

HHS Proposes First Comprehensive Rewrite of Nursing Home Regulations in 24 Years

The United States Department of Health and Human Services ("HHS") recently released the most comprehensive rewrite of the long-term care conditions of participation since 1991, affecting nearly 16,000 skilled nursing facilities and nursing facilities that participate in the Medicare and Medicaid programs around the country. Though the proposed rule in the [Federal Register](#) is subject to a 60-day notice and comment period, it provides valuable insight into how the final rule may look. HHS touts the proposed rule as one that will result in a reduction of unnecessary hospital readmissions and infections, increase the quality of care, and strengthen safety measures for residents.

Though much of the proposed rule outlines practices that have been in place at many facilities for years, total compliance costs in the first year are estimated at \$729,495,614, equivalent to \$46,491 for each facility. Average compliance costs in the second year are estimated to be slightly less, at \$40,685 per facility.

The proposed rule includes a host of substantive changes, including but not limited to the following:

1. **Resident Rights:** Restructured to modernize the language and address roommate choice;
2. **Facility Responsibilities:** Adds a new section to separate facility responsibilities from resident rights and to outline visitation requirements similar to that required of hospitals;
3. **Transitions of Care:** Details specific information that must be exchanged with the receiving provider or facility when a resident is transferred;
4. **Care Planning:** Requires facilities to develop a baseline comprehensive care plan within 48 hours of admission. This section will also implement sections of the Improving Medicare Post-Acute Care Transformation Act of 2014 regarding accounting for quality, resource use and other measures to inform and assist with the discharge planning process;
5. **Administration:**
 1. *Facility Assessment:* Requires facilities to conduct, document and

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regularly review and update a facility-wide assessment to determine what resources are necessary to care for residents;

2. **Binding Arbitration Agreements:** Adds specific requirements that must be incorporated into binding arbitration agreements;

6. **Quality Assurance and Performance Improvement ("QAPI"):** Requires facilities to develop, implement and maintain an effective, comprehensive, data-driven QAPI program that focuses on systems of care, outcomes of care and quality of life; and

7. **Compliance and Ethics:** Implements sections of the Patient Protection and Affordable Care Act of 2010 requiring that facility operating organizations have an effective compliance and ethics program in place.

Though the final rule will likely differ from the proposed rule in significant ways, it is critical that facilities begin to prepare for what is to come.

Reinhart's Long-Term Care Facilities, Assisted Living and Senior Housing practice group is available to assist you as you begin to navigate the complex changes to the nursing home regulatory scheme. In an effort to aid our clients, we will be publishing a series of client alerts in the coming weeks that will address a number of the pressing issues our clients may face.

Please feel free to contact [Rob Heath](#) or any other member of Reinhart's [Post-Acute Care and Long Term Services team](#), or your Reinhart attorney to discuss any questions or concerns related to HHS' proposed rule and how it might impact your organization.

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