

VI. Possible Burden Reduction in the Long-Term Care Requirements

A. Background

On October 4, 2016, we issued a final rule entitled, “Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities” (81 FR 68688). This final rule significantly revised the requirements that Long-Term Care (LTC) facilities must meet to participate in the Medicare and Medicaid programs. Prior to the final rule, the LTC requirements had not been comprehensively reviewed and updated since 1991 (56 FR 48826, September 26, 1991), despite substantial changes in service delivery in this setting. The final rule included revisions that reflect advances in the theory and practice of service delivery and safety. In addition, the various revisions sought to achieve broad-based improvements in the quality of health care provided in LTC facilities and in patient safety. We received mixed reactions from stakeholders in response to our revision of the LTC requirements. Overall, stakeholders supported the regulation’s focus towards person-centered care and agreed that reforms to the existing requirements were necessary to ensure high quality care and quality of life in LTC facilities. While supportive of the goals of the regulation, stakeholders noted that the changes needed to comply with the revised requirements will be costly and burdensome. Given the scope of the revisions, stakeholder requests for more time to comply with the requirements, and the financial impact that the regulation will impose on LTC facilities, we finalized a phased-in implementation of the requirements over a 3 year time period in hopes of reducing some of the burden placed on LTC facilities. Readers may refer to the October 2016 final rule (81 FR 68696) for a detailed discussion regarding the implementation timeframes for the requirements.

B. Areas of Possible Burden Reduction

In a continued effort to further respond to stakeholder concerns, we are currently reviewing the LTC requirements to balance the need to maintain quality of care while reducing procedural burdens on facilities. Specifically, we are reviewing the requirements for obsolete or redundant provisions, areas where processes can be streamlined to reduce burden and cost, or other areas of possible elimination. As a result of our review, we have identified the following areas of the LTC requirements that we are considering for modification or removal in an effort to reduce the burden and financial impact imposed on LTC facilities:

1. Grievance Process

In the October 2016 final rule, we finalized a proposal at § 483.10(j) to extensively expand the grievance process in LTC facilities and require facilities to establish a grievance policy to ensure the prompt resolution of grievances, and identify a grievance officer to oversee the process. In public comments on the proposed rule, stakeholders supported the enhancement of residents’ rights to voice grievances and emphasized the importance and seriousness of resident concerns. However, stakeholders also indicated that the expansion of the requirements for a grievance process will be overly burdensome and costly. Specifically, stakeholders indicated that maintaining evidence related to grievances for 3 years is burdensome and unnecessary. Stakeholders were also concerned regarding the additional costs associated with staffing a grievance official to oversee the grievance process. We are considering areas where we may reduce the burden of these requirements. For example, we may reduce the financial cost associated with maintaining records by reducing the amount of time that they must be retained.

We may also consider removing prescriptive language in the requirements regarding the specific duties of the grievance official and allow facilities greater flexibility in how they ensure that grievances are fully addressed. We are reviewing these requirements to determine whether any of the abuse and neglect reporting requirements may be duplicative of state law. In instances where these requirements may potentially be duplicative we may be able to remove them entirely and defer to existing law.

2. Quality Assurance and Performance Improvement (QAPI)

In the October 2016 final rule, we finalized a proposal at § 483.75 to require LTC facilities to develop, implement, and maintain an effective comprehensive, data-driven QAPI program that focuses on systems of care, outcomes of care and quality of life. Several stakeholders have indicated that our requirements are very detailed, too prescriptive, and significantly exceed the QAPI related requirements for other providers. We are reviewing these requirements to determine if we can be less prescriptive while achieving a balance between specificity and flexibility in recognition of the diversity throughout LTC facilities. For example, in the areas of program design and scope we could propose to eliminate the detailed requirements regarding how the program must be designed and simply require facilities to design a program that is ongoing, comprehensive, and addresses the full range of care and services provided by the facility. Likewise, in the areas of program feedback, monitoring, and analysis we could eliminate the specific requirements for policies regarding exactly how a facility will determine underlying problems impacting systems in the facility, develop corrective actions, and monitor the effectiveness of its performance. We believe that such revisions will allow facilities greater flexibility in tailoring their QAPI program to fit the needs of their individual facility, eliminating unnecessary burden on facilities, while maintaining consistency with the requirements under section 1128I of the Act.

3. Discharge Notices

In the October 2016 final rule, we finalized a proposal at § 483.15(b)(3)(i) to require LTC facilities to send discharge notices to the state LTC Ombudsman. We are re-evaluating this requirement to determine if the process is achieving intended objectives to reduce inappropriate involuntary discharges. In addition, we are concerned as to whether LTC Ombudsman have the capacity to receive and review these notices. We are soliciting comment as to whether LTC Ombudsman can handle receiving this material and to what extent they will use information once received.

C. Stakeholder Feedback

We are interested in receiving feedback regarding the realistic reduction in burden that these revisions may have on facilities and the possibility of unintended negative consequences that these potential revisions may impose on resident care and outcomes. We are also interested in receiving feedback regarding any additional areas of burden reduction and cost savings in LTC facilities. To the extent we proceed with rulemaking in this area, we will use this feedback and information to inform our policy decisions with regard to these issues. We invite general comment, but are particularly interested in data and analysis regarding associated costs and benefits.