

COMPREHENSIVE PROPOSED NEW RULES ANNOUNCED FOR LONG-TERM CARE FACILITIES

"Far reaching," "massive in scope," and "sweeping," are just a few of the terms that have been used to describe a 403-page proposed rule for Medicare and Medicaid nursing homes, which was released Monday (July 12) by the U.S. Department of Health and Human Services (DHHS). DHHS describes the proposed rule as the first "comprehensive" review and update of Medicare/Medicaid requirements for long-term care (LTC) facilities since the rules were first published in 1989.

Some of the proposed requirements are consistent with changes that many organizations have already developed on their own. Other requirements may, however, surprise and concern some. In the days to come, as health care providers and organizations and their attorneys pore through the 400+ pages, additional surprises are likely to emerge. For now, here is a sampling of the proposed new requirements.

- Attending physicians for LTC residents would be required to meet professional credentialing standards to be established by LTC facilities.
- Each resident would be allowed to share a room with his or her roommate of choice "when practicable," which the DHHS comments indicate could include a same-sex couple.
- Admission could not be contingent on a resident's or resident representative's signing a binding arbitration agreement, and any binding arbitration agreements would be subject to specified standards.
- LTC facilities would be prohibited from allowing a "resident representative" to make decisions on behalf of the resident that go beyond what a court requires or the resident delegates, and would be required to report per state law any decisions of the representative that are "not in the best interests" of the resident.
- Before an "unscheduled transfer" of a resident to a hospital, the LTC facility would be required to provide or arrange for "an in-person evaluation of a resident, to be conducted expeditiously, by a physician, a physician assistant, nurse practitioner, or clinical nurse specialist ..., unless the transfer is emergent and obtaining the in-person evaluation would endanger the health or safety of the individual or unreasonably

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delay the transfer."

The last of the proposals outlined above is one aspect of what DHHS describes as the proposed rule's "multifaceted approach to reducing unnecessary hospitalization" of LTC residents.

DHSS estimates the first year total cost for the proposed requirements would be \$729,495,614, with the total cost for the second and future years to be \$638,386,760 annually.

When the proposed rule is officially published on Thursday, July 16, 2015, it is expected to provide until at least September 14, 2015 for comments. Given the importance of the proposed rules, we highly recommend a careful review of their potential impact on your organization, and also suggest addressing any concerns in official comments.

Armstrong Teasdale lawyers regularly counsel health care organizations and professionals about regulatory requirements. We are available to assist clients with determining how they would be affected by the proposed new rules; preparing official comments; and developing strategies to deal with the changes.