Overview of New Federal Nursing Facility Regulations *

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This presentation relies heavily on materials prepared by The National Consumer Voice for Quality Long Term Care, Justice in Aging, the Center for Medicare Advocacy, and the Centers for Medicare & Medicaid Services.

Last month, the final federal nursing facility comments & regulations were published in the Federal Register (700+ pages!)

First revision since the original regs were promulgated in 1991. Some new numbering of federal (C.F.R.) cites.

Some good changes but some important issues not addressed.

What’s happened?

- New regs will go into effect in 3 phases: 11/28/16, 11/28/17, and 11/28/19
- We will focus primarily on the regs that went into effect on 11/28/16 (changes that are easy to implement or require only minor changes in the survey process).
- 2017 changes include new F-tag numbering, interpretive guidelines, and survey process.

When is this happening?
What's missing?

- No minimum staffing standard
- No requirement for a 24 hour RN
- Regs continue current policy: requiring “sufficient” staffing levels and registered nurse presence for eight hours daily.

What is bad?

- New regs water down protections against residents receiving inappropriate antipsychotic drugs (Phase 2).
- Maintain residents’ rights to receive visitors BUT, if the visitors are not family members, the right to receive a visit is now “subject to reasonable clinical and safety restrictions,” as set forth in facility policy.

Good Themes in Preamble to Regs

- “Our primary concern is to protect the health and safety of residents.”
- “Quality of Care and Quality of Life are two separate and overarching principles in the delivery of care to residents of LTC facilities.”
- “[W]e proposed to retain all existing resident’s rights.”
- “[W]e do not intend in this update to diminish resident rights or protections. Rather, we want to ensure that those rights and protections encompass advancements, such as in the area of telecommunications, . . . .”
It is not our intent to reduce a resident’s access to information.

Person-centered care is a focus of these requirements.

We believe that the requirements finalized in this rule will strengthen the protections for residents concerning pharmacy services and improve our oversight of these [psychotropic] drugs used in LTC facilities.

These requirements are intended to decrease, and hopefully eliminate, inappropriate psychotropic drug use and the use of medications for reasons other than the resident’s benefit.

Good Themes in Preamble

- New regs define person-centered care
- Require facilities to learn more about who the resident is—life, history, goals, religious/cultural & food preferences
- More support for resident preferences, control & choice

Improving Individualized Care

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Positive Changes in Care Planning

- Facility must develop care plan within 48 hours of admission with greater resident involvement (this is a Phase 2 requirement)
- CNA responsible for resident and food/nutrition staff must participate in care planning
Abuse, Neglect, and Exploitation

- Now included in a separate section; brings more attention to this issue
- Prohibit facilities from hiring licensed staff with a disciplinary action
- Suspected crime must be reported to law enforcement and the state survey agency (Phase 2).

Training

- Apply to all staff, contractual employees, and volunteers.
- Mandatory topics include communication, residents' rights, and abuse, neglect and exploitation.
- CNAs required to receive training on dementia management and abuse prevention.

Pre-dispute arbitration clauses!

- Happy news: Admission agreements can no longer require that residents agree disputes will be resolved through arbitration instead of in court.
- Most residents/families never knew these clauses were buried in admission contracts and never understood that arbitration in these cases could be expensive and unfair to residents.
- As a result of federal litigation by AHCA challenging this regulation, a court has issued an injunction. Therefore, this provision is not currently in effect.
Nursing facility must send copy of discharge notice to SLTCOP
If Medicaid application (or application to any third party payor) or appeal is pending, facility cannot initiate discharge proceedings.

If a facility “dumps” a resident in a hospital and refuses to readmit, must treat it like a real discharge and follow all requirements for involuntary discharge.
When resident returns from hospital/therapeutic leave, must be able to return to same room if still available.

Person in facility has to be grievance officer
Must produce written report of investigation and findings
Must share w/ resident
More info coming on new regs.
See theconsumervoice.org for link to full new federal regs and commentary, a power point, and a summary of the changes.
Use materials to educate yourself and facilities.
Thanks!!