

Compliance Today – January 2018 Post-acute care compliance issues, Part 1: Long-term care

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This is Part 1 of a two-part article on post-acute compliance issues. Part 2 will be published in the February issue of Compliance Today.

2016 and 2017 were momentous years for compliance issues that impacted long-term care LTC facilities, leaving LTC facilities with significant challenges and burdens to operate successfully and avoid citations and penalties. The substantive changes include finalizing the first major overhaul since 1991 of the Requirements of Participation (RoPs) for LTC facilities.^[1] CMS also made significant revisions to the State Operations Manual (SOM) Interpretative Guidelines and Survey Protocol based on the new RoPs.^[2]

Long-term care Requirements of Participation

LTC facilities will continue to face challenges implementing the RoPs, which became final on September 28, 2016. The revisions to the RoPs will be implemented in three phases. Phase 1, which contained most of the RoP changes, was effective on November 28, 2016. Phase 2 was effective on November 28, 2017. Phase 3 will become effective on November 28, 2019.

With regard to the Phase 2 RoP implementation date, on November 24, 2017, CMS issued a program memorandum that would delay certain enforcement remedies for some Phase 2 RoPs.^[3] The CMS memorandum imposed an 18-month moratorium on civil monetary penalties, denials on payment for new admissions, and discretionary termination for some Phase 2 RoPs. The purpose of this moratorium is to educate LTC facilities on the Phase 2 requirements. This moratorium applies only to Phase 2 RoPs. CMS will continue to use all enforcement remedies for Phase 1 RoPs. CMS has not stated if it will issue a similar moratorium for Phase 3 RoPs. Perhaps the biggest challenge for LTC facilities will be complying with the new RoPs that require a facility assessment and QAPI.

One concern LTC facilities face with implementation of the RoPs is cost. In the proposed RoPs published in July 2016, CMS estimated the cost of implementation for the nearly 16,000 LTC facilities in the United States to be nearly \$730 million for the first year and \$630 million for each subsequent year. On a per-facility basis, these estimates would cost LTC facilities \$45,000 in the first year and \$40,000 in each subsequent year. When the final RoPs were released, the estimated costs were substantially higher. The total cost of implementing the RoPs increased to \$831 million for the first year and \$736 million in each subsequent year for all LTC facilities. On a per-facility basis, these increases would cost LTC facilities \$62,900 in the first year and \$55,000 in each subsequent year. The cost of implementing the RoPs caught the attention of Congress in September 2017, when more than 100 lawmakers, with the support of the American Health Care Association, sent a letter to then HHS Secretary Tom Price and CMS Administrator, Seema Verma. This letter asked CMS to delay the November 28, 2017, Phase 2 RoP implementation due to the financial burden the RoPs would place on LTC facilities.

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