

## **COUNTDOWN TO PHASE II COMPLIANCE: THE FACILITY ASSESSMENT FOR LONG-TERM CARE FACILITIES - REVIEW OF FACILITY RESIDENT POPULATION AND RESOURCES REQUIRED**

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"). 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](#).

### **BACKGROUND**

One of the key elements of the Final Regulations is the new provision that requires facilities to conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during day-to-day operations and emergencies. The facility assessment must address the facility's resident population (number of residents, types of care and staff competencies required by the residents and cultural aspects) and resources (equipment and overall personnel) and a facility-based and community-based risk assessment. The facility assessment is a Phase II requirement, and CMS has not yet issued interpretive guidance on how to comply. Facilities should spend time during these final weeks before the Phase II implementation date to update policies and procedures, as well as plan for their compliance efforts and data required.

### **FACILITY ASSESSMENT**

Part 483.70(e) of the Final Regulations adds a facility assessment requirement for long-term care facilities. In the comments to the Final Regulations, CMS wrote that it did not believe that all facilities perform as thorough an assessment of their resident population or the facility's resources as is required by the Final Regulations.

The assessment may be used by surveyors to assess facility staff levels, competencies and resources in the instance of an adverse event, which underscores the importance of preparing the assessment in accordance with forthcoming guidance.

CMS believes that the requirement for a facility assessment will enable each long-term care facility to thoroughly assess their resident population and the resources that are needed to provide the care that the residents need. It will also enable the facility to determine the resources it has so that it can determine what resources it needs to competently care for its resident population and provide a record for staff and management in the future to understand the reasoning for decisions that were made on staffing and other resources. It will also provide a reference point for assessment when deficiencies are noted or when adverse events occur. CMS cautioned facilities from simply writing up a facility assessment to justify the facility's current resources.

### **FREQUENCY**

The facility must review and update that assessment as necessary and at least annually. The facility must also review and update the assessment whenever there is, or the facility plans for, any change that would require a substantial modification to any part of the assessment.

In the comments to the Final Regulations, CMS wrote that it believes that an annual assessment is needed to ensure that there have not been any substantial changes that will require the facility to update its facility assessment.

CMS also wrote that changes in a facility's population should not necessitate a change in the facility assessment unless the facility begins admitting residents that require substantially different care.

### **ELEMENTS**

The Final Regulations require that the facility assessment cover at least: (1) the facility's resident population; and (2) the facility's resources.

1. Facility's resident population assessment.

The assessment must address and include a review of the facility's population, including the following elements.

- Both the number of residents and the facility's resident capacity.
- The care required by the resident population considering the types of diseases, conditions, physical and cognitive disabilities, overall acuity and other pertinent facts that are present within that population.
- The staff competencies that are necessary to provide the level and types of care needed for the resident population.
- The physical environment, equipment, services and other physical plant considerations that are necessary to care for this population.
- Any ethnic, cultural or religious factors that may potentially affect the care provided by the facility, including, but not limited to, activities and food and nutrition services.

2. Facility's resources assessment.

- All buildings and/or other physical structures and vehicles.
- Equipment (medical and non-medical).
- Services provided, such as physical therapy, pharmacy and specific rehabilitation therapies.
- All personnel, including managers, staff (both employees and those who provide services under contract) and volunteers, as well as their education and/or training and any competencies related to resident care.
- Contracts, memorandums of understanding or other agreements with third parties to provide services or equipment to the facility during both normal operations and emergencies.
- Health information technology resources, such as systems for electronically managing patient records and electronically sharing information with other organizations.

**SURVEY AND ENFORCEMENT**

Facilities unable to demonstrate measures to perform or regularly prepare a facility assessment are at risk of citation, F838, for non-compliance with the CMS Requirements of Participation. To cite deficient practice at F838, the surveyor's investigation will generally show that the facility failed to do any one of the following: (1) annually and as necessary conduct, document, review and update a facility-wide assessment; or (2) address or include in the facility assessment the minimum requirements.

**PRACTICAL TAKEAWAYS**

While waiting for additional CMS guidance on the facility assessment, facilities should immediately review their resident populations and resources.

This review will identify the areas the facility needs to address to ensure that the facility has appropriately assessed its resident population and its resources to competently care for its residents.

A link to the Final Regulations can be found [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](mailto:tselby@hallrender.com);
- **Brian Jent** at (317) 977-1402 or [bjent@hallrender.com](mailto:bjent@hallrender.com);
- **Sean Fahey** at (317) 977-1472 or [sfahey@hallrender.com](mailto:sfahey@hallrender.com); or
- Your regular Hall Render attorney.