Nursing Home Final Rule Takes Effect

Broad changes to impact physician services and providers across care spectrum

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ON SEPT. 28, 2016, the Centers for Medicare and Medicaid Services (CMS) issued a much-anticipated final rule which modernizes and makes drastic changes to the conditions of participation for nursing homes. These long-awaited final rules are the first comprehensive update to the conditions of participation for nursing homes since 1991. CMS received over 10,000 public comments to their initially proposed rule, before the final rule was issued.

CMS stated that its goal in implementing these changes is to "bring best practices for resident care to all facilities that participate in Medicare or Medicaid, implement a number of important safeguards identified by resident advocates and other stakeholders, and include additional protections required by the Affordable Care Act." CMS believes these revisions will help to improve the overall care and safety of nearly 1.5 million residents in more than 15,000 long-term care facilities. The rules will be implemented in three phases: phase one is effective upon the final rule's effective date (Nov. 28, 2016); phase two is effective exactly one year later (Nov. 28, 2017); and phase three is effective three years from the final rules' effective date (Nov. 28, 2019).

All providers across the care spectrum will be impacted by the rules, including physicians rendering care to residents in a nursing home setting. They will also impact physicians serving as medical directors for nursing homes. While the changes are drastic, this article focuses on the changes to the physician services provisions in Section 483.30.

Proposed Changes to Physician Services

Under the initial rule, CMS proposed to make the following changes to Section 483.30, which sets forth the requirements for physician services:

1. Revise the introductory text to specify that, in addition to a physician's recommendation that the individual be admitted to a facility, a physician, a physician assistant, a nurse practitioner, or a clinical nurse specialist must provide orders for the resident's immediate care and needs.
2. Add a new requirement that a facility, prior to an unscheduled transfer of a resident to a hospital, provide or arrange for an in-person evaluation of a resident, to be conducted expeditiously, by a physician, a physician assistant, nurse practitioner, or clinical nurse specialist prior to transferring the resident to a hospital, unless the transfer is emergent and obtaining the in-person evaluation would endanger the resident's health or safety or unreasonably delay the transfer.
3. Provide the physician with the flexibility to delegate to a qualified dietitian or other clinically qualified nutrition professional the task of writing dietary orders, to the extent permitted under state law.
4. Provide the physician with the flexibility to delegate to a qualified therapist the task of writing therapy orders, to the extent permitted under state law.

The final rule does retain some parts of the former rule. These include:

- CMS retained its requirement that orders be provided for the resident's immediate care and needs. The purpose of this requirement is to ensure that residents' receive care for their specific needs until a comprehensive assessment and care plan can be completed. Accordingly, in addition to recommending that individuals be admitted to a nursing home, a physician should also consider writing orders for the immediate care individuals will receive once they are admitted to the nursing home.
- CMS received extensive negative comments on its proposed requirement that a physician or other licensed professional provide an in-person evaluation of an individual prior to transfer. This requirement would have placed a large burden on both nursing homes and physicians in the event that an unscheduled transfer became necessary. In light of the extensive comments received, CMS elected not to finalize this proposal in the final rule.
- CMS received support for its proposal that physicians be allowed to delegate authority to write dietary orders to dieticians acting within their scope of practice under state law and under the supervision of a physician. In the final rule, CMS limited the scope of this authority to the attending physician, since the attending physician retains primary responsibility for the resident. This may allow physicians to make better use of their time by permitting delegation of authority to dieticians who may know the resident better than the attending physician.
- Similarly, CMS retained its proposal that physicians be permitted to delegate to a qualified therapist the task of writing therapy orders, to the extent permissible under state law. CMS noted that this proposal is intended to improve responsiveness to a resident's needs and may be implemented at the discretion of the physician.

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The entirety of these changes to the physician services section are implemented in phase one of the final rule. Accordingly, these changes are currently in effect and physicians practicing in nursing homes are required to comply.

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