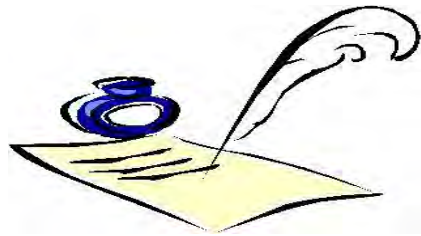


# CHANGES TO FEDERAL NURSING HOME REGULATIONS

MEDICARE AND MEDICAID PROGRAMS: REQUIREMENTS FOR LONG-TERM CARE FACILITIES

**42 CFR**

**PART 483 --  
REQUIREMENTS  
FOR STATES AND  
LONG TERM  
CARE FACILITIES**



# WHY

No major revision since 1991

Residents are more diverse and more clinically complex

Need to improve the quality of life, care and services, optimize resident safety

Reflect current professional standards.

Change in facilities.

# Overview of Changes

- Focus on individual needs “Person-centered care”
- Resident choice and engagement
- Ban on pre-dispute arbitration agreements
- Baseline care plan w/in 48 hours
- Increased protections against involuntary discharges and “hospital dumping”
- More care including behavioral health and dialysis services, pain management
- Enhanced training requirements

## Three Phases

**NOVEMBER 28, 2016**

**NOVEMBER 28, 2017**

**NOVEMBER 28, 2018**

## Subpart B: REQUIREMENTS FOR LONG TERM CARE FACILITIES New Sections

§ 483.1 Basis and scope.

§ 483.5 Definitions.

§ 483.10 Resident rights.

§ 483.12 Freedom from abuse, neglect, and exploitation.

§ 483.15 Admission, transfer, and discharge rights.

§ 483.20 Resident assessment.

§ 483.21 Comprehensive person-centered care planning.

§ 483.24 Quality of life.

§ 483.25 Quality of care.

§ 483.35 Nursing services.

§ 483.40 Behavioral health services.

§ 483.45 Pharmacy services.

§ 483.50 Laboratory, radiology, and other diagnostic services.

§ 483.55 483.30 Physician services.

§ Dental services.

§ 483.60 Food and nutrition services.

§ 483.65 Specialized rehabilitative services.

§ 483.70 Administration.

§ 483.73 Emergency preparedness.

§ 483.75 Quality assurance and performance improvement.

§ 483.80 Infection control.

§ 483.85 Compliance and ethics program.

§ 483.90 Physical environment.

§ 483.95 Training requirements.

## Definitions: new or Revised

**42 CFR 483.5**

**Abuse**

**Adverse Event**

**Exploitation**

**Misappropriation of property**

**Neglect**

**Person-centered Care**

**Resident Representative**

**Sexual abuse**

## Definitions

**Person-centered Care**

**Person-centered care means to focus on the resident as the locus of control and support the resident in making their own choices and having control over their daily lives.**

## Definitions

42 CFR 483.5

### Resident Representative

- ▶ An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making;
- ▶ A person authorized by State or Federal law to act on behalf of the resident
- ▶ Legal representative, as used in section 712 of the Older Americans Act; or.
- ▶ The court-appointed guardian or conservator of a resident.

## Definitions

### Exploitation:

Taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.

### Misappropriation of resident property:

The deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.

## Resident Rights

42 CFR 483.10

Changes:

- Not intended to diminish resident rights or protections
- Want to ensure rights and protections encompass advancements that were not envisioned when the original regulations were written
- Also contains attendant facility obligations

## Resident Rights

42 CFR 483.10

The facility must provide equal access to quality care regardless of diagnosis, severity of condition, or payment source.

The same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse

## Rights

### 42 CFR 483.10(b)

The resident representative has the right to exercise the resident's rights to the extent those rights are delegated either by the resident or a court.

The facility shall not extend the resident representative the right to make decisions beyond the extent required by the court or delegated by the resident.

The resident retains the right to make those decision outside the representative's authority.

## Rights continued

### 42 CFR 483.10(b)

- ▶ The representative must consider the resident's wishes and preferences.
- ▶ The facility must report any concerns that a representative is making decisions or taking actions that are not in the resident's best interest.
- ▶ To the extent practicable the resident must be allowed to participate in the care planning.

## RIGHTS

42 CFR 483.10(c)

### RIGHT TO PARTICIPATE

Residents have the right to participate in the care planning process including the right to:

- ▶ Identify individuals or roles to be included in the planning process,
- ▶ Request meetings
- ▶ Request revisions to the plan of care
- ▶ See the care plan
- ▶ Sign after significant changes

## RIGHTS

42 CFR 483.10(c)

The Facility shall:

- ▶ inform the resident of the right to participate in his or her treatment,
- ▶ facilitate the inclusion of the resident in the planning process,
- ▶ Incorporate the resident's personal and cultural preferences in developing goals of care.



## RIGHTS

42 CFR 483.10(c)

### The right to be informed:

- ▶ of the risks and benefits of proposed care, of treatment,
- ▶ treatment alternatives or treatment options, and
- ▶ to choose the alternative or option he or she prefers.

## RIGHTS

42 CFR 483.10(i)

The right to a safe, clean, comfortable and homelike environment.

The facility must –

- ▶ Allow the resident to use his or her personal belongings to the extent possible.
- ▶ Ensure that the resident receives care and services safely
- ▶ Ensure that the physical layout of the facility maximizes resident independence and does not pose a safety risk.
- ▶ Exercise reasonable care for the protection of the resident's property from loss or theft.

## Rights - Visitation

### 42 CFR 483.10(f)

- ▶ The facility must have written visitation policies and procedures.
- ▶ The facility must provide immediate access to a resident by immediate family and other relatives subject to the resident's right to deny or withdraw consent.
- ▶ The facility must provide immediate access to a resident by others, subject to reasonable clinical and safety restrictions and the resident's right to deny or withdraw consent

## RIGHTS

### 42 CFR 483.10(j)

- ▶ The facility must make information on how to file a grievance or complaint available to the resident
- ▶ The facility must establish a grievance policy and when requested must give a copy of the grievance policy to the resident.
- ▶ Maintain evidence of result of grievance for three years

## Freedom From Abuse, Neglect and Exploitation

### 42 CFR 483.12

The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation.

When the use of restraints is indicated, the facility must use the least restrictive alternative for the least amount of time and document ongoing re-evaluation of the need for restraints.

## Abuse, Neglect and Exploitation

Facilities must not employ or otherwise engage individuals who—

- ▶ Have been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law;
- ▶ Have had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of their property; or
- ▶ Have a disciplinary action in effect against his or her professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property.

## Abuse, Neglect and Exploitation

The facility must have policies and procedures that include:

- Preventions as well as prohibition of abuse, neglect, exploitation and misappropriation of property
- Investigation of allegations
- Training

## Abuse, Neglect and Exploitation

Report all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property,

- ▶ not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or
- ▶ not later than 24 hours if the allegation does not involve abuse and does not result in serious bodily injury

## ADMISSIONS, TRANSFER AND DISCHARGE RIGHTS

42 CFR 483.15

- ▶ Must have an admissions policy
- ▶ Residents cannot waive rights under federal or state nursing home regulations licensing or certifications laws.
- ▶ Facilities cannot waive liability or request that resident's waive their liability for the loss of resident's personal property

## Admission

42 CFR 483.15(a)

- ▶ Facility must provide notice of special characteristics or service limitations
- ▶ Facilities cannot request a third party guarantee of payment, but may require that resident representative pay for care out of resident's funds
- ▶ Admission contract cannot contain a Pre-dispute arbitration agreement

## Equal access to quality care

42 CFR 483.15(b)

- ▶ A facility must establish, maintain and implement identical policies and practices regarding transfer and discharge, and the provision of services for all individuals regardless of source of payment

## Transfer and Discharge

42 CFR 483.15(c)

Two reasons were modified:

- ▶ (C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident.
- ▶ (E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay.

## Transfer and Discharge – Changes

- ▶ Discharge cannot occur while an appeal is pending, unless the health or safety of individuals in the facility is endangered and the facility documents the danger.
- ▶ The facility must assist the resident in completing and submitting an appeal of discharge
- ▶ Notice must be sent to ombudsman

## Involuntary Discharge - Notice

- ▶ Notice must be written in a language and manner understood by the resident and representative
- ▶ (C)(4) Timing of the notice (If facts allow less than thirty days notice), Notice must be given as soon as practicable before transfer or discharge when -
- ▶ If the information in the Notice changes prior to the discharge, the facility must update the recipients as soon as practicable

## Involuntary Discharge New Documentation

42 CFR 483.14(C)(2) Effective phase 2

If the transfer or discharge is based upon the resident needing care that the nursing home cannot provide. The resident's physician must document the file to include:

- The specific resident need(s) that cannot be met;
- The facility attempts to meet the resident needs; and
- the service available at the receiving facility to meet the need(s).

## Involuntary Discharge Documentation

- ▶ The resident's file must be documented by a physician if the transfer or discharge is based upon the safety of individuals in the facility being endangered
- ▶ Appropriate information must be communicated to the receiving health care institution or provider



## Involuntary Discharge

### Information to Receiving Provider

- ▶ Contact information of the practitioner responsible for resident's care;
- ▶ Resident representative information;
- ▶ Advance Directives;
- ▶ Special instructions or precautions for ongoing care;
- ▶ Comprehensive care plan goals;
- ▶ Discharge summary

## Hospital or Therapeutic Leave

### 42 CFR 431.15(e)

A facility must establish and follow a written policy on permitting residents to return to the facility after they are hospitalized or placed on therapeutic leave.

The policy must provide for the following:

- Must allow resident to return to own room if it is available
- If the facility determines that a resident cannot return to the facility, the facility must comply with involuntary discharge procedures.

## Assessments

### 42 CFR 483.20

- ▶ Assessment process must include direct communication and observation of resident and communication of direct care staff on all shifts
- ▶ Must assess strength's goals, life history and preferences as well as needs.
- ▶ Must coordinate assessments with the preadmission screening and resident review (PASARR)

## Assessments

- ▶ The facility must notify the state mental health authority or state intellectual disability authority of a significant change in the mental or physical condition of a resident who has a mental disorder or intellectual disability
- ▶ The State may choose not to apply the preadmission screening program:
  - ▶ When an individual is admitted or readmitted to the facility directly from a hospital after receiving acute inpatient care at the hospital; or
  - ▶ When a resident's attending physician has certified that the resident is likely to require less than 30 days of nursing facility care

## Comprehensive Person-Centered Care Planning

42 CFR 483.21

Baseline care plan must be developed and implemented within 48 hours of admission and include:

- Initial goals,
- Physician orders,
- Dietary orders,
- Therapy services, and
- Social services.

## Comprehensive Person-Centered Care Planning

42 CFR 483.21

Comprehensive care plans must be developed and implemented. They include measurable objectives and time frames to meet resident's medical, nursing and mental and psychosocial needs.

Must be person-centered and consistent with resident's rights for planning care.

Must described required specialized services, specialized rehabilitative services, resident's goals, resident's preference and potential for discharge and discharge plans.

## Comprehensive Person-Centered Care Planning

42 CFR 483.21

Discharge planning must :

- ▶ Focuses on resident's discharge goals
- ▶ Is based on resident's needs,
- ▶ Addresses care and treatment preferences,
- ▶ Involves the interdisciplinary team,
- ▶ Considers caregiver or support person's capabilities,
- ▶ Is documented and discussed with resident or representative
- ▶ Is subject to regular re-evaluation.

## Quality of Life

42 CFR 483.24

- ▶ Quality of life is a fundamental principle that applies to all care and services provided to residents.
- ▶ Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident's comprehensive assessment and plan of care.

## Quality of Life

- ▶ Facility must provide the necessary care and services to ensure that a resident's abilities in activities of daily living do not diminish unless the individual's clinical condition demonstrate that such diminution was unavoidable.
- ▶ Facility must ensure that personnel provide basic life support, including CPR, to a resident requiring such emergency care prior to the arrival of emergency medical personnel and subject to related physician orders and the resident's advance directives.

## Quality of Life

- ▶ The facility must provide both group and individual activities and independent activities, designed to meet the interests of and support the physical, mental, and psychosocial well-being of each resident, encouraging both independence and interaction in the community.

## Quality of Care

### 42 CFR 483.25

- ▶ Quality of care is a fundamental principle that applies to all treatment and care provided to facility residents.
- ▶ Based on the comprehensive assessment of a resident, the facility must ensure that residents receive treatment and care in accordance with professional standards of practice, the comprehensive person-centered care plan, and the resident's choices

## Quality of Care

- ▶ Provide necessary treatment and services, consistent with professional standards of practice, to a resident with pressure ulcers to promote healing, prevent infection and prevention of new pressure ulcers.
- ▶ A resident with limited mobility receives appropriate services, equipment, and assistance to maintain or improve mobility with the maximum practicable independence unless a reduction in mobility is demonstrably unavoidable.

## Quality of Care

- ▶ Provide foot care and treatment, in accordance with professional standards of practice, including to prevent complications from the resident's medical condition(s); and
- ▶ If necessary, assist the resident in making appointments with a qualified person, and arranging for transportation to and from such appointments.

## Quality of Care

- ▶ The facility must ensure that a resident who is continent of bladder and bowel on admission receives services and assistance to maintain continence unless his or her clinical condition is or becomes such that continence is not possible to maintain.
- ▶ A resident who enters the facility with an catheter or subsequently receives one is assessed for removal of the catheter as soon as possible

## Quality of Care

- ▶ the facility must ensure that a resident who is incontinent of bowel receives appropriate treatment and services to restore as much normal bowel function as possible.
- ▶ A resident who has been able to eat enough alone or with assistance is not fed by enteral methods unless the resident's clinical condition demonstrates that enteral feeding was clinically indicated and consented to by the resident.

## Quality of Care

- ▶ The facility must ensure that residents who require dialysis receive such services
- ▶ The facility must ensure that pain management is provided to residents who require such services.



## Quality of Care

- ▶ The facility must attempt to use appropriate alternatives prior to installing a side or bed rail. If a bed or side rail is used, the facility must ensure correct installation, use, and maintenance of bed rails
- ▶ Residents who are trauma survivors must receive culturally-competent, trauma-informed care to eliminate or mitigate triggers that may cause re-traumatization of the resident. (Required by November 2019).

## Physician Services

### 42 CFR 483.30

- ▶ A physician, physician's assistant, nurse practitioner or clinical specialist must provide orders for the resident's immediate care and needs
- ▶ May delegate the writing of dietary orders to a qualified dietitian or clinical qualified nutrition specialist
- ▶ May delegate the writing of therapy orders to a qualified therapist

## Nursing Services

### 42 CFR 483.35

The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to each resident and considering the number, acuity and diagnoses of the facility's resident population.

- ▶ Usage of the Facility Assessment is implemented in Phase 2.

## Nursing Services

Licensed nurses  
and nurse's aides

- ▶ Must have competencies and skill sets to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.
- ▶ Be able to provide care which includes assessing, evaluating, planning and implementing resident care plans and responding to resident needs.

## Behavioral Health

### 42 CFR 483.40 Phase 1

Each resident must receive the necessary behavioral health care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

Behavioral health encompasses a resident's whole emotional and mental well-being, which includes but is not limited to, the prevention and treatment of mental and substance use disorders.

The facility must have sufficient staff with the appropriate competencies and skills sets.

## Behavioral Health

### 42 CFR 483.40

### Phase 3

- ▶ Sufficient staff to caring for residents with a history of trauma and/or post-traumatic stress disorder, that have been identified in the facility assessment

## Pharmacy Services

### 42 CFR 483.45

The pharmacist must report any irregularities to the attending physician and the facility's medical director and director of nursing, and these reports must be acted upon.

Facility must develop policies and procedures for the monthly drug regimen review that include steps to be taken if there is an irregularity

## Pharmacy services

### Psychotropic drugs

A psychotropic drug is any drug that affects brain activities associated with mental processes and behavior, including but not limited to:

- ▶ Anti-psychotics,
- ▶ Anti-depressants,
- ▶ Anti-anxieties, and
- ▶ Hypnotics.

## Pharmacy Services

Facility must ensure that--

Residents who have not used psychotropic drugs are not given these drugs unless the medication is necessary as diagnosed and documented;

Residents who use psychotropic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated;

PRN orders for psychotropic drugs are limited to 14 days.

## Administration

42 CFR 483.70

- ▶ A facility must not enter into a pre-dispute agreement for binding arbitration with any resident or resident's representative nor require that a resident sign an arbitration agreement as a condition of admission
- ▶ A resident may voluntarily enter into an agreement after a dispute arises.

## Administration

### Facility Assessment

#### Phase 2

- ▶ The facility must conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during day-to-day operations and emergencies.
- ▶ Must be reviewed and updated as necessary but at least annually.

## Infection Control

### 42 CFR 483.80

- ▶ The facility must establish an infection prevention and control program
- ▶ Must have written standards, policies, and procedures for the program,

## Training Requirements

**42 CFR 483.95**

Facilities must provide training on--

- ▶ **Activities that constitute abuse, neglect, exploitation, and misappropriation of resident property**
- ▶ **Procedures for reporting incidents of abuse, neglect, exploitation, or the misappropriation of resident property.**
- ▶ **Dementia management and resident abuse prevention.**

## Resources

### **APPENDIX PP State Operations Manual Guidance to Surveyors for Long Term Care Facilities**

- ▶ <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Appendix-PP-03-08-2017.pdf>

### **Discussion of changes – issue briefs**

- ▶ [http://theconsumervoice.org/issues/issue\\_details/proposed-revisions-to-the-federal-nursing-home-regulations#Issue%20Briefs](http://theconsumervoice.org/issues/issue_details/proposed-revisions-to-the-federal-nursing-home-regulations#Issue%20Briefs)

### **Federal Register: New rules with comments**

- ▶ <https://www.gpo.gov/fdsys/pkg/FR-2016-10-04/pdf/2016-23503.pdf>



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*Equal Access to Justice*

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