

NOVEMBER 25, 2019

CMS MEMO ADDRESSES STATUS OF INTERPRETIVE GUIDANCE FOR PHASE 3 SKILLED NURSING FACILITY REGULATIONS AND ARBITRATION AGREEMENTS

On November 22, 2019, the Quality, Safety & Oversight Group at the Centers for Medicare & Medicaid Services ("CMS") issued a **memorandum** entitled "Updates and Initiatives to Ensure Safety and Quality in Nursing Homes" ("QSO Memo") that announced a status update on the Interpretive Guidance for: (1) Phase 3 elements of the regulations in Part 483 to Title 42 of the Code of Federal Regulations, the Requirements for States and Long-Term Care Facilities (the "Regulations"); and (2) skilled nursing facility arbitration agreements under 42 CFR Section 483.70(n). The implementation date for Phase 3 of the Regulations is November 28, 2019.

CMS issued the QSO Memo to address concerns about the implementation of the Phase 3 requirements and skilled nursing facility surveys after November 28, 2019.

PHASE 3 INTERPRETIVE GUIDANCE AND SURVEYS AFTER NOVEMBER 28, 2019

CMS announced that it will release updated Interpretive Guidance for Phase 3 of the Regulations in the second quarter of 2020. At that time, CMS will also release information on training and implementing related changes to the Long-Term Care Survey Process.

Phase 3 F-tags with little or no Interpretive Guidance include:

- F659 – Comprehensive Care Plans
- F699 – Trauma-Informed Care
- F882 – Infection Preventionist
- F940, F941, F942, F944, F945, F946, F949 – Training Requirement
- F895 – Compliance and Ethics Program

CMS confirmed that, despite the lack of Interpretive Guidance, the Regulations remain effective. CMS stated that its ability to survey for compliance with these requirements will be limited until the Interpretive Guidance is released in the second quarter of 2020.

INTERPRETIVE GUIDANCE ON ARBITRATION AGREEMENTS

CMS intends to publish Interpretive Guidance on the regulations that established specific new requirements for skilled nursing facilities when the facility uses arbitration agreements in the upcoming weeks. CMS is continuing to perform research, obtain stakeholder feedback and update the surveyor software.

Final regulations on arbitration agreements were **published** on July 18, 2019 and became effective on September 16, 2019. CMS confirmed that, despite the lack of Interpretive Guidance, the Regulations remain effective and facilities are required to comply with the Regulations.

If you have questions or would like additional information about this topic, please contact:

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