CMS Announces Final Rule for Long-Term Care Facilities Reform of Requirements

On September 28, 2016, CMS issued its long-awaited final rule to revise and strengthen the requirements that long-term care (LTC) facilities must meet to participate in the Medicare and Medicaid programs. The 700-plus page rule is intended to improve the safety, quality, and effectiveness of care delivered to facility residents, and is the first comprehensive rewrite of Medicare and Medicaid quality and safety requirements for LTC facilities since 1991. The rule was originally proposed in July 2015, and received nearly 10,000 comments. It is scheduled to go into effect on November 28, 2016, with the regulations to be implemented in phases over a three-year period. CMS estimates that the final rule will cost $831 million in the first year and $736 million annually in subsequent years, with a per-facility cost of $62,900 in the first year and $55,000 annually thereafter. The rule includes various revisions to staffing and training requirements, discharge and care planning rules, and infection prevention and control provisions. The most notable provision, however, is the prohibition of pre-dispute binding arbitration agreements.

Prohibition of Pre-Dispute Binding Arbitration Agreements

Historically, many facilities required a prospective resident to agree to a binding arbitration clause at admission, which forced the resident to settle any dispute that may arise at the facility in arbitration, rather than through the court system. The final rule prohibits the use of such pre-dispute arbitration agreements as a condition of admission to a long-term care facility.

Facilities and residents may still use arbitration, but only be on a voluntary basis and only after a dispute arises. Further, the arbitration agreement must be clearly explained to the resident, including that the decision to arbitrate is completely voluntary and that the agreement should not prevent or discourage the resident or her family from talking to authorities about quality of care concerns. In addition, the facility cannot require a resident to sign a post-dispute arbitration agreement as a condition of the resident’s continued stay at the facility.

In July, CMS had only proposed requiring facilities that ask residents to accept binding arbitration to meet certain criteria, rather than prohibiting the use of such agreements entirely. In a blog post, CMS Acting Administrator Andy Slavitt noted that many of the 10,000 comments received concerned the use of the required binding arbitration agreements, and that the new rule would protect the “health and safety of residents, particularly during vulnerable and critical times,” such as when moving into a LTC facility.

Additional “Best Practices” Changes

Under the final rule, facilities are required to:

- Develop a comprehensive, person-centered care plan for each resident within 48 hours of admission
- Create an “infection prevention and control program,” which includes creating an antibiotic stewardship program and staffing an infection prevention and control officer
- Requires facilities to provide “nourishing, palatable” dietary options that meet residents’ nutritional needs and preferences, and permits dietitians and therapy providers to write orders in their areas of expertise when a physician delegates the responsibility and state licensing laws allow
- Additional updated regulations regarding elder abuse and dementia, staff competency, and discharge planning

Source: Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities, Final Rule, CMS-3260-F