

Key Medicare SNF Regulatory and Survey Changes

March 2, 2018
Diane E. Felix
Aarthi Krishnamurthy

© 2018 Armstrong Teasdale LLP *Our Mission: Always exceed expectations through teamwork and excellent client service.*

A Moment of Silence for All the Trees...




- Proposed rule - 103 pp
- Final rule - 185 pp
- Survey & Certification Letters - 37 pp +
- Appendix PP - 702 pp
- LTC Survey Pathways - 220 pp
- Surveyor Training - gazillions
- LTCF Staff Training & Policy & Procedure Revisions - gazillions x 2

© 2018 Armstrong Teasdale LLP 

Key Event Timeline

- Jul. 16, 2015: Proposed Rule Published (103 pp)
- Oct. 4, 2016: Final Rule Published (185 pp)
- Nov. 28, 2016: Phase 1 Rules Effective
- Jun. 30, 2017: CMS Releases New Interpretive Guidance, to be effective Nov. 28, 2016
- Nov. 24, 2017: CMS Announces "Temporary Enforcement Delay"
- Nov 28, 2017: Most Phase 2 Rules Effective + New Survey Procedures
- Nov 28, 2019: Phase 3 Rules Effective

© 2018 Armstrong Teasdale LLP 

Reorganization of Existing Rule

- "F-Tag" numbers previously in use changed.
- Different rule groupings.

© 2018 Armstrong Teasdale LLP

Armstrong Teasdale 4

Basic Concepts that Remain

- Scope and severity determinations.

	Isolated	Pattern	Widespread
Immediate jeopardy to resident health or safety	J	K	L
Actual harm that is not immediate	G	H	I
No actual harm with potential for more than minimal harm that is not immediate jeopardy	D	E	F
No actual harm with potential for minimal harm	A <i>No POC Req.</i>	B	C

© 2018 Armstrong Teasdale LLP

Armstrong Teasdale 5

Three Phases of the Rule Implementation

Phase 1	Phase 2	Phase 3
<ul style="list-style-type: none"> Resident Rights and Facility Responsibilities* Freedom from Abuse, Neglect and Exploitation* Admission, Transfer and Discharge* Resident Assessment Comprehensive, Person-Centered Care Planning* Quality of Life Quality of Care* Physician Services Nursing Services* Pharmacy Services* Laboratory, radiology and other diagnostic services Dental services* Food and Nutrition* Specialized Rehabilitation Administration: Facility Assessment* QAPI – QAA Committee Infection Control Program* Physical Environment 	<ul style="list-style-type: none"> Behavioral Health Services* QAPI Plan* Infection Control – Facility Assessment and Antibiotic Stewardship* Compliance and Ethics* Physical Environment - Smoking Policies* <p>18-Month Moratorium Applicable to:</p> <ul style="list-style-type: none"> F-655 - Baseline Care Plan F-740 - Behavioral Health Services F-741 - Sufficient/Competent Direct Care/Access Staff-Behavioral Health F-758 - Psychotropic Medications related to PRN Limitations F-838 - Facility Assessment F-381 - Antibiotic Stewardship Program F-865 - QAPI Program and Plan related to the development of the QAPI Plan 	<ul style="list-style-type: none"> QAPI- Implementation Infection Control- Infection Control Preventionist* Compliance and Ethics* Physical Environment- Call Lights at Bedside* Training*

6

6

Proposed Rule Changes NOT Adopted (or Significantly Revised)

- Requirement for in-person evaluation by physician extender before any unscheduled non-emergency resident transfer to hospital.
- Requirement for physician credentialing.
- Open visitation to residents.
- Ban on pre-dispute binding arbitration agreements.

© 2018 Armstrong Teasdale LLP



Significant Rule Changes Adopted

- **ADDED** - Comprehensive Person-Centered Care Planning requirements added [§483.21]
- **REVISED** - Residents' rights and abuse, neglect and exploitation provisions strengthened [§§483.5, 483.10, 483.12]
- **REVISED** - Admission, transfer and discharge requirements far more detailed [§483.15]
- **ADDED** - Requirements for behavioral health care and services [§483.40]
- **ADDED** - Facilities must annually perform facility-wide assessment to determine resources necessary to care for their resident population day-to-day and in emergencies [§483.70]

© 2018 Armstrong Teasdale LLP



Significant Rule Changes Adopted

- **ADDED** - Facilities must perform a facility assessment and evaluate nursing staff competency to determine the sufficiency of their staff. [§483.35]
- **REVISED** - Requirements pertaining to psychotropic drugs, and monthly drug regimen reviews must include pharmacist review of medical chart [§483.45]
- **ADDED** - Provision covering facility obligation to pay for lost or damaged dentures under certain circumstances [§483.55]
- **ADDED** - Requirement for data-driven Quality Assurance and Performance Improvement (QAPI) program [§483.75]
- **ADDED** - Requirement for Infection Prevention & Control Program that includes an Antibiotic Stewardship Program [§483.80]
- **ADDED** - Requirement for Compliance & Ethics Program [§483.85]

© 2018 Armstrong Teasdale LLP



Increasing Civil Monetary Penalties

- Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, HHS made its first CMP adjustment since 1987.
- Max. penalties increased from \$10,000/day to \$20,628/day.
- For CMPs assessed on or after Feb 3, 2018, max. penalty will now be \$20,965/day.

© 2018 Armstrong Teasdale LLP

Armstrong Teasdale 20

Survey Procedures Changed Significantly

- All States to use new computer-based survey process for LTC surveys.
- Theory: new system will improve consistency.
- Majority of surveyor time to be spent observing and interviewing.
- Surveyors to use Appendix PP and "Survey Pathways".

© 2018 Armstrong Teasdale LLP

Armstrong Teasdale 11

Case Study –Surveyor Review of Non-Elective Transfers from LTCF to Hospital

- See Case Study material in hand-out.

© 2018 Armstrong Teasdale LLP

Armstrong Teasdale 12
