

Protections, Not Burdens

The Centers for Medicare & Medicaid Services (CMS) has indicated it is going to reform the recently revised federal nursing home regulations in order to reduce provider burden. Below are just a few examples of regulations considered burdensome by nursing home providers that provide important protections for residents. Each of these regulations has been targeted by the nursing home industry and/or CMS for modification or elimination.

“Burdensome” Requirement	What Providers Want and/or CMS Is Considering	How the Requirement Protects Residents
Facility assessment 42 CFR 483.70(e)	Elimination of requirement ¹ Flexibility ²	<p>The facility assessment is important because it:</p> <ul style="list-style-type: none"> • Helps address the number one problem voiced by residents – lack of adequate numbers of well trained and competent staff, particularly nursing staff. • Promotes staff competency, in addition to sufficient numbers of staff, which is critical to quality of care and resident safety. • Better ensures that a facility can competently care for its residents. • Helps prevent facilities from making staffing decisions based solely on fiscal considerations because resident specific factors must be considered • Ensures an organizational culture focused on improving care for residents • Documents the process/factors used by the facility in determining staffing needs of residents

¹ Leading Age and AHCA comments in response to CMS solicitation of comments on three possible areas where nursing home standards might be reduced; Federal Register, Vol. 82, No. 85, May 4, 2017. CMS-1679-NPRM

² AHCA comments in response to CMS solicitation of comments on three possible areas where nursing home standards might be reduced. Federal Register, Vol. 82, No. 85, May 4, 2017. CMS-1679-NPRM

		<p>What residents say: “Anything that shores up staffing in nursing homes is very important.” “Often people are left in bed because there are so few staff they don’t have time to get people up.”</p> <p>Data show: 82% of nursing homes report total direct care staffing at 4.0 hours per resident day or less. A landmark federal study indicated that 4.1 hours of direct care staff is typically needed to meet a resident’s clinical needs. just to prevent poor outcomes.³</p>
<p>Notice of transfer/discharge to long-term care ombudsman 42 CFR 483.15(c)(3)(i)</p>	<p>Modification or Elimination of notice requirement⁴</p> <p>Notices of involuntary discharges only to ombudsmen, but not transfer to the hospital⁵</p>	<p>Notice of both transfer and discharge to the long-term care ombudsman is important because:</p> <ol style="list-style-type: none"> 1) Discharge notices: <ul style="list-style-type: none"> • Give the ombudsman the opportunity to reach out to a resident facing discharge and help the resident understand that he or she can challenge the proposed transfer/discharge and receive assistance in doing so. This helps prevent residents from being inappropriately evicted. Some residents may not know that they are being discharged or may be too sick or cognitively impaired to read the notice and take the steps necessary to seek ombudsman assistance. They may feel too intimidated to consider challenging the eviction but may feel differently when they are aware of the type of help the ombudsman can provide. Many don’t have families who can act on their behalf.

³ Safe Staffing in Nursing Homes. Infographic. Long Term Care Community Coalition.

⁴Federal Register, Vol. 82, No. 85, May 4, 2017. CMS-1679-NPRM

⁵ AHCA Issue Brief: Requirements of Participation for Nursing Centers are Onerous and Unnecessary; AHCA comments in response to CMS solicitation of comments on three possible areas where nursing home standards might be reduced. Federal Register, Vol. 82, No. 85, May 4, 2017. CMS-1679-NPRM

		<ul style="list-style-type: none"> • Often prevent inappropriate discharges that can harm residents. Harm includes falls, weight loss, self-care deficits, anxiety, increased confusion, apprehension, depression, loneliness, vigilance, weight change, insecurity, withdrawal, sadness, restlessness, sleep disturbance, crying, feelings of hopelessness and helplessness. • Allow the ombudsman to help ensure resident’s rights and choices are honored during the discharge process if the resident chooses not to appeal the proposed discharge. <p>2) Information about transfers to the hospital:</p> <ul style="list-style-type: none"> • Permits the ombudsman to help residents who have been transferred to the hospital and not been allowed to return to the facility. This situation arises frequently. Knowing which residents have been sent to the hospital allows ombudsmen to check on the status of these residents and provide assistance if requested. • Provides ombudsmen access to data about the numbers of residents not permitted to return to the facility after a hospital transfer, which can be used to advocate for a change in facility practices to protect and uphold residents’ rights. <p>What residents say: “If someone is being told they have to leave, the ombudsman should know in case the resident wants to appeal.”</p> <p>Data show:</p> <p>Complaints about transfers/discharges have been the top complaint received by long-term care ombudsmen for the last six years. Ombudsmen responded to nearly 9500 complaints about involuntary discharges in 2016.⁶</p>
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⁶ National Ombudsman Reporting System data, 2011-2016.

<p>Grievance process 42 CFR 483.10(j)</p>	<p>Modification or elimination of requirement⁷</p> <p>Flexibility⁸</p> <p>Elimination of: -grievance official -maintenance of 3 years of records⁹</p> <p>Elimination of written grievance decisions¹⁰</p>	<p>A grievance process is important because it:</p> <ul style="list-style-type: none"> • Can lead to an improvement in quality of care and quality of life • Can help address a problem before it escalates and causes increased harm • Ensures that all residents have access to a process that includes certain required elements that address problems long experienced by residents and their families <p>A grievance official is important because an official:</p> <ul style="list-style-type: none"> • Ensures there is an individual who has both the responsibility and authority for making sure, through direct action or coordination with others, that grievances are appropriately managed and resolved. • Protects against the responsibilities of handling concerns falling through the cracks, and the mishandling of complaints – or complaints not being handled at all. • Increases accountability since the duties won't be spread out among different staff members.
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⁷ Federal Register, Vol. 82, No. 85, May 4, 2017. CMS-1679-NPRM

⁸AHCA Issue Brief: Requirements of Participation for Nursing Centers are Onerous and Unnecessary; Leading Age and AHCA comments in response to CMS solicitation of comments on three possible areas where nursing home standards might be reduced; Federal Register, Vol. 82, No. 85, May 4, 2017. CMS-1679-NPRM

⁹ Ibid.

¹⁰ AHCA comments in response to CMS solicitation of comments on three possible areas where nursing home standards might be reduced. Federal Register, Vol. 82, No. 85, May 4, 2017. CMS-1679-NPRM

		<ul style="list-style-type: none">• Gives residents and families one person they can come to trust and feel comfortable raising concerns with, and who is charged with protecting their confidentiality. <p>Written decisions to residents are important because they:</p> <ul style="list-style-type: none">• Inform residents there has been a response to their complaint.• Create greater provider accountability for taking the actions stated in the decisions• Provide documentation residents can refer to if the same issue arises again <p>Maintaining records for 3 years is important because such records:</p> <ul style="list-style-type: none">• Assist facilities and surveyors in identifying chronic, repeat deficiencies that are harming residents. When problems are not identified, they are not addressed.• Make nursing homes more accountable <p>What residents say: “Having a grievance official is important. It lets residents know where to go to file a complaint – this makes it easier for residents.” “Getting a written response to your complaint means they can’t deny that you filed a complaint with them.” “The grievance process means your complaint will not be ignored.”</p>
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