

COUNTDOWN TO PHASE 3 SKILLED NURSING COMPLIANCE PROGRAMS - COMPONENT #3 - SUFFICIENT RESOURCES AND AUTHORITY

This is another article in a series discussing the complete overhaul of Part 483 to Title 42 of the Code of Federal Regulations the Requirements for States and Long-Term Care Facilities ("Final Regulations") by the Centers for Medicare & Medicaid Services ("CMS"). To view other articles in this series, click [here](#).

Beginning on November 28, 2019, surveyors will use the requirements detailed in 42 C.F.R. Section 483.85 in the Final Regulations by CMS to determine whether a skilled nursing facility's ("Facility") compliance and ethics program fulfills the requirements in the Final Regulations. One of the required components is that the Facility's compliance and ethics program provide sufficient resources and authority to the specific individuals designated as compliance officers or compliance coordinators to reasonably ensure compliance with the Facility's compliance and ethics program standards, policies and procedures.

BACKGROUND AND PURPOSE OF A COMPLIANCE AND ETHICS PROGRAM

The Final Regulations created a new Section 483.85 requiring Facilities to have a compliance and ethics program. This regulation arises from Section 6102 of the Affordable Care Act, which added Subsection 1128I(b) to the Social Security Act.

Section 483.85(c) sets forth the required compliance and ethics program components for all Facilities. Under those regulations, a compliance and ethics program means, with respect to a Facility, a Facility program that has been reasonably designed, implemented and enforced so that it is likely to be effective in preventing and detecting criminal, civil and administrative violations under the Affordable Care Act and in promoting quality of care; and includes, at a minimum, the required components specified in the Final Regulations.

REQUIRED COMPONENT #3 - SUFFICIENT RESOURCES AND SUFFICIENT AUTHORITY

Section 483.85(c)(3) of the Final Regulations requires that the operating organization for each Facility develop, implement, maintain and establish an effective compliance and ethics program that contains sufficient resources and authority to the specific individuals designated as compliance officers or compliance coordinators to reasonably assure compliance with the Facility's compliance and ethics program standards, policies and procedures.

STATE OPERATIONS GUIDANCE TO SURVEYORS

CMS has not issued guidance on how surveyors will interpret and cite the compliance and ethics program requirement.

Surveyors will likely request information about assets and funds allocated by the Facility to operate and maintain the compliance and ethics program.

OIG GUIDANCE - RESOURCES

In its 2000 memo titled "Publication of the OIG Compliance Program Guidance for Nursing Facilities," the Office of Inspector General ("OIG") wrote that it recognizes that some nursing facilities may not be able to adopt certain elements to the same degree as others with more extensive resources.

In the memo, OIG offers suggestions to assist these smaller Facility providers in implementing the principles expressed in this guidance. Regardless of size, structure or available resources, OIG recommends that every Facility should strive to accomplish the objectives and principles underlying all of the compliance policies and procedures in the memo's guidance.

IMPLEMENTATION TIME FRAME

Beginning on November 28, 2019, surveyors will use requirements detailed in Section 483.85 to determine whether a Facility's compliance and ethics program fulfills the requirements in the Final Regulations.

ACTION ITEMS

Facilities should:

- Identify funds it will use to maintain its compliance and ethic program; and
- Review roles of those individuals carrying out the operations for the compliance and ethics program.

COMPLIANCE AND ETHICS PROGRAM TOOLKIT AVAILABLE

Hall Render has developed a compliance and ethics program toolkit to assist skilled nursing facilities in achieving compliance with Section 483.85 and the Final Regulations. For more information about the toolkit, please contact Sean Fahey at (317) 977-1472 or sfahey@hallrender.com.

If you have questions about this topic or would like assistance with the phase 3 compliance and ethics program requirements, please contact:

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