Center for Medicare Advocacy

The National CONSUMER VOICE for Quality Long-Term Care formerly NCCNHR

JUSTICE IN AGING
FIGHTING SENIOR POVERTY THROUGH LAW

Overview of Phase 3 Nursing Home Regulations: A Look Ahead

April 9, 2019

Toby Edelman, Center for Medicare Advocacy
Eric Carlson, Justice in Aging
Robyn Grant, Consumer Voice

Regulations Implemented in Three Phases

- Nov. 28, 2016 – most regulations effective, particularly those that continued existing requirements.

- Nov. 28, 2017 – additional regulations effective (including behavioral health); Surveyor's Manual included new guidance; use of new survey process began.

- Nov. 28, 2019 – implementation of new programs such as Quality Assurance and Performance Improvement (QAPI), and Compliance and Ethics Programs.

Agenda

- **Welcome and Introductions**
  Robyn Grant, Director of Public Policy & Advocacy, Consumer Voice
- **Part 1:** **Trauma-Informed Care; Quality Assurance and Performance Improvement**
  Robyn Grant
- **Part 2:** **Infection Control; Compliance and Ethics Program**
  Toby Edelman, Senior Policy Attorney, Center for Medicare Advocacy
- **Part 3** **Physical Environment – Call Systems; Training**
  Eric Carlson, Directing Attorney, Justice in Aging
- **Update** *Robyn Grant*
- **Q & A** *All*
- **Closing** *Robyn Grant*

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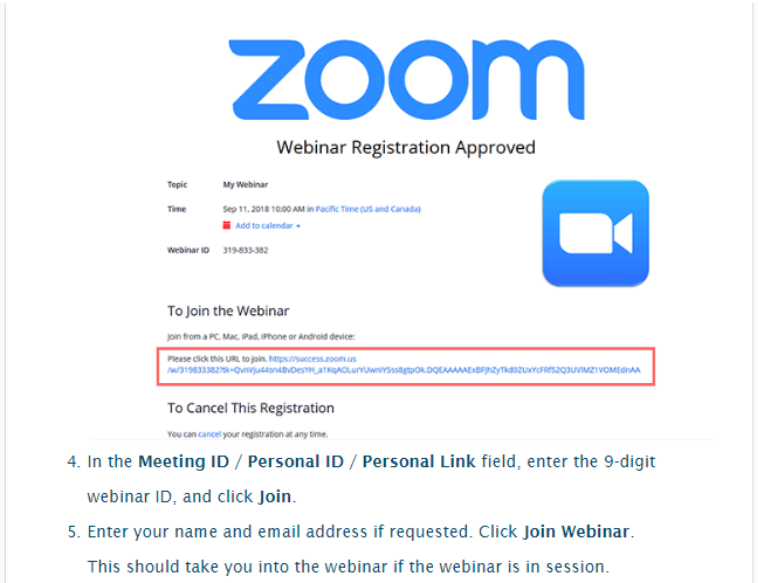

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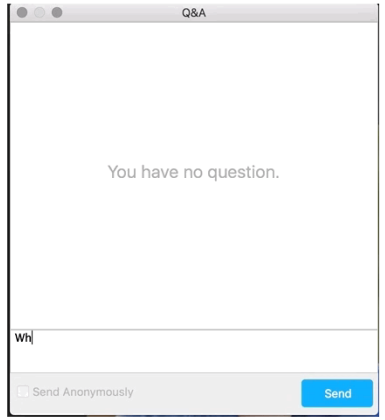
How to ask Questions through Q&A and Chat

Q&A Window

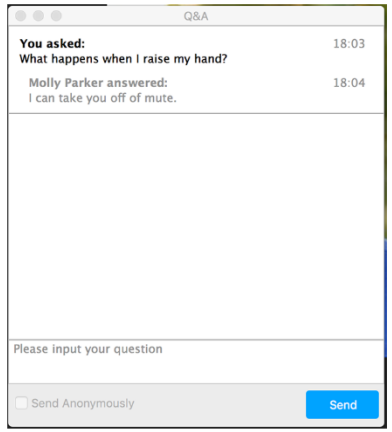
Question & Answer

The Q&A window allows you to ask questions to the host and panelists. They can either reply back to you via text in the Q&A window or answer your question live.

1. Click Q&A to open the Q&A window.
2. Type your question into the Q&A box. Click **Send**.

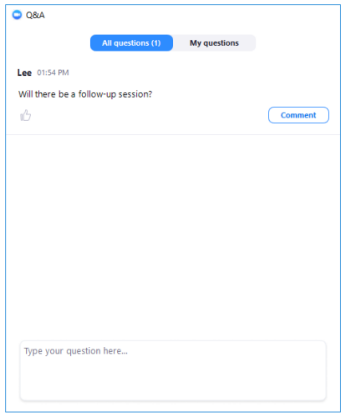


3. If the host replies via the Q&A, you will see a reply in the Q&A window.

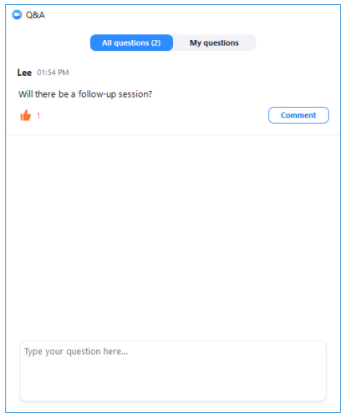


1. Click the thumbs up icon to like a comment.

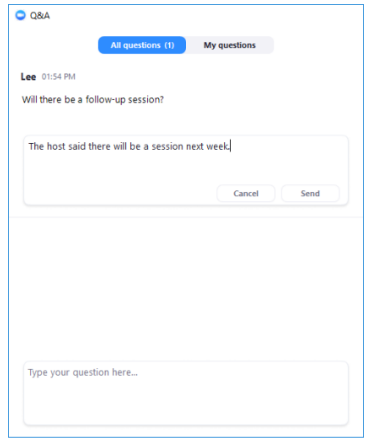
   Tip: The number beside the icon is the total number of likes the question has received so far.



2. Click the red thumbs up icon to unlike a comment.

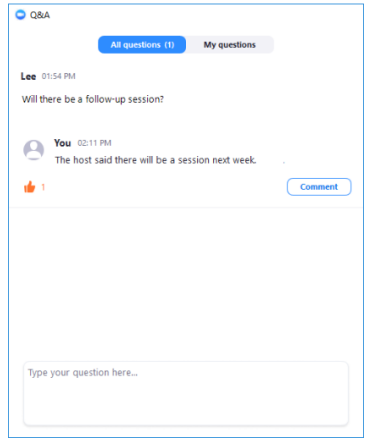


3. Click **Comment** to write a reply to an existing question.



4. Type your comment and click **Send**.

   Your comment will appear beneath the question.



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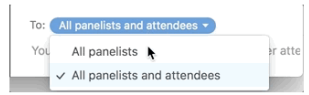
3. To change who you are chatting with, click the drop down beside **To:**.



4. Type your message and press **Enter**.

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You can raise your hand in the webinar to indicate that you need something from the host. The host may instruct you on how they plan to use this. Many webinar hosts use this feature to know if an attendee has a question and would like to speak out loud.

Read more about raising your hand.

1. Click **Raise Hand** in the attendee controls.

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TRAUMA-INFORMED CARE

What is trauma-informed care?

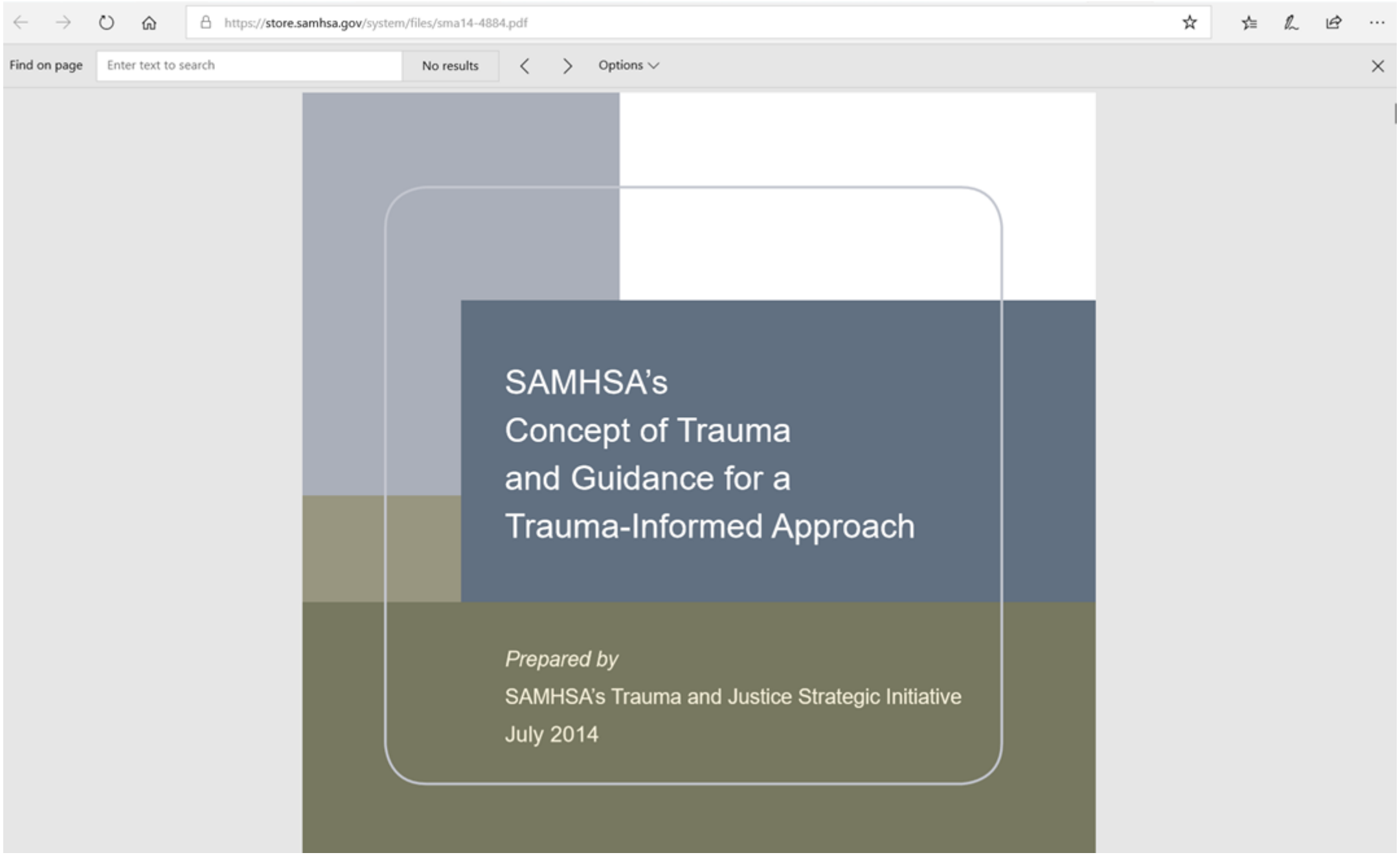
- Trauma: Results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being.
  - *Source: Substance Abuse and Mental Health Services Administration*

What is trauma-informed care?

- CMS does not define trauma-informed care

- Preamble indicates:
  - Care that helps to minimize triggers and retraumatization by addressing the unique needs of the trauma survivor

Trauma informed care = Person-centered care + Principles set forth in SAMSHA's *Concept of Trauma and Guidance for a Trauma-Informed Approach*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Find on page
Enter text to search
No results
Options
SAMHSA's
Concept of Trauma
and Guidance for a
Trauma-Informed Approach
Prepared by
SAMHSA's Trauma and Justice Strategic Initiative
July 2014

§ 483.21 Comprehensive person-centered care planning

Services must be both culturally-competent and trauma-informed

§ 483.25 Quality of Care

Care must be delivered in a way that is culturally-competent and trauma-informed

§ 483.40 Behavioral Health Services

- For residents with documented history of trauma and/or post-traumatic stress disorder:
  - The facility must provide treatment and services to address problems/improve well-being
- For residents with no documented history of trauma and/or post-traumatic stress disorder:
  - The facility must prevent residents from becoming less socially interactive or more withdrawn, angry or depressed (unless these behaviors cannot be avoided due to a clinical condition)

- Staff must be equipped to care for residents with history of trauma and/or post traumatic stress disorder

Resources

- SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach
  - https://store.samhsa.gov/system/files/sma14-4884.pdf

- Upcoming NORC webinar: Trauma-Informed Care: Nursing Home Responsibilities and Ombudsman Program Advocacy
  - **Monday, June 10th at 3:00pm – 4:30pm ET**.

QUALITY ASSURANCE AND PERFORMANCE IMPROVEMENT

QAPI

What is QAPI?

- ***Quality Assurance:***

- **Identifying and correcting deficiencies and problems**

- ***Performance Improvement***

- **Identifying opportunities for improvement and achieving and sustaining the improvement**

QAPI begins with a plan

- Every facility must have a QAPI plan
- All facilities had to give a copy of their plan to surveyors annually starting November 28, 2017
- Starting this November: Plan must be presented to:
  - Federal or state surveyors at each annual recertification survey and upon request during any other survey
  - CMS upon request

Components of the plan

- Design and scope
- Feedback, data systems, and monitoring
- Systematic analysis and systemic action
- Program activities

Design and Scope

- Design
  - Ongoing
  - Reflects unique population of facility
  - Utilizes best available evidence for setting and measuring goals

- Scope
  - Comprehensive: including clinical care, quality of life, resident choice

Feedback, data systems, monitoring

- Systems for gathering data
  - Feedback from residents, families, staff
  - Data from all departments
- Systems for using that data
  - To identify problems and areas for improvement
  - To set and monitor performance goals
- Systems for monitoring in order to track performance
  - Including monitoring adverse events

Systematic analysis and systemic action

- Systematic analysis:
  - Figure out what is causing the problem - WHY?
  - Root Cause Analysis

- Systemic action:
  - Eliminate the cause(s), not just the symptoms
  - Solution must be long-term, achievable, measurable

Program activities

- As part of its QAPI performance improvement activities, the facility must:
  - Consider many factors when deciding on activities
  - Address adverse events and medical errors
  - Conduct Performance Improvement Projects (PIPs)
    - No set number or frequency
    - At least annually one PIP must focus on a high-risk or problem-prone area

Governance & Leadership

- Governing body has full responsibility and authority for all aspects of QAPI
- Must ensure:
  - Continuity during transitions
  - Adequate resources

QAPI Chain of Command

Governing body

Quality Assessment &

Assurance Committee (QAA)

RESOURCES

- State Operations Manual Appendix PP - Guidance to Surveyors for Long Term Care Facilities Table of Contents (Rev. 11-22-17)

https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf

- CMS QAPI Resources

https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/QAPI/NHQAPI.html

INFECTION PREVENTIONIST

INFECTIONS IN NURSING FACILITIES

- 1.6 – 3.8 million healthcare associated infections occur in nursing homes annually, leading to an estimated 150,000 hospitalizations, 388,000 deaths, and health care costs of $673 million - $2 billion. 81 Fed. Reg, 68688, 68808 (Oct. 4, 2016) (preamble to revised RoPs).

INFECTIONS IN NURSING FACILITIES

- Study conducted for Kaiser Health News and reported in *Chicago Tribune*:
  - nationwide, 25,000 residents were transferred to acute care hospitals and died from sepsis.
  - 2012-2016: Medicare paid more than $2 billion annually for their treatment.
  - In IL, 6000 residents hospitalized each year with sepsis; one in five died.

Fred Schulte, Elizabeth Lucas, Kaiser Health News, Joe Mahr, *Chicago* Tribune, "In Illinois' understaffed nursing homes, deadly infections persist from bedsores and common injuries go untreated," *Chicago Tribune* (Sep. 5, 2018), at http://www.chicagotribune.com/news/watchdog/ct-met-nursing-home-sepsis-deaths-20180828-story.html.

INFECTIONS IN NURSING FACILITIES

- Kaiser Health News analysis of four years of federal inspections found 74% of nursing facilities were cited for infection control deficiencies; only one in 75 facilities had high-level deficiency (that could lead to financial penalty).

Jordan Rau, Kaiser Health News, 'Infection lapses are rampant in nursing homes but punishment is rare," *Los Angeles Times* (Dec. 21, 2017), https://www.latimes.com/business/la-fi-nursing-home-infections-20171221-story.html.

INFECTIONS IN NURSING FACILITIES

- New Jersey, 2018: 11 pediatric residents at nursing facility died of adenovirus.
  - Facility had been cited for “no-harm” infection control deficiencies (hand-washing) in prior surveys.
    - CMS’s Interpretive Guidelines give example of level 2 (no harm) deficiency: facility failure to ensure staff demonstrates “proper use of gloves with hand hygiene between residents to prevent the spread of infections.”
  - CMS imposed $600,000 civil money penalty, which did not appear on *Nursing Home Compare*, as of April 1, 2019.

INFECTIONS

- CMS told LeadingAge in March 2019 that “hand hygiene” (i.e., handwashing) is the most-cited deficiency.
- As of April 1, 2019, and since Nov. 2017, there were 7225 infection control deficiencies (F880)
  - 56 substantial compliance (levels A-C) (.8%)
  - 7114 no harm (levels D-F) (98.5%)
  - 8 harm (levels G-I) (.1%)
  - 22 immediate jeopardy (levels J-L) (.3%)
    - Includes NJ nursing facility where 11 children died

REVISED REQUIREMENTS OF PARTICIPATION

- Infection control, 42 CFR § 483.80, addressed in all three phases
  - Phase 1: infection prevention and control program, § 483.80(a), (d), (e), (f) (i.e., most of the requirements were included in Phase 1 and went into effect Nov. 2016).
  - Phase 2: antibiotic stewardship program, § 483.80(a)(3); links to facility assessment process, § 483.70(e)
  - Phase 3: infection preventionist, § 483.80(b); infection preventionist participates in quality assessment and assurance committee, § 483.80(c).

REVISED REQUIREMENTS OF PARTICIPATION

- Preamble (81 Fed. Reg. 68688, 68807-68812, Oct. 4, 2016):
  - CMS creates new position, now called infection preventionist (IP) (health care professional; has completed specialized training in infection prevention and control)
    - Proposed rule: infection prevention and control is a “major responsibility” of the infection preventionist; in response to public comment, final rule deleted the word “major.”
  - CMS rejects public comment that the proposed rules went beyond requirements for hospitals, affirms the need for detailed rules.
  - CMS modifies proposed rules to allow facilities to designate more than one IP.

ESTIMATED COSTS

- In estimating costs, CMS assumes facilities will designate RNs as IPs and that IPs will spend 15% of their time on infection prevention and control. 81 Fed. Reg., 68842.
  - 15% of full-time equivalent RN x $61 average hourly rate for RN x 2080 hours (40 hours/week x 52 weeks = 2080 hours) x 15,653 facilities = $297,907,896.

INFECTION PREVENTIONIST, § 483.80(b), (c)

- Facility must designate one or more IPs who are responsible for its infection prevention and control program (IPCP).
- IPs must
  - "Have primary professional training in nursing, medical technology, microbiology, epidemiology, or other related field."
  - "Be qualified by education, training, experience, or certification."
  - "Work at least part-time at the facility."
  - "Have completed specialized training in infection prevention and control."

42 C.F.R. § 483.80(b)(1)-(4).

CMS is drafting Interpretive Guidelines for IPs.

FACILITY ASSESSMENT, § 483.70(e), F838

- Results of facility assessment "must be used, in part, to establish and update the IPCP, its policies and/or protocols to include a system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for residents, staff, and visitors." (Interpretive Guidelines for F838)
  - Question: is facility assessment publicly available?

CMS/CDC TRAINING PROGRAM

- CMS announces availability of the "Nursing Home Infection Preventionist Training Program," which it developed with the Centers for Disease Control and Prevention (CDC).
  - The course, available at https://www.train.org/cdctrain/training_plan/3814, takes approximately 19 hours and has 23 modules and submodules, which "can be completed at any time, in any order, and over multiple sessions."
  - Individuals who complete all modules and pass a post-course exam receive continuing education credits and a certificate of completion.

CMS, "Specialized Infection Prevention and Control Training for Nursing Home Staff in the Long-Term Care Setting is Now Available," QSO-19-10-NH (Mar. 11, 2019), https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO19-10-NH.pdf

COMPLIANCE AND ETHICS PROGRAM

COMPLIANCE AND ETHICS PROGRAM

- Affordable Care Act, § 6102, requires facilities to have a compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations and in promoting quality of care; implemented at 42 CFR § 483.85.

REQUIRED COMPONENTS, § 483.85(c)(1)-(8)

1. "written compliance and ethics standards, policies, and procedures"
2. "assignment of specific individuals" to oversee program
3. "sufficient resources and authority"
4. no delegation of authority to those who engage in violations
5. effective communication of standards, policies, and procedures
6. facility takes "reasonable steps to achieve compliance"
7. consistent enforcement
8. appropriate response to violations that are detected

ADDITIONAL COMPONENTS FOR LARGE ORGANIZATIONS, § 483.85(d)(1)-(3)

- Organizations with five more facilities must also
  - have mandatory annual training
  - designate a compliance officer (for whom the compliance and ethics program is a “major responsibility”)
  - designate a compliance liaison at each facility.

COST EXPECTATIONS

- The 395 organizations with 5 or more facilities: 30% of full-time equivalent (FTE)
  - 30% of FTE x 2080 x $85 x 395 = $20,950,800
- Each of 6919 facilities: 10% FTE
  - 10% of FTE x 2080 x $61 x 6919 = $87,788,272

PHYSICAL ENVIRONMENT: CALL SYSTEMS

Call System

- Resident must be able to “call for staff assistance through a communication system which relays the call” from
  - Bedside and
  - Bathroom.
    - 42 C.F.R. § 483.90(g).
- May communicate with nurse’s station or directly with staff.
- “Audible or visual signals,” according to Surveyor’s Guidelines.

Call System (cont.)

- Slow response times are cited under sufficient staff, rather than call system.
- Call system should be accessible to residents, with accommodations made as necessary.

TRAINING

Training

- Training required for all of the following, consistent with their expected roles.
  - Staff.
  - Contract employees.
  - Volunteers.
- Training design based on **facility assessment** of residents and resources, performed at least annually.
- According to Guidelines, training could include in-person instruction, webinars, supervised practical training hours, etc.

Training Procedures

- Curricula that includes learning objectives, performance standards, and evaluation criteria.
- Must address potential risks to residents, staff and volunteers if procedures are not followed.
- Facility must track staff participation in required trainings.

Training Topics

- Effective communication.
- Resident's rights and facility responsibilities.
- Identifying and reporting abuse, neglect and exploitation.
- Quality assurance and performance improvement (QAPI).
- Infection control.
- Compliance and ethics.
- Training in behavioral health services.

Orientation and Training on Abuse Prevention

- Including:
  - Identifying benefits of a person-centered environment.
  - Obligation and procedures to report abuse.
  - Identifying indicators of abuse, including
    - Demeaning photos, i.e., social media posts.
    - Involuntary seclusion.
  - Recognizing that difficult behavior by persons with dementia may be efforts to communicate.
  - Conflict resolution skills.
  - Identifying staff burnout and prejudices.

In-Service Training for Nurse Aides

- At least 12 hours each year of employment; more might be required, based on circumstances.
- Include dementia management and abuse prevention.
- Include care for residents with cognitive impairments.
- May address residents' special needs.
- Address areas of weakness, based on performance reviews.

“Private Duty” Employees

- According to Surveyor’s Guidelines, “Private duty nurse aides who are not employed or utilized by the facility on a contract, per diem, leased, or other basis, do not come under the nurse aide training provision.”
  - Of course, residents shouldn’t have to rely on “private duty” aides in the first place.

Citing CNA Training Violations

- “Negative outcome” not necessary to cite as deficiency.

UPDATES

Question and Answer

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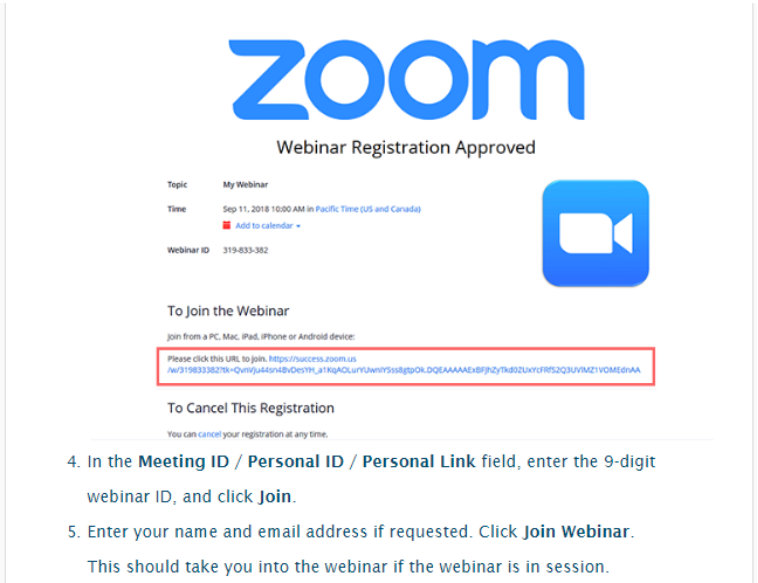

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Time Sep 11, 2018 10:00 AM in Pacific Time (US and Canada)
Add to calendar
Webinar ID 319-833-382

To Join the Webinar

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join. https://success.zoom.us/w/319833382?tk=QvnVju44sn4BvDesYH_a1KqAOLurYUwnlYSss8gtpOk.DQEAAAAAExBFJhZyTkd0ZUxYcFRfS2Q3UVlMZ1VOMEdnAA

To Cancel This Registration

You can cancel your registration at any time.

4. In the **Meeting ID** / **Personal ID** / **Personal Link** field, enter the 9-digit webinar ID, and click **Join**.
5. Enter your name and email address if requested. Click **Join Webinar**. This should take you into the webinar if the webinar is in session.

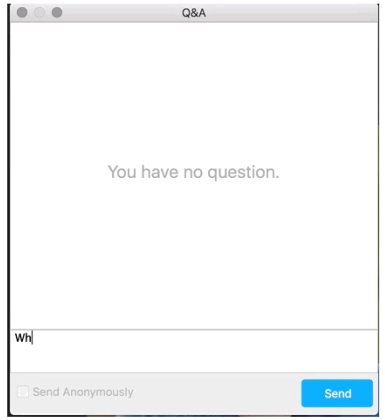
How to ask Questions through Q&A and Chat

Q&A Window

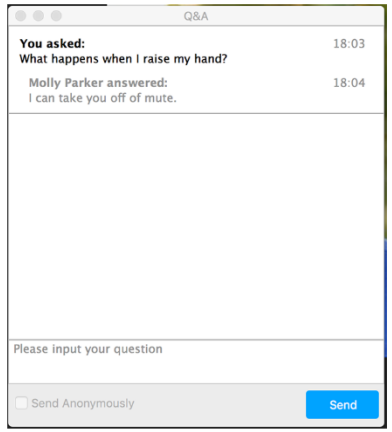
Question & Answer

The Q&A window allows you to ask questions to the host and panelists. They can either reply back to you via text in the Q&A window or answer your question live.

1. Click Q&A to open the Q&A window.
2. Type your question into the Q&A box. Click **Send**.

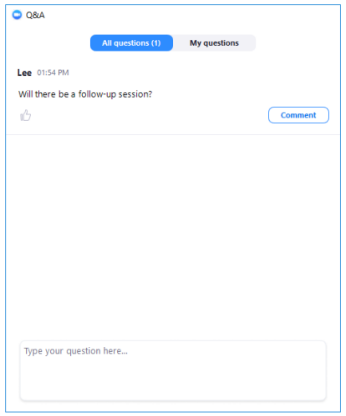


3. If the host replies via the Q&A, you will see a reply in the Q&A window.

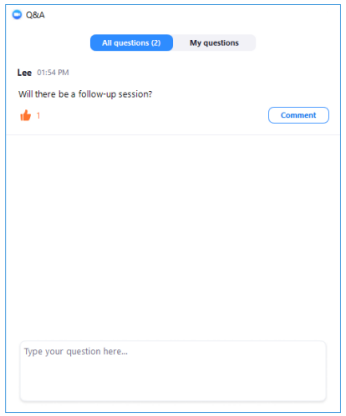


1. Click the thumbs up icon to like a comment.

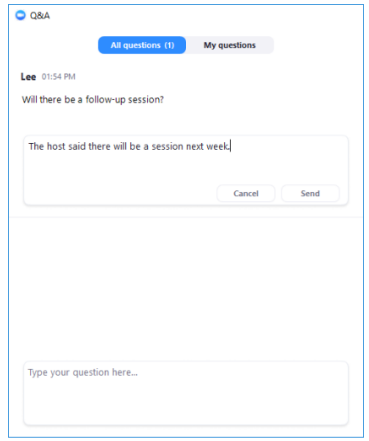
   Tip: The number beside the icon is the total number of likes the question has received so far.



2. Click the red thumbs up icon to unlike a comment.

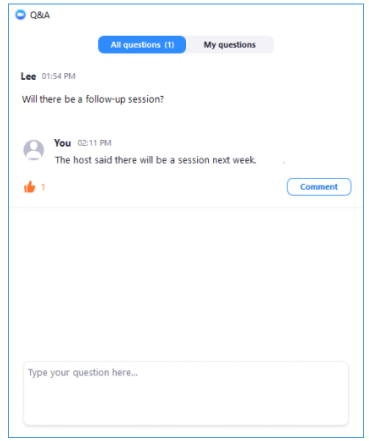


3. Click **Comment** to write a reply to an existing question.



4. Type your comment and click **Send**.

   Your comment will appear beneath the question.



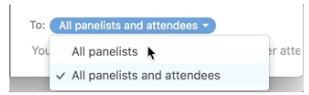
Chat

Chat

The in-meeting chat allows you to send chat messages to and send a message to the host, panelists, and attendees (if permitted).

1. Click **Chat** to open the in-meeting chat.

2. The chat will appear on the right side of your Zoom window if you are not in full screen. If you are in full screen, it will appear in a window that you can move around your screen as needed.
3. To change who you are chatting with, click the drop down beside **To:**.



4. Type your message and press **Enter**.

Raise Hand

You can raise your hand in the webinar to indicate that you need something from the host. The host may instruct you on how they plan to use this. Many webinar hosts use this feature to know if an attendee has a question and would like to speak out loud.

Read more about raising your hand.

1. Click **Raise Hand** in the attendee controls.

2. Your hand will stay raised until you or the host lower it. You can lower your hand if needed by clicking **Lower Hand**.

Leave meeting

Click **Leave meeting** to leave the webinar at any time. If you leave, you can rejoin if the webinar is still in progress, as long as the host has not locked the webinar.

Contact Information

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