



August 24, 2015

Dear LeadingAge Members:

By now, most of you who provide nursing home care are aware of the extensive proposed rule CMS released on July 16, to revise the Requirements of Participation for nursing homes. There have been several notices and articles posted on the LeadingAge web site encouraging you to submit your comments. To make it a little easier, here is a BRIEF summary of the overarching areas and some of our high level concerns. It is SO important that CMS hears from you, the providers. We will submit a formal letter of comment that goes through each issue, line-by-line., but nothing is as impactful as your story! And in this case, volume really matters. You do not have to write a lengthy letter covering everything. You can pick one or two issues and tell CMS what this would mean to your community and how it would impact your staff, your residents and their families.

Here are the “big topic” items:

- Quality assurance and Performance Improvement (QAPI) s with the requirement for a QAPI plan to be in place.
- Compliance and Ethics program requirements to implement 2010 mandate for compliance programs.
- Extensive infection control requirement that involves significant staff training and additional “expertise”.
- A required facility-wide assessment that will be used to determine “sufficient staff”. While the format of this assessment requirement is left unclear, we have to assume that any issues identified at the time of survey will likely link back to whether or not there was an adequate assessment of resident needs with regard to staffing.
- SIGNIFICANT staff training requirements, including culturally competent, trauma-informed care, again leaving many of these competencies undefined and open to surveyor interpretation.
- Detailed clinical practice regulations, including an in-person evaluation by a physician, physician assistant, nurse practitioner or clinical nurse specialist prior to non-emergent hospital transfer; notification to the attending physician of ALL abnormal lab and X-ray results; renewal of PRN orders every 48 hours; and an assumption about attending physician credentialing.
- Broad changes in behavioral health services.
- Expanding the requirements for antipsychotic medications to include ANY psychoactive medication, including antidepressants and opioid pain meds. All with the requirement to have gradual dose reductions.
- Dramatic requirements for physical environment / reconstruction.

We support the person-centered intent of some of these new proposed rules (for example, trauma-informed care), however, as indicated above, many of these requirements are vaguely defined and subject to surveyor interpretation or assume new staff competencies that are also not well defined. In several instances CMS has taken what should be ideal clinical practice goals and elevated them to requirements, even when they can be impossible to achieve by most homes.

We believe that, while many of the proposed requirements are already part of your practice, the issues listed above are far-reaching. There is considerable ambiguity that will set the stage for variation by surveyors from region to region.

We believe these changes cannot be reasonably implemented all at one time, and should, at a minimum, allow for a phase-in over five years. In addition to the complexity of many of the new processes and procedures, we believe many of the requirements for specific staff expertise will be impossible for rural home or those in workforce shortage areas to meet in a short time frame.

We believe CMS significantly underestimated the staff time and cost of compliance with these rules. It is important that they hear from non-profit providers to understand how many of these proposed rules would disadvantage the local, community-based, non-profit homes and risk many will simply have to close their doors.

Below is a link for where you can submit your comments electronically to CMS. Remember, these do not have to be lengthy or comprehensive – just pick an issue or two that you are most concerned about and share it with CMS. In addition, remember to ask for a phase-in of the final rule - that will help keep our message consistent.

And two additional important requests from LeadingAge

- We are very interested in your current facility assessment process. If you would tell us in a few words how you determine staffing needs – it would be very helpful in developing our recommendations to CMS.
- Please send us a copy of your comments to CMS so that we, too, can integrate your voice into our final letter.

As always, if you have any questions, do not hesitate to reach out to Evvie Munley or me. Our contact info:

Evvie Munley: emunley@leadingage.org 202 508 9478

Cheryl Phillips, M.D. cphillips@leadingage.org 202 508 9470

Thank you! We recognize the important and remarkable work you do every day and want to provide the support we can to help you work through these often challenging waters.

Sincerely,

A handwritten signature in black ink that reads "Cheryl Phillips, MD". The signature is written in a cursive, flowing style.

Cheryl Phillips, M.D.
Senior VP Public Policy and Health Services
LeadingAge

Helpful links:

CMS proposed rule: <http://www.gpo.gov/fdsys/pkg/FR-2015-07-16/pdf/2015-17207.pdf>

LeadingAge summary of topic areas:

http://www.leadingage.org/CMS_Proposed_Rule_Updates_Long_Term_Care_Facility_Requirements.aspx