

## **COUNTDOWN TO PHASE 3 SKILLED NURSING COMPLIANCE PROGRAMS - COMPONENT #6 - AUDITING AND MONITORING PROCEDURES TO PROMOTE COMPLIANCE**

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 utilize auditing and monitoring systems that are designed to detect criminal, civil and administrative violations. The auditing and monitoring system is to ensure compliance with Facility policies and procedures and applies to staff and individuals providing services under a contract.

### **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 (the "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 #6 - EFFECTIVE COMMUNICATION OF COMPLIANCE STANDARDS TO STAFF, CONTRACTORS AND VOLUNTEERS**

Section 483.85(c)(6) of the Final Regulations requires that a Facility takes reasonable steps to achieve compliance with the program's standards, policies and procedures. Those steps include utilizing monitoring and auditing systems reasonably designed to detect criminal, civil and administrative by the Facility's staff, individuals providing services under a contractual arrangement or volunteers.

### **WHAT TYPE OF AUDITING AND MONITORING IS REQUIRED?**

The Final Regulations sets forth what auditing and monitoring is required, which includes:

- Implement an auditing and monitoring system reasonably capable of detecting violations under the Act.
- The system of auditing and monitoring to detect suspected violations applies to staff, services provided under contract and to volunteers consistent with their roles.
- Implement a reporting system that allows individuals to report suspected violations anonymously within the operating organization without fear of retribution.
- Have a process for ensuring the integrity of any data that may be a part of a suspected violation.

### **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 auditing and monitoring programs and the required reporting systems.

### **OIG GUIDANCE - RESOURCES**

In its 2000 memo titled "Publication of the OIG Compliance Program Guidance for Nursing Facilities," OIG identifies that an effective compliance program should conduct thorough monitoring of the compliance program's implementation and an ongoing evaluation process.

The compliance officer should document the type of monitoring, and if suspected noncompliance is identified, this should be shared with the compliance committee or senior management of the Facility.

The extent and frequency of the monitoring should take into account the Facility's resources, prior compliance history and other risk factors particular to the Facility. OIG encourages periodic compliance audits by internal or external evaluators who have knowledge and expertise with federal and state laws, regulations and other 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:

- Implement an auditing and monitoring process;
- Make sure the auditing and monitoring covers staff, contracted services and volunteers; and
- Implement an anonymous reporting system without fear of retribution for making a report.

## **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](mailto: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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