REQUIREMENTS OF PARTICIPATION - PHASE 3 AND UPDATES FOR 2019

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Learning Objective

• Review CMS regulations / guidance for implementation of Phase 3 of the Requirements of Participation
• Explore CMS updates to the State Operation Manual for 2019

Outcome Measures

• Gain understanding of the changing roles / responsibility and expectations of the Medical Director and providers in nursing facilities
Changes Continue to Evolve, What We Know At This Time

Phase 3 – Requirements of Participation Update
A Proposed Rule by the Centers for Medicare & Medicaid Services was published on 07/18/2019 in the Federal Register; this proposal also includes a comment period ending 09/16/2019.
Major Areas of Anticipated Change

- Infection Preventionist
- Trauma-informed care
- QAPI
- Compliance and Ethics Program
- Centralized Bedside Call System
- Comprehensive Training Requirements
F-882 Infection Preventionist

- The facility must designate one or more individual(s) as the infection preventionist(s) (IP)(s) who are responsible for the facility’s IPCP. The IP must:
  - Have primary professional training in nursing, medical technology, microbiology, epidemiology, or other related field;
  - Be qualified by education, training, experience or certification;
  - Work at least part-time at the facility; and
  - Have completed specialized training in infection prevention and control.
  - Participate in quality assessment and assurance committee.
F-699 Trauma Informed Care

- The facility must ensure that residents who are trauma survivors receive culturally competent, trauma-informed care in accordance with professional standards of practice and accounting for residents’ experiences and preferences in order to eliminate or mitigate triggers that may cause re-traumatization of the resident.

It's not just a catchphrase. Cultural competency refers to the ability of healthcare providers to recognize and respect patients with diverse values, beliefs, behaviors and linguistic needs.
F-837 QAPI

- The governing body is responsible and accountable for the QAPI program,

- “Governing body” refers to individuals such as facility owner(s), Chief Executive Officer(s), or other individuals who are legally responsible to establish and implement policies regarding the management and operations of the facility.
F-895 Compliance & Ethics Program
The operating organization for each facility must develop, implement, and maintain an effective compliance and ethics program that contains, at a minimum, the following components:

- Established written compliance and ethics standards, policies, and procedures to follow that are reasonably capable of reducing the prospect of criminal, civil, and administrative violations under the Act and promote quality of care, which include, but are not limited to, the designation of an appropriate compliance and ethics program contact to which individuals may report suspected violations, as well as an alternate method of reporting suspected violations anonymously without fear of retribution; and disciplinary standards that set out the consequences for committing violations for the operating organization's entire staff; individuals providing services under a contractual arrangement; and volunteers, consistent with the volunteers' expected roles.

- Assignment of specific individuals within the high-level personnel of the operating organization with the overall responsibility to oversee compliance with the operating organization's compliance and ethics program's standards, policies, and procedures, such as, but not limited to, the chief executive officer (CEO), members of the board of directors, or directors of major divisions in the operating organization.
F-895 Compliance & Ethics Program

- Sufficient resources and authority to the specific individuals designated in paragraph (c)(2) of this section to reasonably assure compliance with such standards, policies, and procedures.

- Due care not to delegate substantial discretionary authority to individuals who the operating organization knew, or should have known through the exercise of due diligence, had a propensity to engage in criminal, civil, and administrative violations under the Social Security Act.

- The facility takes steps to effectively communicate the standards, policies, and procedures in the operating organization’s compliance and ethics program to the operating organization’s entire staff; individuals providing services under a contractual arrangement; and volunteers, consistent with the volunteers’ expected roles. Requirements include, but are not limited to, mandatory participation in training as set forth at §483.95(f) or orientation programs, or disseminating information that explains in a practical manner what is required under the program.

- The facility takes reasonable steps to achieve compliance with the program’s standards, policies, and procedures. Such steps include, but are not limited to, utilizing monitoring and auditing systems reasonably designed to detect criminal, civil, and administrative violations under the Act by any of the operating organization’s staff, individuals providing services under a contractual arrangement, or volunteers, having in place and publicizing a reporting system whereby any of these individuals could report violations by others anonymously within the operating organization without fear of retribution, and having a process for ensuring the integrity of any reported data.
F-895 Compliance & Ethics Program

- Consistent enforcement of the operating organization's standards, policies, and procedures through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect and report a violation to the compliance and ethics program contact identified in the operating organization's compliance and ethics program.

- After a violation is detected, the operating organization must ensure that all reasonable steps in its program are taken to respond appropriately to the violation and to prevent further similar violations, including any necessary modification to the operating organization's program to prevent and detect criminal, civil, and administrative violations under the Act.
F-919 Centralized Bed Call System

- The facility must be adequately equipped to allow residents to call for staff assistance through a communication system which relays the call directly to a staff member or to a centralized staff work area.

- The intent of this requirement is that residents, when in their rooms and toilet and bathing areas, have a means of directly contacting caregivers. In the case of an existing centralized nursing station, this communication may be through audible or visual signals and may include “wireless systems.” In those cases in which a facility has moved to decentralized nurse/care team work areas, the intent may be met through other electronic systems that provide direct communication from the resident to the caregivers.
Training Requirements

- **F-941** -- effective communications as mandatory training for direct care staff.
- **F-942** -- Resident's rights and facility responsibilities
- **F-944** -- QAPI program that outlines and informs staff of the elements and goals of the facility's QAPI program
- **F-945** -- Infection prevention and control program
- **F-946** -- Compliance and Ethics – if the operating organization operates five or more facilities training must be annual
- **F-949** -- Behavioral Health
Modification / Revision to Phase 1 and 2 Guidelines
Resident Rights (§ 483.10) – notification to residents on contact information for attending provider and clarification of “grievance”

Admission, Transfer, and Discharge Rights (§ 483.15) – propose to revise the requirement for facilities to send discharge notices to State LTC Ombudsman by applying this requirement to “facility-initiated involuntary transfers and discharges” only.

Quality of Care (§ 483.25) – propose to modify requirements to focus on the appropriate “use” of bed rails and eliminate references to the “installation” of bed rails. These revisions would provide clarity and address stakeholder concerns regarding the purchase of beds with bed rails already in place with no practical means of removal.
Nursing Services (§ 483.35) -- propose to reduce the timeframe that LTC facilities are required to retain posted daily nursing staffing data from 18 months to 15 months, or as required by state law.

Behavioral Health (§ 483.40) -- propose to remove requirements that are duplicative of other LTC requirements in other sections of the regulation and improve clarity.

Pharmacy Services (§ 483.45) -- propose to remove the existing requirement that PRN for anti-psychotics cannot be renewed unless the attending physician or prescribing practitioner evaluates the resident for the appropriateness of that medication.
Food and Nutrition Services (§ 483.60) – propose to revise the required qualifications for a director of food and nutrition services to provide that those with several years of experience performing as the director of food and nutrition services in a facility could continue to do so. We propose that at a minimum an individual designated as the director of food and nutrition services would receive frequently scheduled consultations from a qualified dietitian or other clinically qualified nutrition professional; and would either have 2 or more years of experience in the position of a director of food and nutrition services, or have completed a minimum course of study in food safety that includes topics integral to managing dietary operations such as, but not limited to, foodborne illness, sanitation procedures, food purchasing/receiving, etc.
Administration (§ 483.70) -- propose to clarify that data collected under the facility assessment requirement can be utilized to inform policies and procedures for other LTC requirements. In addition, we propose to remove duplicative requirements and revise the requirement for the review of the facility assessment from annually to biennially.
Physical Environment (§ 483.90) – propose to allow older existing LTC facilities to continue to use the 2001 Fire Safety Equivalency System (FSES) mandatory values when determining compliance for containment, extinguishment, and people movement requirements. This proposal would allow older facilities who may not meet the FSES requirements in the recently adopted 2012 Life Safety Code (LSC) to remain in compliance with the older FSES without incurring substantial expenses to change their construction types, while maintaining resident and staff safety. In addition, we propose to revise the requirements that newly constructed, re-constructed, or newly certified facilities accommodate no more than two residents in a bedroom and equip each resident room with its own bathroom that has a commode and sink. Specifically, we propose to only apply this requirement to newly constructed facilities and newly certified facilities that have never previously been a nursing home.
■ Informal Dispute Resolution and Independent Informal Dispute Resolution (§ 488.331 and § 488.431) -- propose to revise the informal dispute resolution and independent informal dispute resolution processes to increase provider transparency by ensuring that administrative actions are processed timely, and that providers understand the outcomes of results.

■ Civil Money Penalties: Waiver of Hearing, Reduction of Penalty Amount (§ 488.436) -- propose to eliminate the requirement for facilities to actively waive their right to a hearing in writing and create in its place a constructive waiver process that would operate by default when CMS has not received a timely request for a hearing. The accompanying 35 percent penalty reduction would remain.
2019 Survey Trends in Virginia

- Increase in number of deficiencies cited per visit
- Increase in number of deficiencies cited at Level 3 and/or Level 4
- Increase in number of re-visits
- Top 10 most frequently cited deficiencies
  1. F-656 Develop/Implement Comprehensive Care Plan
  2. F-880 Infection Prevention & Control
  3. F-657 Care Plan Timing and Revision
  4. F-689 Free of Accident Hazards/Supervision/Devices
  5. F-684 Quality of Care
  6. F-658 Services Provided Meet Professional Standards
  7. F-812 Food Procurement, Store/Prepare/Serve - Sanitary
  8. F-842 Resident Records - Identifiable Information
  9. F-695 Respiratory/Tracheostomy care and Suctioning
  10. F-761 Label/Store Drugs & Biologicals
Thank You

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