

CMS ISSUES GUIDANCE SUSPENDING ENFORCEMENT OF PENALTIES FOR PHASE 2 REQUIREMENTS AND REVISES F-TAGS

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").

BACKGROUND

On September 28, 2016, CMS released a complete overhaul of Part 483 to Title 42 of the Code of Federal Regulations, the Requirements for States and Long-Term Care Facilities. CMS's Final Regulations cover many regulatory requirements for long-term care facilities and create new compliance obligations for providers. The Final Regulations seek to target rehospitalizations, facility-acquired infections, overall quality and resident safety.

Hall Render published an [overview](#) of Final Regulations components as well as Parts 1, 2, 3 and 4 in the series, which are located [here](#), [here](#), [here](#) and [here](#).

IMPLEMENTATION IN PHASES

The Final Regulations became effective November 28, 2016. They were to be implemented in phases with the first phase-in period completed by November 28, 2016, followed by additional phases that end on November 28, 2017 and November 28, 2019. The implementation date for Phase 2 of the revisions is November 28, 2017.

CMS ISSUES GUIDANCE ON ENFORCEMENT OF PENALTIES

On June 30, 2017, the Survey and Certification Group at CMS issued a memorandum, "Revision to State Operations Manual (SOM) Appendix PP for Phase 2, F-Tag Revisions, and Related Issues" ("S&C Memo") on enforcement of Phase 2 requirements. CMS will provide a one-year restriction of enforcement remedies for specific Phase 2 requirements. CMS wrote that it "will not utilize civil money penalties, denial of payment, and/or termination." Should a facility be found to be out of compliance with these new requirements beginning in November of 2017, CMS would use this year-long period to educate facilities about certain new Phase 2 quality standards by requiring a directed plan of correction or additional directed in-service training. CMS emphasized that this one-year period is not a change in the required implementation date for Phase 2 provisions.

Enforcement for other existing standards, including Phase 1 requirements, will follow the standard process.

REVISED F-TAGS

The Final Regulations caused many of the previous regulatory citations to be re-designated. CMS re-numbered the F-Tags used to identify each regulatory part. CMS created a list of the F-Tags under each regulatory group and a F-Tag crosswalk that compares the prior F-Tags to the new F-Tags. The re-structuring of the regulation caused some tags to be combined while others were split into multiple subparts.

PRACTICAL TAKEAWAYS

CMS will provide a one-year restriction of enforcement remedies for specific Phase 2 requirements. The one-year delay does not alter the Phase 2 implementation date of Nov. 28, 2017. The delay only impacts the monetary penalties. Many F-Tags were renumbered. CMS has created a crosswalk reference guide for old and new F-Tags.

A link to the S&C Memo is [here](#).

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

- **Todd Selby** at (317) 977-1440 or tselby@hallrender.com;
- **Brian Jent** at (317) 977-1402 or bjent@hallrender.com;
- **Sean Fahey** at (317) 977-1472 or sfahey@hallrender.com; or

- Your regular Hall Render attorney.