

## **CMS ANNOUNCES POST-ACUTE PRIORITIES FOR 2020 - FINAL REGULATIONS, STATE OPERATION MANUAL UPDATES, HOME HEALTH AND HOSPICE SURVEY PROCESS REVISIONS**

On December 11, 2019, the Center for Clinical Standards and Quality/Quality, Safety & Oversight Group at the Centers for Medicare & Medicaid Services ("CMS") issued a **memorandum** to State Survey Agency Directors entitled "Fiscal Year (FY) 2020 Mission & Priority document (MPD) – Action" ("FY 2020 Memo") that announced its work and intentions for the fiscal year 2020.

The Fiscal Year Mission & Priority document is an annual document that directs and outlines the work of the Quality, Safety & Oversight Group, the CMS Regional Offices and the State Survey Agencies based on regulatory changes, adjustments in budget allocations and new initiatives, as well as new requirements based on statutes such as the Improving Medicare Post-Acute Care Transformation Act of 2014 ("IMPACT Act").

### **PRIOR GOALS**

In its Fiscal Year 2019 Mission Priority document, CMS announced its intention to: (1) issue these proposed regulations in areas it identified as unnecessary, obsolete or excessively burdensome on health care providers and suppliers; and (2) publish a proposed rule to fully enforce Section 1150B requirements for reporting crimes to nursing home residents, which would propose a regulation that would allow Civil Money Penalties to be imposed of up to \$200,000 against covered individuals (staff, volunteers, etc.) who fail to report reasonable suspicion of crimes.

### **FISCAL YEAR 2020 GOALS**

The FY 2020 Memo announced the following post-acute priorities for 2020.

#### **NURSING HOMES: FINALIZE REGULATIONS, THEN UPDATE STATE OPERATIONS MANUAL**

Earlier in 2019, CMS released proposed regulations motivated by an intention to remove requirements for participation CMS identified as unnecessary, obsolete or excessively burdensome nursing homes. The FY 2020 Memo announced that CMS intends to finalize those regulations in 2020.

CMS confirmed that once those regulations are finalized, it will provide guidance to state agencies for surveying for compliance with the final regulations. On November 22, 2019, the Quality, Safety & Oversight Group at CMS issued a memorandum entitled "Updates and Initiatives to Ensure Safety and Quality in Nursing Homes" that announced they 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.

#### **NURSING HOMES: AGREEMENTS TO ARBITRATION OF DISPUTES**

Earlier in 2019, CMS issued a final rule updating the requirements nursing homes must meet to use binding arbitration agreements. The FY 2020 Memo confirms that CMS is allowing binding arbitration agreements, but will prohibit nursing homes from requiring residents to sign binding arbitration agreements as a condition for receiving care, and will require nursing homes to inform residents or their representatives that they are not required to sign a binding arbitration agreement.

CMS confirmed that it is prohibiting nursing home arbitration agreements from including language preventing residents or anyone else from communication with federal, state or local officials.

The FY 2020 Memo announced that CMS will issue guidance to state agencies for surveying for compliance with the final rule on arbitration agreements in 2020.

#### **NURSING HOMES: FACILITY REPORTED INCIDENTS AND COMPLAINT INVESTIGATIONS**

The FY 2020 Memo states that CMS plans to release guidance in Chapter 5 of the State Operations Manual related to the management of facility-reported incidents and complaints. The FY 2020 Memo provides that changes would include the development and implementation of

policies and procedures that are consistent with federal guidelines, adherence to federal time frames for investigation, the collection of mandated elements from the initial and investigation reports and the collection of data to support the tracking of facility-reported incidents.

## HOME HEALTH AGENCIES

CMS announced it will implement a new survey process for home health agencies in FY 2020 and will simplify procedures for moving from standard to partially extended to extended surveys.

The FY 2020 Memo states that home health surveys should include a sample of extension locations.

## HOSPICE AGENCIES

CMS announced it is working on revisions to the hospice survey process with a target release date of late 2020. Under the IMPACT Act of 2014, each Medicare-certified hospice must be surveyed by the State Agency or Accrediting Organization no less frequently than every 36 months.

The FY 2020 Memo states that hospice surveys should include a sample of multiple locations in the survey process. At a minimum, the sample should be included in the record reviews and onsite visits when possible.

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

- **Sean Fahey** at (317) 977-1472 or [sfahey@hallrender.com](mailto:sfahey@hallrender.com);
- **Todd Selby** at (317) 977-1440 or [tselby@hallrender.com](mailto:tselby@hallrender.com);
- **Brian Jent** at (317) 977-1402 or [bjent@hallrender.com](mailto:bjent@hallrender.com); or
- Your regular Hall Render attorney.

More information about Hall Render's Post-Acute and Long-Term Care services can be found [here](#).