

COUNTDOWN TO PHASE 3 SKILLED NURSING COMPLIANCE PROGRAMS - COMPONENT #7 - CONSISTENT ENFORCEMENT OF DISCIPLINE PROCEDURES

This is another article in a series discussing the complete overhaul of Part 483 to Title 42 of the Code of Federal Regulations the Requirements for States and Long-Term Care Facilities ("Final Regulations") by the Centers for Medicare & Medicaid Services ("CMS"). To view other articles in this series, click [here](#).

Beginning on November 28, 2019, surveyors will use the requirements detailed in 42 C.F.R. Section 483.85 in the Final Regulations to determine whether a skilled nursing facility's ("Facility") compliance and ethics program fulfills the requirements in the Final Regulations. One of the required components is that the Facility must have disciplinary mechanisms in place in the form of policies and procedures. These policies and procedures would serve to discipline individuals for failure to detect and report a compliance violation to the compliance contact at the Facility.

BACKGROUND AND PURPOSE OF A COMPLIANCE AND ETHICS PROGRAM

The Final Regulations created a new Section 483.85 requiring Facilities to have a compliance and ethics program. This regulation arises from Section 6102 of the Affordable Care Act, which added Subsection 1128l(b) to the Social Security Act (the "Act").

Section 483.85(c) sets forth the required compliance and ethics program components for all Facilities. Under those regulations, a compliance and ethics program means, with respect to a Facility, a Facility program that has been reasonably designed, implemented and enforced so that it is likely to be effective in preventing and detecting criminal, civil and administrative violations under the Affordable Care Act and in promoting quality of care; and includes, at a minimum, the required components specified in the Final Regulations.

REQUIRED COMPONENT #7 - ENFORCEMENT OF STANDARDS, POLICIES AND PROCEDURES

Section 483.85(c)(7) of the Final Regulations requires that a Facility takes reasonable steps to achieve compliance with the program's standards, policies and procedures. The Facility must ensure that compliance with the program's standards, policies and procedures are consistently enforced and that individuals will be disciplined for failure to detect and report a compliance violation to the Facility's compliance contact.

WHAT TYPE OF DISCIPLINARY MECHANISMS ARE REQUIRED?

The Final Regulations set forth what type of disciplinary mechanisms are required, which includes:

- The Facility must develop policies and procedures on what disciplinary mechanisms it plans to utilize.
- The Facility's disciplinary policies and procedures must be consistently enforced.
- The Facility's disciplinary mechanisms must address discipline of individuals for failure to detect and report a violation to the Facility's compliance program contact.

STATE OPERATIONS GUIDANCE TO SURVEYORS

CMS has not issued guidance on how surveyors will interpret and cite the compliance and ethics program requirement.

Surveyors will likely ask to see the records of the auditing and monitoring programs and the required reporting systems.

OIG GUIDANCE - RESOURCES

In its 2000 memo titled "Publication of the OIG Compliance Guidance for Nursing Facilities," OIG wrote that an effective compliance program should conduct thorough monitoring of the compliance program's implementation on an ongoing basis. Part of this implementation and evaluation should address the consequences for violating disciplinary policies and procedures and standards of conduct.

The OIG guidance expects policies and procedures to address not only individuals, but also contractors and individuals or entities who have violated federal, state or private payor health care program requirements.

The written standards of conduct should address how disciplinary problems will be handled and who is responsible for taking action on disciplinary issues. The OIG specifically states "[t]he consequences of noncompliance should be consistently applied and enforced in order for the disciplinary policy to have the required deterrent effect" and that consistent disciplinary enforcement should apply to all facility personnel including corporate officers, managers and supervisors.

IMPLEMENTATION TIME FRAME

Beginning on November 28, 2019, surveyors will use the requirements detailed in Section 483.85 to determine whether a Facility's compliance and ethics program fulfills the requirements in the Final Regulations.

ACTION ITEMS

Facilities should:

- Develop disciplinary policies and procedures;
- Ensure disciplinary policies and procedures address contracted entities; and
- Ensure disciplinary policies and procedures are consistently enforced.

COMPLIANCE AND ETHICS PROGRAM TOOLKIT AVAILABLE

Hall Render has developed a compliance and ethics program toolkit to assist skilled nursing facilities in achieving compliance with Section 483.85 and the Final Regulations. For more information about the toolkit, please contact Sean Fahey at (317) 977-1472 or sfahey@hallrender.com.

If you have questions about this topic or would like assistance with the phase 3 compliance and ethics program requirements, please contact:

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