

CMS Memorandum (S&C 17-27-NH) on Substandard Quality of Care and Clarification on Notice before Transfer or Discharge Requirements

CMS began issuing formal interpretations and clarifications on changes that are reflected in the *Requirements for Participation (RoP)*. Below is AHCA's summary of the CMS S&C 17-27-NH that provides in pertinent part:

- The new SQC definition incorporates some new requirements, such as parts of the behavioral health services requirements that go into effect in Phase 2 (November 28, 2017).
- At the start of Phase 2 on November 28, 2017, CMS will implement a new F-tag numbering system which will clarify the F-tags under which SQC findings will be cited from that point forward. Until then, findings of SQC will be cited under the current F-tag numbering system.
- The memo also clarifies that nursing centers must send a copy of the transfer or discharge notice for all nonresident initiated transfers to the Office of the State Long-Term Care Ombudsman.

S&C 17-27-NH: Implementation Issues, Long-Term Care Regulatory Changes: Substandard Quality of Care and Clarification of Notice before Transfer or Discharge Requirements

On May 12, 2017, the Survey and Certification Group (S&C) at the Centers for Medicare & Medicaid Services (CMS) issued a [memorandum](#), "Implementation Issues, Long-Term Care Regulatory Changes: Substandard Quality of Care (SQC) and Clarification of Notice before Transfer or Discharge Requirements." The memo addresses two topics:

- The new regulatory definition of substandard quality of care (SQC) and the F-tags and regulatory groups that are considered SQC in Phase 1 and Phase 2 of the implementation of the final rule on the Requirements of Participation (RoP).
- Clarification in advance of formal interpretive guidance regarding notice of transfer or discharge to the Office of the State Long-Term Care Ombudsman. AHCA and other stakeholders asked CMS for clarification on this issue after the final rule was released (outlined in further detail below).

Implementing New Definition of SQC

The memo highlights the new definition of SQC that was included in last year's final RoP rule. The definition, which is found in §488.301, became effective on November 28, 2016. According to CMS, the new definition of SQC does not include substantive changes to the types of deficient practices that would result in SQC, but rather updates the relevant regulatory citations based on the final rule.

However, it is important to note that the new SQC definition does incorporate some new requirements, such as parts of the behavioral health services requirements that go into effect in Phase 2 (November 28, 2017). This could result in additional opportunities for findings of SQC. AHCA is evaluating how best to monitor the impact of this expansion of potential SQC deficiencies.

The memo further notes that the new definition of SQC will be implemented based on the implementation phases of the requirements referenced in the definition. At the start of Phase 2 on November 28, 2017, CMS will implement a new F-tag numbering system which will clarify

the F-tags under which SQC findings will be cited from that point forward. Until then, findings of SQC will be cited under the current F-tag numbering system as outlined in the current version of Appendix PP of the [State Operations Manual](#).

Notice of Transfer or Discharge

The regulation at 42 CFR 483.15(c)(3)(i) requires, in part, that before a facility transfers or discharges a resident, the facility must "notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand..." The facility must also "...send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman."

The memo clarifies that nursing centers must send a copy of the transfer or discharge notice in the following instances:

- *When the facility decides to discharge a resident while the resident is still hospitalized.* In these instances, the notice to the Long Term Care (LTC) Ombudsman must occur at the same time the notice is provided to the resident and their representative.
- *For all other types of facility-initiated discharges.* In these instances, the notice to the LTC Ombudsman must be provided at the same time the notice is provided to the resident and resident representative - at least 30 days prior to discharge or as soon as possible, as specified in 42 CFR 483.15(c)(4).
- *When a resident is temporarily transferred on an emergency basis to an acute-care facility.* In these instances, the notice must be provided to the resident and resident representative as soon as practicable, according to 42 CFR 483.15(c)(4)(ii)(D). Copies of notices for emergency transfers must also still be sent to the LTC Ombudsman, but they may be sent when practicable, such as in a list of residents on a monthly basis.

For resident-initiated transfers or discharges, sending a copy of the notice to the LTC Ombudsman is not required. A resident-initiated transfer or discharge means the resident or, if appropriate, the resident representative has provided verbal or written notice of intent to leave the facility. The medical record must contain documentation or evidence of the resident's or resident representative's verbal or written notice of intent to leave the facility.

Additional information can be found on the CMS website [here](#). Any questions may be submitted to the NH Survey Development mailbox [here](#).

Please note: In the [proposed rule](#) on the Medicare Prospective Payment System for Fiscal Year 2018 which was released last month, CMS requested stakeholder feedback regarding areas of possible burden reduction in the final RoPs. Based on feedback provided by AHCA and other stakeholders, CMS indicated it was re-evaluating whether the requirement that facilities send discharge notices to the LTC Ombudsman was achieving the intended objective to reduce inappropriate involuntary discharges and was also seeking comment on whether the LTC Ombudsman could handle receiving this material and to what extent they would use it. AHCA is providing comments in response to this request to reiterate that notices should only be required for facility-initiated transfers or discharges and that notices should NOT be required for temporary transfers to acute care facilities or for resident-initiated transfers or discharges.

If you have additional feedback on this issue, please send your comments to [Sara Rudow](#).

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