

What you need to know about the Newest State and Federal Laws Impacting Long Term Care

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CMS Phase 2 and Phase 3 Guidance

- QSO-22-19-NH issued June 29, 2022
- Provides long awaited guidance for Phase 2 and Phase 3 regulations
- Updated State Operations Manual, Appendix PP and Chapter 5, Psychosocial Outcome Severity Guide, and surveyor training resources including Critical Access Pathways.

Pharmacy:	<ul style="list-style-type: none"> Addresses unnecessary use of non-psychotropic drugs in addition to antipsychotics, and gradual dose reduction.
Infection Control:	<ul style="list-style-type: none"> Requires facilities have a part-time Infection Preventionist. While the requirement is to have <u>at least</u> a part-time IP, the IP must meet the needs of the facility. The IP must physically work onsite and cannot be an off-site consultant or work at a separate location. IP role is critical to mitigating infectious diseases through an effective infection prevention and control program. IP specialized Training is required and available.
Arbitration:	<ul style="list-style-type: none"> Clarifies existing requirements for compliance when arbitration agreements are used by nursing homes to settle disputes.
Psychosocial Outcome Severity Guide	<ul style="list-style-type: none"> Clarifies the application of the “reasonable person concept” and severity levels for deficiencies.
State Operations Manual Chapter 5	<ul style="list-style-type: none"> Clarifies timeliness of state investigations, and communication to complainants to improve consistency across states.

Abuse and Neglect	<ul style="list-style-type: none"> Clarifies compliance, abuse reporting, including sample reporting templates, and provides examples of abuse that, because of the action itself, would be assigned to certain severity levels.
Admission, Transfer, and Discharge:	<ul style="list-style-type: none"> Clarifies requirements related to facility-initiated discharges.
Mental Health/Substance Use Disorder (SUD):	<ul style="list-style-type: none"> Addresses rights and behavioral health services for individuals with mental health needs and SUDs.
Nurse Staffing (Payroll-Based Journal):	<ul style="list-style-type: none"> Uses payroll-based staffing data to trigger deeper investigations of sufficient staffing and added examples of noncompliance.
Resident Rights:	<ul style="list-style-type: none"> Imports guidance related to visitation from memos issued related to COVID-19, and makes changes for additional clarity and technical corrections.
Potential Inaccurate Diagnosis and/or Assessment	<ul style="list-style-type: none"> Addresses situations where practitioners or facilities may have inaccurately diagnosed/coded a resident with schizophrenia in the resident assessment instrument.

CMS Phase 2 and Phase 3 Guidance (cont'd)

- Discharge - CMS clarified that when a facility initiates a discharge while the resident is in the hospital following an emergency transfer (i.e., does not allow the resident to return to the nursing home), the facility must have evidence that the resident's status at the time the resident seeks to return to the facility (not at the time the resident was transferred for acute care) meets one of the discharge criteria at §483.15(c)(i).
- Substance Abuse – CMS clarified that facility staff should have knowledge of signs and symptoms of possible substance use, and be prepared to address emergencies (e.g., an overdose) by increasing monitoring, administering naloxone, initiating cardiopulmonary resuscitation (CPR) as appropriate, and contacting emergency medical services.
- PBJ Staffing – CMS added guidance that incorporates the use of Payroll Based Journal (PBJ) staffing data to direct surveyors to investigate potential noncompliance with CMS' nurse staffing requirements, such as insufficient staffing, lack of a registered nurse for eight hours each day, or lack of licensed nursing for 24 hours a day.
- Resident Rights – Revised guidance related to visitation restrictions to incorporate COVID-19 guidance related to prevention of the spread of communicable diseases.

CMS Phase 2 and Phase 3 Guidance (cont'd)

- Psychotropic Medications - CMS revised guidance addressing medications not defined as psychotropic medications, but that affect brain activity and can also have adverse consequences. The use of these “other medications,” is subject to the psychotropic medication requirements if the documented use appears to be a substitution for another psychotropic medication rather than for the original or approved indication.
- Infection Control – New COVID-19 F-tags. F-tag 885 (Reporting Coronavirus Disease 2019 (COVID-19) data to residents, their representatives, and families), F-tag 886 (COVID-19 testing of residents, and staff), F-tag 887 (offer/educate on COVID-19 immunization) and F-tag 888 (Health Care Staff Vaccination Requirements).
- Psychosocial Severity Guide - CMS also revised the Psychosocial Outcome Severity Guide and F-tag 600 to enhance oversight of compliance related to ensuring a resident’s right to be free from abuse. These revisions include: • Clarifying how to apply the reasonable person concept, • Clarifying examples under each severity level, and • Listing certain instances of abuse where, because of the action itself, the deficiency would be assigned to certain severity levels.
- Compliance and Ethics Program – F895 deficiency tag, with guidance on establishing the program

Schizophrenia Coding

- QSO-23-05-NH CMS Memorandum – issued January 18, 2023
- CMS concern is that facilities can mask the true use of antipsychotics in the facility since residents with a Schizophrenia are excluded from the star rating calculation of long-stay residents receiving antipsychotic drugs.
- CMS will conduct *offsite* audits of schizophrenia coding in MDS assessments. Specifically, CMS will examine the facility's evidence for appropriately documenting, assessing, and coding a diagnosis of schizophrenia in the MDS for residents in a facility.
- Facilities selected for an audit will receive a letter explaining the purpose of the audit, the process that will be utilized, and instructions for providing supporting documentation. During the audit process, facilities will have the opportunity to ask questions and seek any clarification needed. Additionally, at the conclusion of the audit, the facility will have the opportunity to discuss the audit results with CMS.
- If audit reveals inaccurate coding, CMS will adjust the facility's Quality Measure (QM) as follows:
 - The Overall QM and long stay QM ratings will be downgraded to one star for six months (this drops the facility's overall star rating by one star). • The short stay QM rating will be suppressed for six months. • The long stay antipsychotic QM will be suppressed for 12 months.
- Also, we plan to offer facilities the opportunity to forego the audit by admitting they have errors and committing to correct the issue. This will reduce the burden of conducting audits for CMS and nursing homes, and allow CMS to audit more facilities. To incentivize this admission and to promote improvement, for facilities that admit miscoding after being notified by CMS that the facility will be audited, but prior to the start of the audit, CMS will consider a lesser action related to their star ratings than those listed above, such as suppression of the QM ratings (rather than downgrade).

Deficiencies under Dispute (IDR/IIDR)

- CMS will post deficiency citations under IDR/IIDR in each section of Nursing Home Care Compare that currently displays citations, and will indicate if a citation is under dispute. If, based on the results of the IDR/IIDR process, the citations are upheld, they will remain posted and will be included in the calculation of the facility's star rating if applicable. If the citations are overturned (i.e., removed), they will be removed from the website. If the level of scope or severity of a citation is reduced, the citation will be displayed at the reduced level.
- While the citations will be publicly displayed, we will not include them in the calculation of a facility's star rating until the dispute is complete (and the survey is considered final).

IDPH Staffing Violations

- No staffing fines may be issued for noncompliance prior to the revised implementation date, which shall be January 1, 2025.
- A plan of correction and posting is still required.
- No appeal right to contest staffing violation.

POSTING OF FAILURE TO MEET MINIMUM STAFFING RATIOS

Within 24 hours after receipt of this Notice, the facility shall display, at a minimum, in all publicly used exterior entryways into the facility, inside the main entrance lobby, and next to any registration desk for easily accessible viewing, the following notice. Using Calibri (body) font and 26-point type in black letters on an 8.5 x 11-inch white paper the posting must state the following:

Notice Dated: (insert current date)

*“This facility does not currently meet the minimum staffing ratios required by law.
Posted at the direction of the Illinois Department of Public Health.”*

The notice must also be posted on the main page of the facility’s website.

The notice must be posted for the duration the facility is out of compliance with minimum staffing requirements. For purposes of the implementation period, the posting will be required from the Date of the receipt of this Notice until the Department provides notice to the facility that it has accepted the facility’s POC. Failure to post the notice as required may result in additional regulatory violations. The Department shall have the discretion to determine the gravity of any violation and, taking into account mitigating and aggravating circumstances and facts, may reduce the requirement of, and amount of time for, posting the notice. Section 3-209(b) of the Act.

Biden Nursing Home Reforms

- On October 21, 2022, the Biden Administration announced its program to “Improve the Quality of Nursing Homes.”
 - Strengthen the Special Focus Facilities Program for skilled Nursing Homes:
 - Increase penalties for facilities that fail to improve;
 - Raise the bar to qualify for graduation from the program and add 3 years of CMS monitoring post graduation;
 - Increase technical assistance to facilities in the program;
 - Creation of a Department of Labor \$80 million grant to support the training of nurses;
 - \$13 million in HRSA grants to increase the number of nursing preceptors; and
 - Establish minimum staffing requirements (targeted for Spring 2023).

End of the Public Health Emergency

- CMS has announced that the Public Health Emergency will end on May 11, 2023.
- CMS has NOT yet issued new guidance on COVID testing.
- A coalition of 22 states filed a petition for rulemaking on November 17, 2022 asking CMS to rescind the COVID-19 staff vaccination mandate rule.
- The waiver that that allowed for Medicare payments for an individual admitted WITHOUT a 3 day-hospital stay will end.
- On June 6, 2022, CMS terminated the blanket waiver allowing for greater flexibility in the training and certification of nurse aides. Since that time CMS has reviewed individual requests on a case-by-case basis. This practice will end on May 11, 2023.

Section 1557 Nondiscrimination

- On August 4, 2022, HHS issued a proposed rule related to Section 1557 of the Affordable Care Act that prohibits discrimination on the basis of race, color, national origin, sex, age, or disability. Topics include:
 - Providing meaningful access for limited English proficient individuals;
 - Effective communication for individuals with disabilities;
 - Accessibility of information and communication technology for individuals with disabilities;
 - Equal program access on the basis of sex;
 - Nondiscrimination in health insurance and other health-related coverage; and
 - Nondiscrimination in the delivery of health programs and activities through telehealth services.

Assisted Living Regulatory Changes

- 295.500 - Increases application fees
- 295.1010 – Changes the definition of Violations:
 - Type 2 Violation – “an act or omission by the establishment or its staff that causes harm to a resident or has the potential to cause harm to a resident or residents.
 - Type 1 violation - “an act or omission by the establishment or it staff that causes severe harm or death of a resident or has the potential to cause severe harm a resident or residents.”

Assisted Living Regulatory Changes

- 295.1060
 - Revises “consultative conferences” as follows: “*In addition to other remedies, the Department may conduct a consultative conference with administrative staff who oversee the daily operations of the establishment to identify remedial actions to address a violation*” removing “consultative conference – possible for all violations.”
 - Failure to meet the requirements set in the consultative conference **will** result in a higher violation (used to be: “**may**” result in a higher violation)

Assisted Living Regulatory Changes

- 295.1060 - Increased fines
 - Type 2 Violation –up to **\$3000** per violation (was \$1000)
 - Type 1 Violation (initial) –up to **\$6000** per *initial* violation (was \$2000)
 - Type 1 Violation (repeat, serious/immediate threat) – up to \$20,000 per violation (was \$10,000)

Assisted Living Regulatory Changes

- 295.1070 – On-Site & Complaint Investigation
 - Removes opportunity to file a statement of dispute
 - Permits Department to send survey findings by email
 - Gives the Department the authority to reject the Plan of Correction if
 - findings are not addressed and corrected;
 - if corrective actions are not specific enough;
 - insufficient steps to prevent future occurrences; or
 - corrective action is not sufficiently timely.

Assisted Living Regulatory Changes

- 295.1090 – Complaints
 - Specifies the Department will investigate complaints of
 - Abuse/Neglect within 7 days (same)
 - All others within 30 days of receipt (**new**)

Assisted Living Regulatory Changes

- 295.2050 – Reporting Accidents/ Incidents

“any serious incident or accident. For the purposes of this Section, "serious" means any incident or accident that causes physical or emotional harm or injury to a resident.”



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