Key Medicare SNF Regulatory and Survey Changes

March 2, 2018
Diane E. Felix
Aarthi Krishnamurthy

A Moment of Silence for All the Trees...

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
- 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
Reorganization of Existing Rule

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

Basic Concepts that Remain

- Scope and severity determinations.

<table>
<thead>
<tr>
<th>Isolated</th>
<th>Pattern</th>
<th>Widespread</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immediate jeopardy to resident health or safety</td>
<td>J</td>
<td>K</td>
</tr>
<tr>
<td>Actual harm that is not immediate</td>
<td>G</td>
<td>H</td>
</tr>
<tr>
<td>No actual/harm with potential for more than minimal harm that is not immediate jeopardy</td>
<td>D</td>
<td>E</td>
</tr>
<tr>
<td>No actual/harm with potential for minimal harm</td>
<td>A</td>
<td>B</td>
</tr>
</tbody>
</table>

Three Phases of the Rule Implementation

- Admission, Transfer and Discharge*
  - Administration* - Facility Assessment*
  - Care/Access Staff - Behavioral Health Services*
- Laboratory, radiology and other diagnostic services
  - Physical Environment - Smoking
- Dental services*
  - Food and Nutrition*
  - Specialized Rehabilitation
- Clinical/Pharmacy Services
  - Specialty Drugs
  - Infection Control Program*
  - Physical Environment*
- F-758 - Psychotropic Medications
- F-881 - Antibiotic Stewardship
- QAPI - Implementation
- Infection Control - Facility Assessment and Antimicrobial Stewardship
- Compliance and Ethics* - Physical Environment - Smoking Policies
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.

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]

Significant Rule Changes Adopted

- **ADDED** - Faciltities must perform a facility assessment and evaluate nursing staff competency to determine the sufficiency of their staff. [§483.95]  
- **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 items 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 monitors an Antibiotic Stewardship Program [§483.80]
- **ADDED** - Requirement for Compliance & Ethics Program [§483.85]
Increasing Civil Monetary Penalties

- 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.

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”.

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

- See Case Study material in hand-out.