



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 17-36-NH

DATE: June 30, 2017

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Revision to State Operations Manual (SOM) Appendix PP for Phase 2, F-Tag Revisions, and Related Issues

Memorandum Summary

- **Revised Interpretive Guidance:** In September 2016, the Centers for Medicare & Medicaid Services (CMS) released revised Requirements for Participation under the Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities rule. CMS is releasing revised Interpretive Guidance to be effective November 28, 2017.
- **Revised F Tags:** The revisions to the regulations caused many of the prior regulatory citations to be re-designated. As such, CMS was required to re-number the F-Tags used to identify each regulatory part. Those new F-Tags are described here.
- **Training Resources:** CMS is providing several training resources on our website and on an MLN Connect call on July 25, 2017 from 1:30 to 3:00pm EST.
- **Enforcement and Nursing Home Compare Considerations:** To address concerns related to the scope and timing of the changes, CMS will be providing limited enforcement remedies for certain Phase 2 provisions and will be holding constant the Nursing Home Compare health inspection rating for one year.

I. Background

Revised Medicare and Medicaid requirements for participation for Long Term Care (LTC) facilities (42 CFR part 483, subpart B) were released on September 28, 2016 and became effective as of November 28, 2016, with a three-part phase-in of implementation dates over the next three years. These requirements include the minimum health and safety standards that long-term care facilities must meet to participate in Medicaid and Medicare. **The implementation date for Phase 2 of the revisions is November 28, 2017.** CMS is releasing this revised version of Appendix PP in advance of that implementation date so that State Survey Agencies (SAs), long term care facilities and the public have sufficient time to become aware of the sub-regulatory guidance for the regulations and how they will be surveyed.

We recognize that CMS has asked for comment on the underlying regulations to reduce burden and simplify rules and policies for Medicare beneficiaries, clinicians, providers and supplier through the proposed rule (CMS-1679-P) released in April 2017. We are reviewing these comments and sincerely appreciate all of the stakeholder input provided to date.

II. Appendix PP

CMS provides surveyor guidance through Interpretive Guidelines in the SOM. The Interpretive Guidelines for Long-Term Care include guidance primarily for the surveyors, however these guidelines are frequently used by facilities to ensure they understand the health and safety expectations that will be evaluated through the survey process. Many standards have remained unchanged since the early 1990's. For these areas, CMS reviewed the existing Interpretive Guidelines and updated where necessary to ensure that the standards and examples were clear. We also added a section in some areas to the Interpretive Guidance titled "Key Elements of Noncompliance." This is intended to guide surveyors and nursing facilities about the key behaviors and practices identified in the regulation.

This Interpretive Guidance is effective November 28, 2017. The Interpretive Guidance includes clarifications to existing requirements, guidance for new Phase 2 requirements, and references to the revised survey process and protocols.

III. F-Tags

As described above, CMS is revising the nursing facility F-Tags to correspond with the new regulatory sections. We are enclosing two documents for your use:

- 1) A revised list of the F-Tags under each regulatory group; and,
- 2) A crosswalk of old tags to new tags.

Given the re-structuring of the regulation, some tags were combined, and some tags were split into multiple subparts as described in these Attachments. These new F-Tags will be used after November 28, 2017.

IV. Survey Process

In addition, implementation of Phase 2 is scheduled to occur simultaneously with a new, computer-based Long Term Care survey system. CMS is incorporating the new regulatory requirements while combining the Traditional and Quality Indicator Survey processes. Within the Interpretive Guidance, there is information about the survey process. Information about the survey process is also available on our website described below, where CMS will be making additional materials available in the coming months

V. Training Resources

Between July and October 2017, CMS will provide a number of trainings for SAs, nursing facilities and the public to understand and meet the new requirements of the survey process and regulations. States may offer additional training. Publicly-available training will include:

- A Medicare Learning Network (MLN) Call on July 25th from 1:30 to 3:00pm to discuss the Interpretive Guidance and Survey Process. Questions can be submitted in advance to NHSurveyDevelopment@cms.hhs.gov.

- Information about the call can be found at <https://www.cms.gov/Outreach-and-Education/Outreach/NPC/National-Provider-Calls-and-Events.html> when it is posted in the coming weeks. The call information will also be posted on our registration website at <https://blh.ier.intercall.com/> when registration opens.
- CMS' website at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes.html> which includes a slide deck outlining the survey process. We will also be posting a Frequently Asked Questions document and links to other training resources in the future.
- The Integrated Surveyor Training Website (<https://surveyortraining.cms.hhs.gov/index.aspx>) will also host the following in the coming months:
 - Training videos by CMS staff that review highlights of 11 key topics for the Interpretive Guidance including for example, person-centered care, sufficient and competent staff, pharmacy services and infection control. These videos will review key components of the requirements;
 - Self-paced, online training describing the survey process changes to the Regional Office and State staff (which will also be made available publicly); and
 - Provider-specific training that will focus on those elements needed for the LTC survey process (e.g., materials to be requested during the entrance conference, etc.).

VI. Enforcement and Nursing Home Compare Considerations

Enforcement

CMS has heard concerns regarding the scope and timing of the new requirements for Phase 2. We believe that these standards (for example, development of an antibiotic stewardship program to combat multi-drug resistant organisms) represent important national health and safety standards. However, to address these concerns, CMS will provide a one- year restriction of enforcement remedies for specific Phase 2 requirements. Specifically, we will not utilize civil money penalties, denial of payment, and/or termination. Should a facility be found to be out of compliance with these new requirements beginning in November of 2017, CMS would use this year-long period to educate facilities about certain new Phase 2 quality standards by requiring a directed plan of correction or additional directed in-service training. Enforcement for other existing standards (including Phase 1 requirements) would follow the standard process. Please note, this one-year period is not a change in the required implementation date for Phase 2 provisions.

The listing of specific Phase 2 requirements associated with enforcement delays will be shared at a later date. In general, CMS will identify those requirements that are associated with a unique and separate tag and where specialized efforts and technical assistance may be needed (e.g., antibiotic stewardship, facility assessment, Quality Assurance and Performance Improvement (QAPI) plan).

Nursing Home Compare

Currently, the *Nursing Home Five Star Quality Rating System* calculates a rating based on each facility's survey performance as compared to others' in the same State. Most facilities will be surveyed for compliance with Phase 2 requirements using the revised survey process within a year of the November 28, 2017 effective date. However, due to the differing standards being phased in over the year, CMS will be holding constant for one year the Nursing Home Compare health inspection rating for any surveys conducted after November 28, 2017. CMS has done this previously where the star ratings are maintained for a period of time as new requirements are phased-in. To address the concern that serious quality concerns will not be known, CMS will separately flag those nursing facilities to ensure public transparency. CMS will provide more detailed methodology information at a later date.

Contact: For any questions, please contact CMS at NHSurveyDevelopment@cms.hhs.gov.

Effective Date: November 28, 2017. This information should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators immediately.

/s/

David R. Wright

Attachments:

Attachment 1: F-Tag Crosswalk

Attachment 2: Advanced Copy-Revised Interpretive Guidance, Appendix PP SOM

cc: Survey and Certification Regional Office Management

The contents of this letter support activities or actions to improve patient or resident safety and increase quality and reliability of care for better outcomes.