a resident’s needs. (p.42193)

AHCA concerns: It is unclear if all centers throughout the U.S. will have access to an individual meeting the definition of an Infection Prevention and Control Officer. Need definition for “qualified mental health profession” and have similar concerns to the availability of these individuals for all nursing centers throughout the U.S. Will all centers be able to include a chaplain or other spiritual care provider in their IDT?

Quality Assurance and Performance Improvement (QAPI):

To demonstrate compliance with the requirements of QAPI, a center may be required to provide the following to a surveyor:

- Access to systems and reports demonstrating systematic identification, reporting, investigation, analysis, and prevention of adverse events
- Documentation demonstrating the development, implementation, and evaluation of corrective actions or process improvement activities
- Other documentation considered necessary by a state or federal surveyor in assessing compliance (p. 42214; 42265-42266)

AHCA concerns: We are concerned about possible implications of making this information public and by surveyors having access to these reports. The surveyors should not have access to the content of QAPI data.

Arbitration agreements: (p. 42211)

Arbitration agreements must be strictly voluntary and offered separately from the contract. CMS is also considering banning all arbitration agreements and is requesting comment about this.

AHCA concerns: CMS should not eliminate arbitration agreements. Arbitration agreements have been effective tools in assisting families and residents resolve disputes without resorting to lengthy and costly litigation.