

Oppose Weakening and Delay of Federal Nursing Home Rules!

The Revised Federal Nursing Home Regulations

On October 4, 2016, the Centers for Medicare and Medicaid Services (CMS) published the final revised federal nursing home regulations for nursing homes participating in Medicare and/or Medicaid programs (the “requirements of participation”). This is the first time the regulations had been updated since 1991. Among the revised federal nursing home regulations are important new provisions that better promote quality of care, quality of life, and resident rights. Examples include:

- Greater focus on person-centered care and addressing a resident’s individual needs and preferences
- Better planning for resident care
- Improved staff training
- Improved protections against abuse, neglect and exploitation
- Stronger protections against evictions
- Required infection prevention
- A facility assessment to determine what resources are needed to care for residents

Concerns

Since their release in October 2016, there have been efforts to undermine, repeal and delay these standards.

- CMS has issued a proposed rule to repeal the ban on pre-dispute arbitration and allow it to be a condition of admission. The agency also requested comments on select provisions of the rules that it is considering for modification or elimination in an effort to reduce the burden and financial impact on nursing homes.
- 120 members of the US House of Representatives sent a letter to CMS calling for “re-evaluation” of the requirements of participation and more time for providers to come into compliance.
- The nursing home industry has called for 1) the rules to be significantly revised or “repealed and replaced;” and 2) a complete suspension of the phase-in enforcement of the requirements of participation until the new rule it is requesting is finalized,¹ while another called for a delay of the effective dates of Phases 2 and 3.²
- CMS has postponed any major enforcement of a number of regulations that will be phased in November 2017. This delay will impact how effectively these requirements will be implemented.

The Importance of the Revised Regulations to Long-Term Care Consumers

- Nursing home residents need stronger regulations now more than ever.
 - The requirements of participation have not been updated since they were first issued in 1991. Since that time, the acuity level of residents has increased dramatically. Residents are more frail

¹ AHCA letter, March 2017

² <http://www.leadingage.org/regulation/leadingage-calls-delay-revision-nursing-home-requirements-participation>

- and dependent, and the majority have some form of dementia. Strong rules are needed to ensure these individuals receive appropriate care even if they cannot speak up for themselves and have no one else to do so.
- Increased physical and cognitive impairments make residents more vulnerable to abuse and neglect, as evidenced by a CNN investigative report exposing widespread sexual assault in nursing homes across the country.³
 - More robust and comprehensive rules better protect residents from poor care, abuse and neglect which continues to be a problem nationwide.
 - Studies and reports continue to show the harm that nursing home residents experience. The U.S. Department of Health and Human Services Office of Inspector General (OIG) report released in 2014 found that approximately one-third of individuals discharged from a hospital to a skilled nursing facility were harmed, and that 59% of the time that harm was “clearly or likely preventable.”⁴
 - Another study found that in 2015 more than one in five nursing homes had violations that caused harm or immediate jeopardy (defined as causing or likely to cause injury, harm, impairment, or death to a resident).⁵
 - The revised standards better ensure nursing homes can protect resident safety and health during natural disasters. Requirements such as competent staff, sufficient training, and a well-developed facility assessment that determines what resources are necessary to care for residents will help nursing homes improve their preparation for and response to emergencies

What Can Be Done To Help Long-Term Care Consumers

The revised requirements of participation and the improvements they bring to the safety, health, welfare and rights of residents are needed more than ever before. Stronger regulations and timely implementation are needed more than ever before. **CMS should retain the regulations as issued in October 2016 and implement and enforce these requirements according to the originally mandated schedule.**

For more information on this issue, please visit www.theconsumervoice.org

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³ Sick, Raped and Dying in America’s Nursing Homes. <http://www.cnn.com/interactive/2017/02/health/nursing-home-sex-abuse-investigation/>

⁴ *Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries* (Feb. 2014) OEI-06-11-00370

⁵ *Nursing Facilities, Staffing, Residents, and Facility Deficiencies, 2009-2015*. Prepared by: Charlene Harrington, Ph.D. Helen Carrillo, M.S. University of California San Francisco and Rachel Garfield Kaiser Family Foundation