

# Federal Requirements of Participation for Nursing Homes

## Summary of Key Changes in the Final Rule

### Issued September 2016

On September 28, 2016, the Centers for Medicare & Medicaid Services (CMS) issued updated federal nursing home regulations (Requirements of Participation for Long-Term Care Facilities). This is the first comprehensive revision to the regulations since they were issued in 1991. The updated rule (also referred to as the “final rule”) is being implemented in three phases: Phase 1-November 28, 2016; Phase 2 - November 28, 2017; and Phase 3-November 28, 2019.

This summary provides a brief overview of key changes in the sections on Resident Rights; Freedom from Abuse, Neglect, and Exploitation; and Admission, Transfer and Discharge that will go into effect in Phase 1. The purpose of the summary is to highlight what is different between the prior rule and the final rule.

A summary of additional sections of the final rule will be issued in the near future.

#### Changes in the rule are indicated in two ways:

##### NEW

means that the language is completely new.

##### MODIFIED

means that a prior regulation has been revised in some way. Some language has either been deleted or revised, or new language has been added. Instances where the content of the prior and final rule are the same, but there is a slight variation in phrasing, have not been included.

#### §483.5 DEFINITIONS

##### NEW

- Abuse
- Adverse event
- Exploitation
- Misappropriation of resident property
- Neglect
- Person-centered care
- Resident representative
- Sexual abuse

##### MODIFIED

- Composite distinct part
- Nurse aide
- Common area

## §483.10 RESIDENT RIGHTS

Many provisions previously in other sections of the regulations have been moved to Resident Rights:

From Quality of Life:

- Promoting maintenance or enhancement of resident quality of life; dignity
- Self-determination
- Participation in resident and family groups
- Participation in other activities
- Accommodation of needs
- Environment

From Resident Behavior and Facility Practices:

- Freedom from physical and chemical restraints

### (a) Residents Rights

NEW

(2) Equal access to quality care must be provided regardless of diagnosis, severity of condition and payment source.

### (b) Exercise of rights.

The rule uses a new term “resident representative.” See definition section in the regulations. Note that the term now includes an individual, other than an agent under a power of attorney, chosen by the resident to act on the resident's behalf.

MODIFIED

(2) The facility must support the resident in exercising his/her rights.

### *For residents not adjudged incompetent by a state court:*

NEW

(3) Same sex spouses and opposite sex spouses must be treated equally.

NEW

(3)(i) A resident representative can only exercise those rights specifically delegated to him or her.

NEW

(3)(ii) The resident retains the right to exercise those rights not delegated to a resident representative.

NEW

(5) The facility can only allow the resident representative to exercise the rights specifically delegated to him/her by the resident.

NEW

**(6)** The facility must report any concerns that a resident representative is making decisions or taking actions that are not in the resident's best interests in the manner required under state law.

***For residents adjudged incompetent by a state court:***

NEW

**(7)** The court-appointed resident representative can only exercise those rights given to him/her by the court.

NEW

**(7)(i)** The resident retains the right to make decisions that are outside the resident representative's authority.

NEW

**(7)(ii)** The resident representative must consider the resident's wishes and preferences.

NEW

**(7)(iii)** The resident must be given the opportunity to participate in the care planning process.

**(c) Planning and implementing care**

NEW

**(2)** The regulation expands resident involvement in and control over the care planning process. Residents now have the explicit right to:

- Identify individuals or roles to be included in the planning process
- Participate in establishing goals, outcomes of care and type/amount/frequency/duration of care
- Request meetings
- Request revisions to the person centered care plan
- Receive the services and items in the plan of care
- See the care plan
- Sign after significant changes

NEW

**(3)** The facility now has an affirmative duty to support the resident's right to participate in his or her treatment.

The planning process must:

- Facilitate the inclusion of the resident and/or resident representative
- Include an assessment of the resident's strengths and needs
- Integrate the resident's personal and cultural preferences into developing care goals

MODIFIED

**(4)** Residents have the right to be informed in advance about the type of caregiver or professional that will provide care.

NEW

**(5)** Information and choice have been broadened to include elements of informed consent. Residents have the right to:

- Be informed in advance by the practitioner of the risks and benefits of proposed care, treatment and treatment alternatives or treatment options
- Choose the alternative or option the resident prefers

MODIFIED

**(6)** The right to refuse treatment and refuse to participate in experimental research has been expanded to include the right to request and/or discontinue treatment and to participate in research.

#### **(d) Choice of attending physician**

NEW

**(2) & (4)** If a resident's physician is not following federal requirements, the facility can seek an alternate physician. However, the facility must discuss this with the resident, and honor the resident's choice of physician if the physician meets the requirements. (This is former interpretive guideline language that has been made into regulation.)

MODIFIED

**(3)** The facility must also provide contact information for the resident's other primary care professionals, not just the attending physician.

#### **(e) Respect and dignity**

MODIFIED

**(5)** The resident has the right to share a room with his or her roommate of choice when:

- Both residents live in the same facility
- Both residents consent to the arrangement
- It is practicable

This applies to anyone a resident might wish to have as a roommate – sibling, other relatives, same sex spouse, friend, etc.

MODIFIED

**(6)** The notice before a resident's room or roommate in the facility is changed must now be in writing and include the reason for the change.

NEW

**(7)(iii)** The right to refuse a transfer to another room in the facility now includes the right to refuse if the only reason is staff convenience.

## **(f) Self-determination**

NEW

The facility is now required to promote and facilitate resident self-determination through support of resident choice.

MODIFIED

**(1)** The regulation specifically states that residents can choose sleeping and waking times when exercising their right to choose schedules. In addition, residents can choose their providers of health care services as well as their health care services.

MODIFIED

**(3)** The right to participate in community activities has been added.

### ***Visitation***

NEW

**(4)** The rule affirms and explicitly states that residents have the right to receive visitors of their choosing at the time of their choosing.

NEW

**(4)(i)(G)** The resident representative is added to the list of people who have immediate access to the resident.

MODIFIED

**(4)(iii)** Visits from non-family visitors are now subject to resident consent and "reasonable clinical and safety restrictions" instead of just "reasonable restrictions."

NEW

**(4)(v) & (4)(vi)(A)** The facility must have a written visitation policy and inform residents of their visitation rights, the facility policy, any restrictions, the reasons for the restrictions and to whom the restrictions apply.

NEW

**(4)(vi)(B)** The resident's right to receive visitors of their choice is further strengthened by language saying the resident has the right to receive visitors that he or she designates, including a spouse or domestic partner of any sex, another family member, or a friend.

NEW

**(4)(vi)(C)&(D)** The facility must ensure all visitors have full and equal visitation privileges (subject to resident preferences) and not discriminate.

### ***Resident and family groups***

NEW

**(5)(i)** The facility must take reasonable steps, with the approval of the group, to make residents and family members aware of upcoming meetings in a timely manner.

MODIFIED

**(5)(ii)** Other guests as well as staff and visitors can attend only if invited.

MODIFIED

**(5)(iii)** The designated staff person must be approved by the resident or family group.

MODIFIED

**(5)(iv)** The facility is now required to act promptly upon grievances and recommendations of groups. The nature of these grievances and recommendations has been broadened to issues of resident care and life in the facility.

NEW

**(5)(iv)(A)** A new requirement has been added mandating the facility to demonstrate their response and rationale for such response.

NEW

**(5)(iv)(B)** Acting upon grievances/recommendations does not mean the facility must implement every request as recommended.

NEW

**(6)** Residents have the right to participate in family groups.

MODIFIED

**(7)** The language has been revised to say that it is the resident who has the right to have their families or representatives meet with other families/representatives rather than the families or representatives having this right.

### ***Financial affairs/resident personal funds***

MODIFIED

**(10)(i)** The facility must not require a resident to deposit their funds with the facility (language was previously "may not"). If the resident authorizes the facility to manage his/her funds, the facility must now act as a fiduciary of the resident's funds.

MODIFIED

**(10)(ii)** Separate requirements have been established for residents whose care is funded by Medicare and Medicaid.

MODIFIED

**(10)(ii)(A)** For residents whose care is funded by Medicare: Amounts have been changed from \$50 to \$100.

MODIFIED

**(10)(v)** The facility must now return residents' personal funds and a final accounting within 30 days when they have been discharged or evicted and not just upon death.

## **Charges for items and services**

**MODIFIED**

**(11)** The facility must not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare. Language was previously “may not.”

**NEW**

**(11)(i)(G)** Hospice services have been added to the list of services for which the facility must not charge the resident.

**NEW**

**(11)(ii)(L)(1)** The facility may not charge the residents for special foods and meals ordered by the resident's physician, physician assistant, nurse practitioner, or clinical nurse specialist.

**NEW**

**(11)(i)(L)(2)** The facility has to consider residents' needs, preferences, and the cultural and religious make-up of its population in food and meal preparation.

### **(g) Information and communication**

#### **Records**

**MODIFIED**

**(2)** Resident access to records has changed from access to “all” records pertaining to himself or herself to “personal and medical records pertaining to him or herself.”

**MODIFIED**

**(2)(i)** Residents must be given access to their personal and medical records in the form and format they request if the record can be readily produced in that form/format (for instance, electronic format or readable hard copy).

**MODIFIED**

**(2)(ii)** Residents no longer have to inspect the records first before obtaining copies. The facility can now charge a reasonable cost-based fee, instead of a cost not to exceed the community standard. The cost-based fee can include only the cost of copying, including supplies and labor, and postage, if the copy is to be mailed.

**NEW**

**(3)** All information except for personal and medical records and survey reports must be given to the resident in a form and manner that he/she can understand, including in an alternative format or in a language the resident can understand.

## Required notices

### MODIFIED

**(4)(i)(C)** This list must be given to each resident. [There is a separate requirement that the list be posted – see (5)]. The list of entities/agencies/programs has been expanded to also include:

- Informational agencies
- Resident advocacy groups
- Adult protective services
- The local contact agency for information about returning to the community

### MODIFIED

**(4)(i)(D)** The statement about filing complaints in the written description of rights has been broadened to indicate that residents may now file a complaint concerning any suspected violation of state or federal nursing home regulations, including requests for information about nursing home transitions (not just resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with the advance directives requirements).

## Postings

### NEW

**(5)** Posted information must be in a form and manner accessible and understandable to residents and resident representatives.

### MODIFIED

**(5)(i)** The list of entities/agencies/programs to be posted has been expanded to also include:

- Informational agencies
- Resident advocacy groups
- Adult protective services
- The local contact agency for information about returning to the community

### MODIFIED

**(5)(ii)** The statement about filing complaints must be posted and indicate that residents may now file a complaint concerning any suspected violation of state or federal nursing home regulations, including requests for information about nursing home transitions (not just resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with the advance directives requirements).



## **Communications, including mail**

**MODIFIED** (6) Use of a telephone must include TTY and TDD services and a cellular phone at the resident's expense.

**MODIFIED** (7) The facility must protect and facilitate the resident's rights to communicate with individuals within the facility and externally, including reasonable access to the internet as well as to a telephone and items for sending written mail.

**MODIFIED** (8) Mail is expanded to include letters, packages and other items delivered by means other than a postal service.

**NEW** (9) The resident has the right to reasonable access (at the resident's own expense) and privacy in electronic communications. This includes:

- Email and video communication
- Internet research

Use must comply with state and federal laws.

## **Survey results**

**MODIFIED** (11)(i) The facility must post the most recent survey results instead of posting a notice of their availability.

**NEW** (11)(ii)-(iii) Three years of surveys, certifications and complaint investigations and plans of correction must be available for anyone to review and a notice of their availability must be posted in a place the public can easily see and access.

## **Notification of changes**

**MODIFIED** (14)(i)(C) The "need to alter treatment" now includes changing an existing form of treatment.

**NEW** (14)(ii) Notification must include information required for transfer/discharges (see §483.15(c)(2)) and be given to the doctor if requested.

## **Notice of services**

**MODIFIED** (18) Information about services not covered under Medicaid must now also be provided.

NEW

**(18)(i)& (ii)** The facility must notify residents of changes in:

- Coverage of items and services by Medicare and Medicaid as soon as reasonably possible
- Charges for non-Medicaid/non-Medicare covered items in writing at least 60 days in advance.

NEW

**(18)(iii)& (iv)** The facility must refund any deposit or charges already paid, minus the facility's per diem rate, for the days the resident resided, reserved or retained a bed in the facility if the resident dies, is hospitalized or is transferred and does not return. Refunds must be given within 30 days of discharge.

NEW

**(18)(v)** Admission contracts cannot include provisions that conflict with the federal nursing home regulations.

### **(h) Privacy and confidentiality**

MODIFIED

**(2)** The facility is explicitly required to respect the resident's personal privacy. Privacy in communications is expanded to include oral communication.

MODIFIED

**(3)** The resident has the right to secure as well as confidential records.

NEW

**(3)(ii)** The facility must allow representatives of the Office of the State Long-Term Care Ombudsman to examine a resident's records in accordance with state law.

### **(i) Safe environment**

NEW

The resident now has a specific right to a safe, clean, comfortable and homelike environment, which includes safely receiving treatment and supports for daily living.

NEW

**(1)(i)** A safe environment includes making sure the resident can receive care safely and that the physical layout of the facility is safe and maximizes resident independence.

NEW

**(1)(ii)** For the first time, the facility must provide reasonable care to protect resident property/belongings from loss or theft.

## (j) Grievances

MODIFIED

**(1)** The resident's right to voice grievances to other agencies and entities in addition to the facility is now clearly stated. The right to voice grievances without discrimination or reprisal has been broadened to also include the right to voice grievances without fear of discrimination or reprisal. The type of grievances that can be filed have been expanded to include care as well as treatment, the behavior of staff and of other residents, and other concerns about the resident's stay.

NEW

**(3)** The facility must make information about how to file a grievance available to residents.

NEW

**(4)** The facility must develop a grievance policy and provide a copy of the policy to residents upon request.

The grievance policy must include:

- Notifying residents of the:
  - Right to file a complaint orally, in writing and anonymously
  - Contact information of the grievance official with whom a complaint can be filed
  - Reasonable expected time frame for completing the review of the grievance
  - Right to obtain a written decision regarding his or her grievance
  - Contact information of independent entities with whom grievances may be filed
- Identifying a Grievance Official responsible for:
  - Overseeing the grievance process
  - Receiving and tracking grievances
  - Leading any necessary investigations by the facility
  - Maintaining the confidentiality of all information associated with grievances, e.g. identity of the resident for those grievances submitted anonymously
  - Issuing written grievance decisions to the resident
  - Coordinating with state and federal agencies as necessary in light of specific allegations
- Taking immediate action to prevent further potential violations of any resident right while the alleged violation is being investigated

- Immediately reporting all alleged violations involving neglect, abuse, including injuries of unknown source, and/or misappropriation of resident property, by anyone furnishing services on behalf of the provider, to the administrator of the provider; and as required by State law
- Ensuring that all written grievance decisions include:
  - The date the grievance was received
  - A summary statement of the resident's grievance
  - The steps taken to investigate the grievance
  - A summary of the pertinent findings or conclusions regarding the resident's concern(s)
  - A statement as to whether the grievance was confirmed or not confirmed
  - Any corrective action taken or to be taken by the facility as a result of the grievance
  - The date the written decision was issued
- Taking appropriate corrective action in accordance with State law if the alleged violation of the residents' rights is confirmed by the facility or an outside entity
- Maintaining evidence demonstrating the results of all grievances for at least 3 years

#### **(k) Contact with external entities**

NEW

The facility must not prohibit or discourage residents from communicating with federal, state or local officials, including federal and state surveyors and representatives of the Office of the State Long-Term Care Ombudsman.

### **§483.12 FREEDOM FROM ABUSE, NEGLECT, AND EXPLOITATION**

This section was previously located under Resident Behavior and Facility Practices.

MODIFIED

In addition to abuse and neglect, residents must now also be free from exploitation.

#### ***Restraints***

NEW

**(a)(2)** The facility must use the least restrictive alternative for the least amount of time and must document evaluation of continued need for the restraint.

#### ***Hiring***

MODIFIED

**(3)** The facility is prohibited from otherwise engaging as well as employing disqualified individuals.

MODIFIED

**(3)(i)** Exploitation and misappropriation of property have been added.

MODIFIED

**(3)(ii)** Exploitation has been added.

NEW

**(3)(iii)** Employment prohibition is extended to licensed professionals who have had a disciplinary action taken against them by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property.

### **Facility policies/procedures**

#### **(b) The facility must develop and implement policies and procedures**

MODIFIED

**(1)** The policies and procedures must include prevention as well as prohibition of abuse, neglect, exploitation and misappropriation of resident property.

NEW

**(2) & (3)** The facility's policies and procedures must also include:

- Investigation of allegations
- Training

NEW

**(c)** The facility must ensure that all allegations are reported immediately, but not later than 2 hours, if there is serious bodily harm, and no later than 24 hours if there is not serious bodily harm. In addition to reporting to the administrator and other officials, such as the State Survey Agency, reports must now be made to adult protective services (APS) in states where APS covers nursing home abuse.

## **§483.15 ADMISSION, TRANSFER, AND DISCHARGE RIGHTS**

### **(a) Admissions policy**

NEW

**(1)** The facility must establish and implement an admissions policy.

NEW

**(2)(i)** The rights that cannot be waived have been expanded to include residents' rights under the federal nursing home regulations and residents' rights under other applicable state, federal or local licensing or certification laws. Facilities can neither request nor require residents/potential residents to waive these rights.

MODIFIED

**(2)(ii)** Facilities are now prohibited from even requesting such assurance.

NEW

**(2)(iii)** Facilities cannot:

- Waive their liability for loss of resident personal property
- Request or require that residents/potential residents waive this liability

MODIFIED

**(3)** Facilities can no longer even request a third party guarantee of payment, but may request and require a resident representative to pay for care out of the resident's funds without being held financially liable.

NEW

**(6)** The facility must disclose and provide notice of any special characteristics or service limitations. Such notice must be given to residents or potential residents prior to the time of admission.

### **(b) Equal access to quality care**

MODIFIED

**(1)** In addition to establishing and maintaining identical policies and practices, the facility must also implement them.

### **(c) Transfer and discharge**

MODIFIED

**(1)(i)(C)** Transfer/discharge when the safety of individuals in the facility is endangered has been changed to safety "due to the clinical or behavioral status of the resident."

MODIFIED

**(1)(i)(E)** Non-payment has been revised to apply only if the resident does not submit the necessary paperwork for third party payment.

NEW

**(1)(ii)** The facility cannot transfer or discharge a resident while a transfer/discharge appeal is pending unless the health or safety of the resident or other individuals in the facility would be endangered. The facility has to document what that danger is.

### **(2) Documentation**

MODIFIED

The facility must also ensure that appropriate information about the resident is communicated to the receiving health care institution or provider when the resident is transferred or discharged.

MODIFIED

**(3)(i)** A copy of the transfer/discharge notice must be sent to a representative of the Office of the State Long-Term Care Ombudsman.

MODIFIED

**(4)(ii)** Language has been changed from "may" be made as soon as practicable to "must" be made as soon as practicable.

MODIFIED

**(5)** Instead of just informing residents of their right to appeal, the notice must now provide:

- The name, address and telephone number of the entity receiving appeal requests
- Information on how to obtain an appeal form
- Assistance in completing the form and submitting the appeal hearing request

NEW

**(6)** The facility has to update the people who received the notice as soon as practicable if the information in the notice changes prior to transfer/discharge.

MODIFIED

**(7)** The facility must document as well as provide sufficient preparation and orientation for transfer/discharge. The orientation must be in a form and manner that the resident can understand.

### **(e)(1) Permitting residents to return to facility**

MODIFIED

**(1)(i)** A resident must be allowed to return to his or her own room if available.

MODIFIED

**(1)(i)(B)** The bed hold policy is extended to those who are eligible for Medicare skilled nursing facility services as well as Medicaid nursing facility services.

NEW

**(1)(ii)** If a resident who was transferred to the hospital had an expectation of returning and the facility determines s/he cannot return, the facility must comply with discharge requirements.

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