The New Nursing Home Regulations & Hospices: How Is It Going?

April 2018
Subscriber Webinar

The Plan
1. Brief Review: The New Nursing Home Requirements for Participation & Survey Process
2. Overview: Where Are We Now?
3. A Moratorium & What It Means for Hospices
4. Medications
5. Actions of the Prudent Hospice

Unless otherwise noted all regulatory language in this presentation is from the Advance Copy Appendix PP State Operations Manual Medicare Internet Only Manual System Effective 11/26/2017

Getting Up to Speed: Past Subscriber Webinars

September 2017
Hospice Care in the Nursing Home: The New Interpretive Guidelines for NF Surveyors

January 2018
Making Sense of the Long Term Care Mega Rule: Unnecessary Drugs & Psychotropics

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Director of Drug Information
Optum Hospice Pharmacy Services

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Why So Much Material on NFs?

• Our mission is to provide comprehensive and appropriate care to individuals that are dying and to support those around them – in all settings
• We are engaged in partnerships with nursing facilities - the stronger the partnership the better the patient care
• Just as we combine our expertise in care of our shared patients, we need to combine our expertise in the regulatory world

The Healthcare Regulatory Continuum

The Survey Processes

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Nursing Homes</th>
<th>Hospices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Implications if Deficiencies</td>
<td>Yes</td>
<td>No*</td>
</tr>
<tr>
<td>Can Trigger Complaint Survey for Other Provider</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Regulations Located at</td>
<td>42 CFR 483 Subpart B</td>
<td>42 CFR 418 Subparts C &amp; D</td>
</tr>
<tr>
<td>Surveys Guided By</td>
<td>State Operations Manual Appendix P</td>
<td>State Operations Manual Appendix M</td>
</tr>
</tbody>
</table>

* Some states impose monetary penalties on hospices
NF Deficiency Categorizations

Scope: How many residents are affected?
- Isolated
- Pairwise
- Widespread

Severity: What is the potential or actual negative outcome?
- Level 1
- Level 2
- Level 3
- Level 4: Immediate Jeopardy

Some Good News

Nursing Homes
Emphasis at start of partnership
Maintaining "highest practicable level of functioning”

Hospices
Quality of life and patient’s wishes

The gap between the two continues to decrease as NH regulations increasingly recognize resident/representative choice, quality of life and national focus on decreasing rehospitalization.

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Definitions from NF Regulations

Highest practicable physical, mental, and psychosocial well-being is defined as the highest possible level of functioning and well-being, limited by the individual's recognized pathology and normal aging process. Highest practicable is determined through the comprehensive resident assessment and by recognizing and competently and thoroughly addressing the physical, mental or psychosocial needs of the individual.

Hospice Care means a comprehensive set of services, identified and coordinated by an interdisciplinary group (IDG) to provide for the physical, psychosocial, spiritual, and emotional needs of a terminally ill patient and/or family members, as delineated in a specific patient plan of care. (42 CFR 418.3)

Palliative care means patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice. (§418.3)

Terminally ill means that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course. (§418.3)

Was Negative Outcome Avoidable?

Did these 4 steps occur?

Conducted an accurate and comprehensive assessment including evaluating the resident’s clinical condition and risk factors for the concern being investigated.

Based on information gathered through resident assessments, with resident/representative input, developed a person-centered care plan, defined and implemented interventions that are consistent with resident needs, goals, and recognized standards of practice.

Implemented the care plan, and monitored resident responses to the interventions and

Provided ongoing review and revision of the care plan and interventions as necessary.

Year Provider Event

2008 Hospice New Conditions of Participation & Interpretive Guidelines

Included New Condition §418.113 Hospices that provide hospice care to residents of a SNF/NF or ICF/IID (Condition + 6 Standards)

Companion Regulatory Language for Residents Receiving Hospice Care Added to Requirements of Participation

2013 NH §483.75 Administration

(a) Hospice services. (effective date August 26, 2013)

No Accompanying Interpretive Guidelines Released

2016 NH New Requirements of Participation

2017 NH New Survey Process Commencing: Interpretive Guidelines for Surveyors Released and become effective 11/28/2017

The Saga: Nursing Home Residents Receiving Hospice Care
## Implementation Grid*

<table>
<thead>
<tr>
<th>Implementation Date</th>
<th>Type of Change</th>
<th>Details of Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1: November 28, 2016</td>
<td>Nursing Home Requirements for Participation</td>
<td>New Regulatory Language was uploaded to the Automated Survey Processing Environment (ASPEN) under current F Tags</td>
</tr>
<tr>
<td>Phase 2: November 28, 2017</td>
<td>F Tag numbering Interpretive Guidance (IG) Implement new survey process</td>
<td>New F Tags Updated IG Begin surveying with the new survey process</td>
</tr>
<tr>
<td>Phase 3: November 28, 2019</td>
<td>Requirements that need more time to implement</td>
<td>Requirements that need more time to implement</td>
</tr>
</tbody>
</table>

*From CMS New Long Term Survey Process Presentation: May 15, 2017 Accessed 8/30/2017
https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/New-Long-Term-Survey-Process

### F684 §483.25 Quality of Care

Quality of life is a fundamental principle that applies to all care and services provided to facility residents. Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident’s comprehensive assessment and plan of care.

**INTENT**
To ensure facilities identify and provide needed care and services that are resident centered, in accordance with the resident’s preferences, goals for care and professional standards of practice that will meet each resident’s physical, mental, and psychosocial needs.

### F684 Quality of Care (Pre & Post 11/28/2017)

<table>
<thead>
<tr>
<th>PRE Review of a Resident Receiving Hospice Services</th>
<th>POST Review of a Resident at or Approaching End of Life and/or Receiving Hospice Care and Services Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mostly bullet-pointed recitation of regulations and mechanics of the partnership and provision of care</td>
<td>Recognizes concept of appropriate care based on choice for all residents approaching end of life plus greatly expands on how hospice and NF will work together</td>
</tr>
<tr>
<td>Length: 1 page</td>
<td>Length: 10 pages</td>
</tr>
</tbody>
</table>
### F849 / §483.70 Hospice Services

1. Provision of Hospice Services in a NH  
2. NH Ensures Professional Standards and Timeliness of Services  
3. Signed Written Agreement with Hospice Prior to Provision of Care  
4. Hospice Plan of Care  
5. Nursing Home Responsibilities  
6. Communication Process between NH and Hospice  
7. Notifying Hospice Regarding Clinical Changes  
8. Hospice Determines Level of Hospice Services  
9. NH Responsibilities for Personal Care and Nursing Needs in Coordination with Hospice  
10. Definition of Hospice Responsibilities  
11. Nursing Home Responsibilities for Administration of Prescriber Therapies  
12. Report to Hospice of Any Alleged Violations of Mismanagement  
13. Responsibilities for Bereavement Services for NH Staff  
14. NH Designee(s) Responsibilities  
15. Provision of Current, Coordinated Plan of Care

### NOTE: If NH Surveyor Notes Situations in Which...

NH advised hospice of concerns and hospice failed to address and resolve issues related to:  
- coordination of care plan  
- implementation of appropriate services  
Hospice failed to provide services in accordance with the coordinated plan of care.

NH Surveyor Is to Refer Complaint to Hospice Survey Section

This guidance, or some variation thereof, shows up several times in the two sections.

### From MLN Training Presentation

#### Themes of the Final LTC Rule

1. Person-Centered Care  
2. Quality  
3. Facility Assessment, Competency-Based Approach  
4. Alignment with HHS Priorities  
5. Comprehensive Review and Modernization  
6. Implementation of Legislation
Person-Centered Care

Residents and Representatives: Informed, Involved, and In Control.
- Existing protections maintained
- Choices
- Care & Discharge Planning
- Prohibition on Pre-dispute Arbitration Agreements, Requirements for Post-Dispute Arbitration Agreements

Quality

Quality of Care and Quality of Life—overarching principles for every service.

Quality of Life and Quality of Care
- Additional special care issues: restraints, pain management, bowel incontinence, dialysis services, and trauma-informed care

Quality Assurance and Performance Improvement
- Based on the pilot
- Resources available:
  - http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/QAP/Pinhqapi.html

Facility Assessment and Competency-Base Approach

Facilities need to know themselves, their staff, and their residents.
- Not a one-size fits all approach.
- Accounts for and allows for diversity in populations and facilities.
- Focus on each resident achieving their highest practicable physical, mental, and psychosocial well-being.
Align with Current HHS Initiatives

Advancing cross-cutting priorities
- Reducing unnecessary hospital readmissions,
- Reducing the incidences of healthcare acquired infections,
- Improving behavioral healthcare, and
- Safeguarding nursing home residents from the use of unnecessary psychotropic (antipsychotic) medications

Comprehensive Review and Modernization
- Reengineered
- Updated
- Consistent with current health and safety knowledge

Implementation of Legislation
- Section 6137 of ACA, compliance and ethics programs.
- Section 6138 of ACA, quality assurance and performance improvement program (QAPI).
- Section 6138 of ACA (Section 1138 of the Act), requirements for reporting to law enforcement suspicion of crimes.
- Section 621 of ACA, dementia and abuse training.
- Section 2 of the IMPACT Act (adds $99B to the ACA, discharge planning requirements for SNFs.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Center for Medicare & Medicaid Services
7000 Security Boulevard, Mailstop C2-25-16
Baltimore, Maryland 21244-0001

Center for Clinical Standards and Quality/Survey & Certification Group

DATE: November 24, 2017
TO: State Survey Agency Directors
FROM: Director Survey and Certification Group
SUBJECT: Temporary Enforcement Delays for Certain Phase 2 P-Tags and Changes to Nursing Home Capacity
**SUBJECT:** Temporary Enforcement Delay for Certain Phase 2 F-Tag Changes to Nursing Home Compare

**Memorandum Summary:**
- Temporary moratorium on imposing certain enforcement remedies for specific Phase 2 requirements: CMS will provide a delay or moratorium on the imposition of certain enforcement remedies for specific Phase 2 requirements until such time as CMS determines that the required actions have been completed. This delay will be used to ensure facilities are aware of the requirements.
- **F360 Administration and Quality Assurance Team (QAS) Training:** When a facility is placed on the enforcement path for administration and quality assurance team (QAS) training, the facility will receive 30 days to complete the required training. This delay will be used to ensure facilities are aware of the requirements.
- **F365 Baseline Care Plan:** The baseline care plan requirement will be delayed for facilities during COVID-19. This delay will be used to ensure facilities are aware of the requirements.
- **F400 Long Term Care Plan (LTC):** The long-term care plan requirement will be delayed for facilities during COVID-19. This delay will be used to ensure facilities are aware of the requirements.
- **F411 Sufficient/Competent Direct Care/Access Staff-Behavioral Health:** The sufficient/competent direct care/access staff-behavioral health requirement will be delayed for facilities during COVID-19. This delay will be used to ensure facilities are aware of the requirements.
- **F458 Psychotropic Medications (related to PRN Limitations):** The psychotropic medications requirement will be delayed for facilities during COVID-19. This delay will be used to ensure facilities are aware of the requirements.
- **F740 Behavioral Health Services:** The behavioral health services requirement will be delayed for facilities during COVID-19. This delay will be used to ensure facilities are aware of the requirements.
- **F741 Sufficient/Competent Direct Care/Access Staff-Behavioral Health:** The sufficient/competent direct care/access staff-behavioral health requirement will be delayed for facilities during COVID-19. This delay will be used to ensure facilities are aware of the requirements.
- **F758 Psychotropic Medications (related to PRN Limitations):** The psychotropic medications requirement will be delayed for facilities during COVID-19. This delay will be used to ensure facilities are aware of the requirements.
- **F838 Facility Assessment:** The facility assessment requirement will be delayed for facilities during COVID-19. This delay will be used to ensure facilities are aware of the requirements.
- **F881 Antibiotic Stewardship Program:** The antibiotic stewardship program requirement will be delayed for facilities during COVID-19. This delay will be used to ensure facilities are aware of the requirements.
- **F865 QAPI Program and Plan (related to the development of QAPI Plan):** The QAPI program and plan requirement will be delayed for facilities during COVID-19. This delay will be used to ensure facilities are aware of the requirements.
- **F926 Smoking Policies:** The smoking policies requirement will be delayed for facilities during COVID-19. This delay will be used to ensure facilities are aware of the requirements.

**Tags to Which the Moratorium Applies**

<table>
<thead>
<tr>
<th>Tag</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>F655</td>
<td>Baseline Care Plan</td>
</tr>
<tr>
<td>F740</td>
<td>Behavioral Health Services</td>
</tr>
<tr>
<td>F741</td>
<td>Sufficient/Competent Direct Care/Access Staff-Behavioral Health</td>
</tr>
<tr>
<td>F758</td>
<td>Psychotropic Medications (related to PRN Limitations)</td>
</tr>
<tr>
<td>F838</td>
<td>Facility Assessment</td>
</tr>
<tr>
<td>F881</td>
<td>Antibiotic Stewardship Program</td>
</tr>
<tr>
<td>F865</td>
<td>QAPI Program and Plan (related to the development of QAPI Plan)</td>
</tr>
<tr>
<td>F926</td>
<td>Smoking Policies</td>
</tr>
</tbody>
</table>

If it’s on this list, it was identified by our NF partners as being challenging to implement.

Considerations:
- a. How you might collaborate in these areas?
- b. Any particular challenges residents receiving hospice care might pose?
- c. How did each partner do on survey?
**F 838 Facility Assessment**

Requires a facility-wide assessment to determine resources are necessary to care for residents day-to-day and in emergencies.

The assessment must be reviewed and updated as necessary and at least annually.

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**Assessment Must Address**

- Resident population including number capacity care required staff competencies
- Physical environment
- Ethnic, cultural, or religious factors
- Resources
- Services

- All personnel including managers, staff, and volunteers
- Contracts
- Health information technology resources
- Facility- and community-based risk assessment utilizing an all-hazards approach.

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**F 881 Antibiotic Stewardship**

- Part of broad ATB stewardship initiative across all healthcare settings
- P&P and more being developed – what about ATB use in the hospice population?
- Keep up on facility movement on this initiative – it will impact your patients too
F 865 QAPI Program and Plan

- Needs to be fully implemented by the end of Phase 3
- Will likely require that facility shift some portion (or all) of an RN FTE to oversee this program
- What are some ways that you might collaborate with this position?

Unnecessary Drugs (F757)

1. Inadequate indications for use
2. Inadequate monitoring
3. Excessive dose
4. Excessive duration
5. Adverse consequences

- Permission given by or a request made by the resident and/or representative does not serve as a sole justification for the medication itself.

Psychotropic Medications (F758)

- Any drug that affects brain activities associated with mental processes and behavior...includes, but is not limited to, 4 broad categories:
  - Antidepressants
  - Anxiolytics
  - Hypnotics
  - Antipsychotics
  - Other
The Big "Other"

- any drug that affects brain activities associated with mental processes and behavior… includes, but is not limited to...

### Examples of Other CNS Active Medications

<table>
<thead>
<tr>
<th>Anticholinergics</th>
<th>Diphenhydramine (Benadryl), Dimenhydrinate (Dramamine), Cyproheptadine (Periactin)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-epileptic drugs</td>
<td>Gabapentin (Neurontin), Valproate (Depakote), Topiramate (Topamax), Pregabalin (Lyrica)</td>
</tr>
<tr>
<td>Anti-Parkinson's drugs</td>
<td>Ropinirole (Requip), Pramipexole (Mirapex), Amantadine</td>
</tr>
<tr>
<td>Muscle relaxants</td>
<td>Tizanidine (Zanaflex), Cyclobenzaprine (Flexeril), Carisoprodol (Soma)</td>
</tr>
<tr>
<td>Newer Non-Antipsychotics</td>
<td>Pimavanserin (Nuplazid), Quinidine-DSM (Neudexta)</td>
</tr>
</tbody>
</table>

*Note: the Interpretive Guidelines do not provide specific medication examples for each category of psychotropics medications above; are commonly prescribed examples. This is not intended to be a comprehensive list.*
Antipsychotics & PRN Requirements

<table>
<thead>
<tr>
<th>Category</th>
<th>Examples*</th>
<th>PRN Requirements</th>
</tr>
</thead>
</table>
| Antipsychotics | haloperidol (Haldol) | 14 day limit on PRN orders
|                | quetiapine (Seroquel) | If attending physician or prescriber wants to write a new order for the PRN antipsychotic, the attending physician or prescriber must evaluate the resident to determine if the order for a PRN antipsychotic is appropriate
|                | olanzapine (Zyprexa) |               |
|                | ziprasidone (Geodon) |               |
|                | aripiprazole (Abilify) |               |
|                | prochlorperazine (Compazine) |               |
|                | chlorpromazine (Thorazine) |               |

*Note: the Interpretive Guidelines do not provide specific medication examples for each category of psychotropic medications above are commonly prescribed examples. This is not intended to be a comprehensive list.

This slide from January 2018 Subscriber Webinar

Additional Antipsychotic PRN Info

As part of the evaluation, the attending physician or prescribing practitioner should, at a minimum, determine and document the following in the resident’s medical record:
– Is the antipsychotic medication still needed on a PRN basis?
– What is the benefit of the medication to the resident?
– Have the resident’s expressions or indications of distress improved as a result of the PRN medication?

*CMS OSA 1017

Note: Report of the resident’s condition from facility staff to the attending physician or prescribing practitioner does not constitute an evaluation.

This slide from January 2018 Subscriber Webinar

Questions to Consider

• What are your facilities asking for?
• Are you running into misinformation?
• If you have not heard anything from them, what proactive steps are you taking?
Actions of the Prudent Hospice™ - Medication Management

• Obtain NF pharmacy reviews if possible
• Expect building specific processes and protocols
• Develop database so IDG knows practice for each facility
  – What information is requested?
  – Who will prepare and transmit?
  – To whom will the information be sent?
  – For a PRN antipsychotics, who will track the 14 day clock and how will responsibility be determined?
• If you get evidence of the system not working, analyze to see what can be done to prevent a repeat

Actions of the Prudent Hospice™ - General

• Review past webinars & continue to work on those Actions of the Prudent Hospice™
• Check in with your facility partners to find out if they have specific areas of concern related to residents receiving hospice services
• Consider coordinated QAPI measures and PIPs
• If you are not aware of survey windows for your NFs, find out
• Retrain IDG members on existing and/or updated processes
• Remember: our patients benefit from a strong partnership

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