

COUNTDOWN TO PHASE 3 SKILLED NURSING COMPLIANCE PROGRAMS - COMPONENT #5 - EFFECTIVE COMMUNICATION OF COMPLIANCE STANDARDS TO STAFF, CONTRACTORS AND VOLUNTEERS

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 take steps to effectively communicate the standards, policies and procedures in the operating organization's compliance and ethics program to the operating organization's entire staff, individuals providing services under a contractual arrangement and volunteers, consistent with the volunteers' expected roles. The communication requirements include, but are not limited to, mandatory participation in training as set forth at 42 C.F.R. Section 483.95(f) or orientation programs or disseminating information that explains in a practical manner what is required under the program.

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 11281(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 #5 - EFFECTIVE COMMUNICATION OF COMPLIANCE STANDARDS TO STAFF, CONTRACTORS AND VOLUNTEERS

Section 483.85(c)(5) of the Final Regulations requires that a Facility take steps to effectively communicate the standards, policies and procedures in its compliance and ethics program to its entire staff, individuals providing services under a contractual arrangement and volunteers, consistent with the volunteers' expected roles. The communication requirements include, but are not limited to, mandatory participation in training as set forth at 42 C.F.R. Section 483.95(f) or orientation programs or disseminating information that explains in a practical manner what is required under the program.

MANDATORY PARTICIPATION IN TRAINING - 42 C.F.R. SECTION 483.95

This component is related to the training requirement regulation at 42 C.F.R. Sec. 483.95(f). 42 C.F.R. Section 483.95(f) focuses on training and provides that a Facility's compliance and ethics program, must have:

- An effective way to communicate that program's standards, policies and procedures through a training program or in another practical manner that explains the requirements under the program; and
- An annual training if the operating organization operates five or more facilities.

If the Facility fails to demonstrate that it has an effective communications practice with staff, third-party contractors and volunteers, the Facility could be subject to being cited by surveyors.

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 ask to see the records of the training program and documentation of the communication of the compliance and ethics

program.

OIG GUIDANCE - RESOURCES

In its 2000 memo titled "Publication of the OIG Compliance Program Guidance for Nursing Facilities," the OIG identifies that Facilities are required by federal, and in some cases state law, to investigate the background of certain employees. The OIG wrote that the proper education and training of corporate officers, managers and health care professionals, and the continual retraining of current personnel at all levels, are critical elements of an effective compliance program. The OIG emphasized that these training programs should include sessions summarizing the organization's compliance program, fraud and abuse laws, federal health care program and private payor requirements. More specific training on issues such as claims development and submission processes, residents' rights and marketing practices should be targeted at those employees and contractors whose job requirements make the information relevant.

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:

- Take actions to effectively communicate the standards and procedures to all employees, third-party contractors and volunteers;
- Require participation in training programs; and
- Distribute publications that explain 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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