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HEALTH LAW NEWS

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CMS FINALIZES NEW REGULATIONS FOR FACILITIES

On September 28, 2016, the Centers for Medicare & Medicaid Services ("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 (the "Final Regulations") cover many regulatory requirements for long-term care facilities ("Facilities") and create new compliance obligations for providers. The Final Regulations seek to target rehospitalizations, facility-acquired infections, overall quality and resident safety.

CMS received nearly 10,000 comments from the public. Many of the comments addressed the use of required binding arbitration agreements that many prospective residents must sign before they are admitted to a Facility.

Since the Final Regulations impose numerous requirements, Hall Render will issue a series of articles summarizing various components.

COST OF IMPLEMENTATION

Perhaps the most significant change in the Final Regulations is CMS's estimation of the cost of implementation of the new regulations. In the Proposed Rules published in July 2016, CMS estimated the cost of implementation for providers to be nearly $730 million for the first year and $630 million each subsequent year. Under the estimates in the Proposed Rules, the nearly 16,000 skilled nursing facilities would see a cost of over $45,000 for the first year and $40,000 each subsequent year in new costs. The Final Regulations have a substantially higher estimation of cost. In the Final Regulations, the total estimated cost of implementation increases to $831 million for the first year and $736 million each subsequent year. This raises the Facility costs to $62,900 for the first year and $55,000 each subsequent year. Despite the large anticipated increase in cost, CMS states in comments to the Final Regulations that they are unable to quantify the benefits of the Final Regulations.

PROPOSED PHYSICIAN EVALUATION

The Proposed Rules included a provision requiring a Facility to provide or arrange for an in-person evaluation of a resident prior to an unscheduled transfer to a hospital. This evaluation could have been performed by a physician, physician assistant, nurse practitioner or clinical nurse specialist. After consideration of the comments received for this requirement, CMS withdrew this requirement from the Final Regulations.

ARBITRATION AGREEMENTS (§483.70(N))

Effective November 28, 2016, the Final Regulations will prohibit the use of pre-dispute binding arbitration agreements. This means that a Facility may not utilize pre-dispute arbitration agreements at the time of admission to that Facility. Facilities and residents will still be able to use arbitration on a voluntary basis at the time a dispute arises. The Final Regulations require that these agreements be clearly explained to residents, including the understanding that these arbitration agreements are voluntary and that these agreements should not prevent or discourage residents and families from talking to authorities about quality of care concerns.

COMPREHENSIVE PERSON-CENTERED CARE PLANNING (§483.21)

CMS moved the requirements for comprehensive care plans to a new section 483.21, Comprehensive Person-Centered Care Planning. The section significantly expands the requirements for comprehensive care plans.

CMS will require Facilities to develop and implement a baseline care plan for each resident within 48 hours of their admission, which includes the instructions needed to provide effective and person-centered care that meets professional standards of quality care. The baseline interim care plan must include, at a minimum, the initial resident goals based on admission orders, physician orders, dietary orders, therapy and social services and PASARR recommendations.

The Final Regulations include a requirement that discharge assessment and planning be included in the comprehensive care plan.

BEHAVIORAL HEALTH SERVICES (§483.40)

The Final Regulations add new requirements for behavioral health services and Facility staffing qualifications.

Under the Final Regulations, Facilities must have sufficient staff that provides direct services to residents with the appropriate competencies

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and skill sets to provide nursing and related services to ensure resident safety and attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident. These are determined by resident assessments, individual plans of care and, considering the number, acuity and diagnoses of the Facility's resident population. There is no required staffing ratio in the Final Regulations. These appropriate competencies and skills include knowledge and training for caring for residents with mental illness, psychosocial issues or a history of trauma. Staff must also be trained in implementing non-pharmacological interventions. The Final Regulations require a Facility to ensure that a resident who displays or is diagnosed with a mental disorder or psychological adjustment difficulty receives appropriate treatment and services to correct the issue or attain the highest practicable well-being.

EFFECTIVE DATE AND IMPLEMENTATION DATES

The Final Regulations will become effective November 28, 2016. They will be implemented in phases with the first phase-in period completed by November 28, 2016, followed by additional phases that end on November 28, 2017 and November 28, 2019.

PRACTICAL TAKEAWAYS

- Effective November 28, 2016, the Final Regulations will prohibit the use of pre-dispute binding arbitration agreements;
- Facilities must have sufficient staff that provides direct services to residents. There is no required staffing ratio in the Final Regulations;
- CMS did not maintain the proposed requirement for a resident evaluation prior to an unscheduled transfer to a hospital;
- The Final Regulations increased the already significant cost estimates of implementation included in the Proposed Rules; and
- While many of the Final Regulations are revisions to current regulations, Facilities should keep in mind that many of the Final Regulations have changes that could impact Facility operations.

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

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