

## *CMS Delays Mega-Rule Enforcement*

July 5, 2017

To: LeadingAge Wisconsin Members-- Attention Nursing Facilities

From: John Sauer, President/CEO

Subject: ***CMS Delays Mega-Rule Enforcement***

In much welcomed good news, the Center for Medicare and Medicaid Services, (CMS) has agreed to delay for one year punitive enforcement of certain aspects of the federal nursing home mega-rule (Requirements of Participation).

On June 30, 2017, CMS issued S&C: 17:36- NH memo containing voluminous information related to the mega-rule's interpretative guidelines, F-tags, training resources, Nursing Home Compare and enforcement.

CMS saved the best bit of information for one of the last few paragraphs of the S&C memo:

*"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."* (Emphasis added).

This is obviously good news and gives CMS the opportunity to evaluate what further changes are needed to the mega-rule.

The CMS S&C memo also provides the following additional information about the changes effective November 28, 2017:

- **Revised Interpretive Guidance:** CMS has released revised Interpretive Guidance to be effective November 28, 2017. For these areas, CMS reviewed the existing Interpretive Guidelines and updated where necessary to ensure that the standards and examples were clearer. CMS 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.
- **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. CMS has provided a crosswalk for the F-Tags to assist surveyors and providers with understanding the changes.
- **Notification about Training Resources** - CMS is providing several training resources available to the public:
  - A Medicare Learning Network (MLN) call will be held on **July 25th from 12:30 to 2:00 pm** CST to discuss the Interpretive Guidance and Survey Process. Questions can be submitted in advance to [NHSurveyDevelopment@cms.hhs.gov](mailto:NHSurveyDevelopment@cms.hhs.gov).
  - CMS' website at [www.cms.gov/Medicare/Provider-Enrollment-andCertification/GuidanceforLawsAndRegulations/Nursing-Homes.html](http://www.cms.gov/Medicare/Provider-Enrollment-andCertification/GuidanceforLawsAndRegulations/Nursing-Homes.html) includes a slide deck outlining the new survey process.
  - The Integrated Surveyor Training Website (<https://surveyortraining.cms.hhs.gov/index.aspx>) in the future will also host training videos on the Interpretive Guidance; the new survey process impacting CMS and DQA; and on provider-specific preparation for the LTC survey process.
- **5-Star Reports-- Nursing Home Compare** - CMS announced "it will be holding constant the Nursing Home Compare health inspection rating for one year for any surveys conducted after November 28, 2017. CMS previously had done this as new requirements are being 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."

It is not clear what CMS means by saying it will be holding constant the Nursing Home Compare health inspection rating for one year for any surveys conducted after November 28, 2017. We will be contacting CMS to ask that facilities with improving state survey ratings not be penalized by "freezing" a lower 5-Star rating for a year. This issue has already been shared with the Division of Quality Assurance which shares our concerns.

Here are the links to the CMS information released on June 30<sup>th</sup>:

- [S&C Memo: Revision to State Operations Manual Appendix PP for Phase 2 \(Includes Training Information and Related Issues\) \[PDF, 121KB\]](#)
- [Advance Appendix PP including Phase 2 \[Effective November 28, 2017\] \[PDF, 3MB\]](#)

- [List of Revised FTags \[Effective November 28, 2017\] \[PDF, 230KB\]](#)
- [F-Tag Crosswalk \[XLSX, 28KB\]](#)

LeadingAge Wisconsin and LeadingAge (national) will be providing additional information on the CMS S&C: 17:36- NH memo as it becomes available. We are planning several educational and training sessions which will be announced shortly.

Please feel free to contact the Associations if you have any comments, questions or suggestions as we tackle these upcoming changes.

For now, let's take comfort that CMS has heard some our concerns about the mega-rule and continue to advocate for regulatory reforms that embrace quality improvement over enforcement and punishment.

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