



A note from the State Long-Term Care Ombudsman:

October is Residents' Rights month, and this week we want to highlight some of the new federal nursing facility regulations just released by the Centers for Medicare and Medicaid Services (CMS) and the effects those changes will have on residents living in long-term care in Iowa and across the country.

The comprehensive revision of regulations and explanatory material resulted in a [700-page document](#). While we discuss some of the impacts on residents' rights and quality of care below, additional analysis of the regulations will be conducted in the following weeks by Consumer Voice, the Center for Medicare Advocacy and Justice in Aging.



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New CMS regulations to impact residents' rights, quality of care

The Centers for Medicare and Medicaid Services published a Reform of Requirements for Long-Term Care Facilities last week with revisions it states reflect "substantial advances... in the theory and practice of service delivery and safety."



While the regulations are prescribed to roll out in three phases over the next three years, Phase 1 changes must be implemented by Nov. 28, 2016.

Below is a portion of a release jointly developed by Consumer Voice, the Center for Medicare Advocacy and Justice in Aging that discusses some of the ways the revisions will impact residents' rights and quality of care:

Residents' Rights

Prohibiting Pre-Dispute Arbitration: Currently, many nursing facility admission agreements include provisions obligating a resident to have disputes adjudicated through private arbitration. Such "pre-dispute" arbitration agreements now will be prohibited. Arbitration agreements will be allowed only when the events at issue occurred before the arbitration agreement was signed.

Improvements to Involuntary Transfer-Discharge Procedures: The new regulations specify that transfer-discharge for non-payment is inappropriate when a resident has submitted necessary paperwork to a third-party payor (such as Medicaid), and that payor is now evaluating the claim for payment. Also, facilities now will be obligated to send a copy of each transfer-discharge notice to the state's long-term care ombudsman program, which is available to advise the resident.

Limiting Facility's Ability to "Dump" Resident at Hospital: In an effort to evade transfer-discharge requirements, some facilities "dump" residents by refusing to readmit them from hospitalizations. To address the problem, the new regulations explicitly require a facility to follow the transfer-discharge procedures when the facility claims that a hospitalized resident cannot return to the facility.

Modifying Residents' Rights to Have Visitors: The new regulations continue current law providing each resident with a right to receive visitors at any time. In an unwelcome change, however, if a visitor is not a family member, the right to receive a visit now is "subject to reasonable clinical and safety restrictions," as set forth in facility policy.

Grievances: Far too often, complaints from residents and families have been dismissed or not taken seriously. The regulations will now call for facilities to have a grievance policy and a grievance official to oversee the grievance process. Complainants will receive a written grievance decision that includes the steps taken to investigate, a summary of the finding or conclusions, a statement as to whether the grievance was confirmed or not confirmed and the action taken or to be taken by the facility.

Quality of Care

Staffing: Although inadequate staffing is the greatest problem in nursing facilities today, the new regulations do not include a minimum staffing standard or a requirement for a 24-hour registered nurse. Instead, the new regulations continue current policy: requiring "sufficient" staffing levels and registered nurse presence for eight hours daily. Staff must have "appropriate competencies and skills sets," and staffing levels must take into consideration the number, acuity and diagnoses of the resident population based on a newly mandated

facility assessment.

Person-Centered Care: The previous regulations required that care be individualized, and based on a care plan, but the new regulations add emphasis. The new regulations define person-centered care and require that facilities learn more about who the resident is as a person, provide greater support for resident preferences and give residents increased control and choice.

Care Planning: Under the new regulations, facilities must develop and implement a baseline care plan for a new resident within 48 hours of admission. The care planning process itself calls for greater resident involvement and participation. In addition, the certified nursing assistant responsible for the resident and a member of the food and nutrition services staff must participate in the care planning process.

Abuse, Neglect and Exploitation: Provisions related to abuse, neglect and exploitation are now included in a separate section, which brings more attention and focus to these issues. New protections include prohibiting licensed individuals with a disciplinary action from being hired and requiring that suspicion of a crime be reported to law enforcement and the state survey and certification agency.

Antipsychotic Drugs: Many residents with dementia are inappropriately given harmful antipsychotic drugs, despite strong current federal rules. The new regulations water down existing protections by folding antipsychotic drugs into a broader category of psychotropic drugs and moving them from quality of care regulations to pharmacy services.

Training: Training requirements have been expanded to apply to all staff, contractual employees and volunteers. Mandatory topics include communication, residents' rights and abuse, neglect and exploitation. Certified nursing assistants will be required to receive training on dementia management and resident abuse prevention.

The mission of the Office of the State Long-Term Care Ombudsman is to protect the health, safety, welfare and rights of individuals residing in long-term care by investigating complaints, seeking resolutions to problems and providing advocacy, with the goal of enhancing quality of life and care.

Please feel free to forward this newsletter to others who may be interested.