

New Developments in Federal Nursing Home Rules



Implementation of New Federal Regulations (This article is reprinted from an "Justice in Aging" article)

The Centers for Medicare & Medicaid Services (CMS) released new federal nursing facility regulations in 2016. The vast majority of the regulations became effective in November 2016, but some components are newly effective as of November 2017. The new "Phase Two" requirements include, among other things:

- **Care Planning:** A nursing facility must prepare a "baseline" care plan within 48 hours of a resident's admission. 42 C.F.R. § 483.21(a).
- **Involuntary Discharge:** If a facility attempts to discharge a resident based on a supposed inability to meet the resident's needs, the facility must document the need that supposedly cannot be met, the facility's attempts to meet that need, and services available at the receiving facility to meet the need. 42 C.F.R. § 483.15(c)(2)(i)(B).

- **Psychotropic Medication:** Psychotropic medication should be used only to treat a specific, identified condition, and facilities should attempt dose reductions and behavioral interventions to reduce or discontinue use of the medication. 42 C.F.R. § 483.45(e).
- **Dentures:** The facility must pay for replacement dentures when loss or damage of dentures was the facility's fault. 42 C.F.R. § 483.55(a)(3).
- **Crime Reporting:** The facility must ensure that any reasonable suspicion of a crime against a resident is reported to the survey agency and local law enforcement. 42 C.F.R. § 483.12(b)(5).

New Interpretive Guidelines

CMS's Interpretive Guidelines provide significant guidance to how the federal nursing facility regulations should be interpreted and implemented. Revised Guidelines became available and effective on November 28, and are found at Appendix PP to CMS's State Operations Manual.

Moratorium on Full Enforcement of Some Phase Two Regulations

CMS is temporarily limiting its enforcement remedies. For the next 18 months, violations of certain Phase Two Regulations cannot be addressed by money penalties, discretionary denial of payment for new admissions, or termination.

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