

Compliance Today – January 2020

CMS proposes delay and revisions to long-term care regulations

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On October 4, 2016, the Centers for Medicare & Medicaid Services (CMS) issued a final rule revising the requirements that long-term care (LTC) facilities must meet to participate in the Medicare and Medicaid programs (the final rule).^[1] The effective date of this final rule was November 28, 2016. The requirements set forth in the final rule were initially intended to be implemented in three phases, with the final phase commencing November 28, 2019; however, the breadth of the participation requirements are such that CMS recently proposed a one-year delay in the third and final phase of implementation, as well as revisions to simplify and streamline a variety of the requirements (the proposed rule).^[2] Note that the final rule implementing these proposals may be published by CMS prior to the date this article is published.

Background of LTC ROP requirements

The final rule, which contained the most substantial revisions to the Medicare and Medicaid LTC requirements for participation since 1991,^[3] was promulgated, in part, as a result of CMS's recognition that the number of individuals accessing LTC has dramatically increased, and the healthcare concerns of individuals residing in these facilities have become increasingly complex.^[4] In the final rule, CMS explains that these regulations are referred to as "requirements for participation" instead of "conditions of participation" to reflect the statutory language in the Social Security Act.^[5] However, CMS clarifies that there is no meaningful distinction between the two phrases.^[6]

Additionally, the Patient Protection and Affordable Care Act of 2010 (ACA)^[7] established a variety of new statutory requirements intended to promote certain reforms in LTC facilities.^[8] Specifically, the ACA requires LTC facilities to implement an effective compliance and ethics program that detects criminal, civil, and administrative violations; promotes quality of care; and further requires the Secretary of Health and Human Services (the Secretary) to work with the Inspector General of HHS to promulgate regulations for an effective compliance and ethics program.^[9] The ACA also requires LTC facilities to implement a Quality Assurance and Performance Improvement (QAPI) program.^[10] Based on this mandate in the ACA, in conjunction with the Secretary's authority to promulgate regulations that are "adequate to protect the health, safety, welfare, and rights of residents [in LTC facilities],"^[11] CMS significantly revised the LTC requirements for participation, with the goal of "achieving the statutorily mandated outcome of ensuring that each resident is provided care that allows the resident to maintain or attain their highest practicable physical, mental, and psychosocial well-being."^[12]

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