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PADONA Convention
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Get Ready for Phase 1 of the New Requirements of Participation

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New Requirements of Participation (RoPs)

- Published October 4, 2016 (81 Fed. Reg. 68688)
- Available at https://www.federalregister.gov/documents/2016/10/04
- First comprehensive update since 1991
- CMS estimated cost per SNF
  - Year 1: ~ $62,900
  - Subsequent years: ~$55,000
    - 81 Fed. Reg. 68844

CMS: Themes Of The RoPs

- Person-centered care
- Quality
- Facility assessment, competency-based approach
- Comprehensive review & modernization
- Implementation of legislative requirements

Survey Implementation

- Phase 1: effective November 28, 2016
  - Same survey process
  - New RoPs merged into existing F-tags (March 8, 2017 https://gallery.mailchimp.com/6aa03d144064c1d5470548657/files/e335bdf1-5cae-90a-961c-3c9f83717bd8/SOM_Appendix_PP_3_8_17.pdf)
- Phase 2: effective November 28, 2017
  - New Appendix PP (State Operations Manual, SOM) with all new F-tags
  - New survey process combines “traditional” & “Quality Indicator Survey” (QIS)

Multi-Phase Implementation Of RoPs

- Phase 1: November 28, 2016
- Phase 2: 1 year following the *effective date* of the final rule (Nov. 28, 2017)
- Phase 3: 3 years following the *effective date* of the final rule (November 28, 2019)

Phase 1

Phase 1 ***(* this section is partially implemented in Phase 2 and/or 3)***

- Resident Rights and Facility Responsibilities*
- Freedom from Abuse Neglect and Exploitation*
- Admission, Transfer and Discharge*
- Resident Assessment
- Comprehensive, Person-Centered Care Planning*
- Quality of Life
- Quality of Care*
- Physician Services
- Nursing Services*
- Pharmacy Services*
- Laboratory, radiology and other diagnostic services
- Dental Services*
- Food and Nutrition*
- Specialized Rehabilitation
- Administration (Facility Assessment – Phase 2)*
- Quality Assurance and Performance Improvement* - QAA Committee
- Infection Control – Program*
- Physical Environment*

Phases 2 and 3

Phase	Primary Implementation
Phase 2	• Behavioral Health Services* • Quality Assurance and Performance Improvement* - QAPI Plan • Infection Control – Facility Assessment and Antibiotic Stewardship ** • Physical Environment- smoking policies *
Phase 3	• Quality Assurance and Performance Improvement* - Implementation of QAPI • Infection Control – Infection Control Preventionist * • Compliance and Ethics • Physical Environment- call lights at resident bedside * • Training *

** This section is partially implemented in other phases.*

New Definitions

- "abuse"
- "adverse event"
- "exploitation"
- "misappropriation of resident property"
- "mistreatment"
- "neglect"
- "person-centered care"
- "resident representative"
- "sexual abuse"

Phase 1: Highlights

- Resident rights/facility responsibilities combined and expanded
- Drug regimen review process more detailed
- Must have discharge planning process & plan for all residents
- Person-centered care plan
  - More extensive resident assessment process
  - Must include CNA and dietary worker
  - PASARR incorporated into assessment, care plan and discharge plan

Phase 1: Highlights

- New behavioral health services (§483.40)

- Pre-dispute Binding Arbitration Agreements prohibited *but* AHCA sued and this rule is currently enjoined

Phases 2 And 3: Highlights

- Quality assurance and performance improvement (QAPI)
- Added compliance and ethics section
- Greater monitoring and documentation related to appropriateness of meds
  - Psychotropic & antibiotic stewardship
- Requires Infection Control Program & Infection Preventionist

Phases 2 And 3: Highlights

- Added a staff competency requirement to determine nursing staffing levels
  - Based on a facility assessment, which includes but is not limited to the number of residents, resident acuity, range of diagnoses, and the content of individual care plans

- Require facility provide behavioral health care and services training (for patients with trauma)

§483.5 Definitions

- Person-centered care – focus on resident as locus of control and support resident in making own choices and having control over daily lives

- Resident representative – individual chosen by resident to act on behalf of resident; person authorized by State or Federal law
  - Review PA Act 169
  - Right to access medical, *social or other personal information* of the resident

§483.10(b)(1-4) Changes in Resident Representative

- Representative has the right to exercise the resident's rights to the extent those rights are properly delegated to them
- Resident retains those rights not delegated, including the right to revoke a delegation
- Must treat Representative decisions as decisions of the Resident BUT not beyond what is required by court or delegated by Resident
- Must report concerns that Representative not acting in best interests of Resident.

§483.10 Resident Rights

- Includes “facility responsibilities”
- Resident must receive information in language that he or she can understand about various topics, including medical condition
  - Consider also Section 1557 of Affordable Care Act (ACA): http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/
- Facility must have policies and procedures (P&Ps) re: visitation rights of resident, including any clinically necessary or reasonable restriction or limitation or safety restriction or limitation when consistent with the regulations

§483.10 Resident Rights

- Facility acts as fiduciary if resident deposits personal funds
- Reasonable access to electronic communication
- Advance directives §483.10(b)(8)
- Accommodate needs of LGBT residents and same sex spouses
- Facility must have a grievance policy and a Grievance Official
  - Must also have a grievance officer under Section 1557 of the ACA

Resident Grievance Rights

- Right to voice grievances without discrimination or reprisal and without fear of discrimination or reprisal
  - Includes care and treatment which has been furnished as well as that which has not been furnished
  - Behavior of staff and of other residents
  - Other concerns regarding their stay

Resident Grievance Rights — SNF Duties

- Make prompt efforts to resolve grievances
- Provide residents with information on how to file a grievance or complaint
- Establish a grievance policy to ensure the prompt resolution of all grievances
  - Must give copy of grievance policy to resident upon request

Grievance Policy — Address Resident Rights

- Notifying resident individually or through postings in prominent locations throughout facility of right to file grievances orally (meaning spoken) or in writing
- Right to file grievances anonymously
- Contact information of the grievance official with whom a grievance can be filed
  - Name, business address (mailing and email) and business phone number

Grievance Policy — Address Resident Rights

- Reasonable expected time frame for completing review of grievance
- Right to obtain a written decision regarding his or her grievance
- Contact information of independent entities with whom grievances may be filed

Grievance Policy — Grievance Official

- Identify a Grievance Official and responsibilities
  - Overseeing the grievance process
  - Receiving and tracking grievances through to their conclusion
  - Leading any necessary investigations
  - Maintaining confidentiality of all information associated with grievances
  - Issuing written grievance decisions to resident
  - Coordinating with state and federal agencies as necessary in light of specific allegations

Grievance Policy – Decisions

- All written grievance decisions must include:
  - Date the grievance was received
  - Summary statement of the grievance
  - Steps taken to investigate the grievance
  - Summary of pertinent findings or conclusions
  - Statement whether grievance was confirmed or not confirmed
  - Any corrective action taken or to be taken
  - Date the written decision was issued

Grievance Policy – Corrective Action

- Taking appropriate corrective action in accordance with State law if the alleged violation of the residents' rights is confirmed by the facility or if an outside entity having jurisdiction, such as the State Survey Agency, Quality Improvement Organization, or local law enforcement agency confirms a violation of any of these residents' rights within its area of responsibility

Grievance Policy – Log

- Must maintain evidence demonstrating the results of all grievances for a period of no less than 3 years from the issuance of the grievance decision
  - Consider whether to combine RoP Grievance Log with OCR Grievances

§483.12 Freedom From Abuse, Neglect, And Exploitation

- Review P&Ps for consistency with new definitions and requirements
- Prohibits hiring anyone with a disciplinary action in effect against professional license by a state licensure body as result of a finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of resident property
  - Impact of Pennsylvania's Protective Services Laws (OAPSA, APSA, CPSL)?

§483.12 (c)(1) Freedom From Abuse, Neglect, and Exploitation

Note change in reporting timing:

In response to allegations of abuse, neglect, exploitation, or mistreatment, the facility must ... Ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, are *reported immediately, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury*, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the administrator of the facility and to other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures.

§483.15 Admission, Transfer, And Discharge Rights

- Heightened emphasis on discharge planning—
  - Phase 2 implementation Transfer/Discharge Documentation
- Establish and implement (or review/revise) admission policy
- Requires orientation of resident for transfer or discharge to ensure safe and orderly transfer or discharge
- Review/revise/create written policy on permitting residents to return after hospitalization or therapeutic leave
  - Include specific provisions outlined in regulation

48-Hour Baseline Care Plan

- New requirement - Phase 2
- Initial set of instructions to facilitate smooth transition of care and to provide effective, person-centered care starting at admission

48-Hour Baseline Care Plan

- Minimum of 6 key elements:
  - Initial goals based on admission orders;
  - All physician orders, including medications and administration schedule;
  - Dietary orders;
  - Therapy services;
  - Social services; and
  - PASARR recommendations, if PASARR completed.
- Could be replaced by the comprehensive care plan if done within 48 hours of admission.

§483.21 Comprehensive Person - Centered Care Planning

- Specific information must be included in comprehensive care plan
- Plan must be developed within 7 days after completion of the comprehensive assessment
- Requires IDT preparing plan to include
  - Nurse aide with responsibility for the resident
  - Member of food and nutrition services staff
- If participation of resident and representative in development of plan not practicable, explanation must be in resident's medical record

§483.21 Comprehensive Person - Centered Care Planning: Discharge Planning

- Must focus on discharge goals and residents must be active partners in the planning and transition process
- Regular re-evaluation and modification of plan
- Specifies what must be included in the plan and considerations that must be taken in development of the plan

Discharge Planning Process #1

Required steps

- Create an IDT which includes the resident
- Evaluate the resident's discharge potential, goals, and needs
- Document results of discharge plan
- Create a discharge plan
- Update discharge plan
- Share discharge plan with the resident

Discharge Planning Process #1

- Prepare resident & their representative for discharge
- Notify Ombudsman of ***all*** discharges and transfers
- Document reason for discharge or transfer
- Provide required information to receiving provider
- Complete a discharge summary

Information Accompanying Resident at Discharge or Transfer

- Ensure specified information is copied and available to go with resident:
  - Contact information of practitioner responsible for care
  - Resident representative information
  - Advance Directive information
  - Special instructions or precautions

Information Accompanying Resident at Discharge or Transfer

- Ensure specified information is copied and available to go with resident: (con't.)
  - Most recent comprehensive care plan goals
  - Resident's discharge summary
  - Other documents as needed
  - Resident's consent to share information
- Develop checklist to ensure all required information is sent

Discharge Summary Template: Phase 1 Requirement

- Recapitulation of stay (diagnoses, pertinent lab tests and results, course of illness, treatments, therapy)
- Final summary of resident's status (specified items from comprehensive resident assessment, including needs, strengths, goals, preferences)
- Medication reconciliation
- Post-discharge plan of care (where individual will reside, arrangements for follow-up care, consent to share discharge summary)
- Other elements as determined by facility

§483.25 Quality of Care

"Quality of care is a fundamental principle that applies to all treatment and care provided to facility residents***. Based on the comprehensive assessment of a resident,*** the facility must ensure that residents receive treatment and care in accordance with professional standards of practice, the comprehensive person-centered care plan, and the resident's choices, including but not limited to the following":*

- Vision & Hearing;
- Skin Integrity;
- Mobility;
- Incontinence;
- Assisted Nutrition & Hydration;
- Respiratory Care;
- Prostheses;
- Pain Management;
- Dialysis;
- Trauma Informed Care;
- Bed Rails

* Emphasis supplied

§483.25 Quality of Care

- Includes care issues that were previously included at F-tag 309
- Entire RoP implemented in Phase 1 *except* trauma-centered care (Phase 3)
- Very specific requirements on addressing certain conditions
- "Based on the comprehensive assessment of a resident"

§483.30 Physician Services

- No requirement for credentialing
- No requirement for physician visit prior to transfer
- Allows delegation for writing dietary orders
- Allows delegation for writing therapy orders

- *Tip: review all physician agreements to require compliance with new pharmacy provisions, as well as Stark Law and Anti-Kickback Statute*

§483.35 Nursing Services

- Must have sufficient nursing staff with *appropriate competencies and skills sets* to assure resident safety and attain maintain highest practicable physical, mental, and psychosocial well-being of each resident
  - Determined by resident assessments
  - Residents' individual plans of care
  - Number & acuity & diagnoses of residents
- Other nursing personnel includes nurse aides

§483.40 Behavioral Health Services

- Based on comprehensive assessment, resident with mental disorder or psychosocial adjustment difficulty receives appropriate treatment and services to correct the problem or attain highest practicable mental and psychosocial well-being
  - Resident with dementia receives treatment & services

§483.40 Behavioral Health Services

- If assessment does not reveal mental or psychosocial adjustment difficulties, no pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors unless clinical condition demonstrates development of such a pattern was unavoidable
- Must provide medically-related social services for highest practicable well-being
- Sufficient, competent staff

§483.45 Pharmacy Services

- Psychotropic drug: any drug that affects brain activities associated with mental processes and behavior; includes but not limited to:
  - Anti-psychotic
  - Anti-depressant
  - Anti-anxiety
  - Hypnotic
- Drug regimen review & reporting
  - Pharmacist must report irregularities to attending physician, medical director and DON and reports must be acted upon

§483.50 Laboratory, Radiology, and Other Diagnostic Services

- Facility must promptly notify the ordering physician, PA, NP, or clinical nurse specialist of lab results that fall outside of clinical reference ranges in accordance with facility policies and procedures for notification of a practitioner or per the ordering physician's orders
- Physician extenders can order radiology and other diagnostic services and must be promptly notified of results falling outside of clinical reference ranges in accordance with facility policies and procedures

§483.55 Dental Services

- Note new requirements for replacement of lost dentures within 3 days
  - Phase 2 implementation

§483.60 Food & Nutrition Services

- Sufficient and competent staff
- New education requirements for dietitian and food service manager
- Must make reasonable efforts to address religious, cultural and ethnic needs
- Policy for use and storage of foods brought to residents by family and visitors

Resident / Facility Assessment

- §483.35 (Nursing Services) - The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at 483.70(e).

Resident / Facility Assessment

- §483.70(e) Facility assessment. The facility must conduct and document a facility wide assessment to determine what resources are necessary to care for its residents competently during both day to- day operations and emergencies. The facility must review and update that assessment, as necessary, and at least annually. The facility must also review and update this assessment whenever there is, or the facility plans for, any change that would require a substantial modification to any part of this assessment. The facility assessment must address or include: [resident population, facility resources, and a facility and community based risk assessment, utilizing an all hazards approach.

§483.70 Administration

- Facility assessment implemented in Phase 2 but should start reviewing now
- Requires full time social worker for >120 beds
- Incorporates recent regulations (facility closure, hospice, payroll based journal)

§483.75 Quality Assurance and Performance Improvement

- QA&A committee – all provisions except the inclusion of the infection prevention control officer in Phase 1
- State may not require disclosure of the records of the committee except related to requirements of the committee (e.g., who is on committee; that committee meets as required; etc.)
- Good faith attempts by the committee to identify and correct quality deficiencies will not be used as a basis for sanctions
- Most QAPI requirements in Phase 2

§483.80 Infection Control

- Infection prevention and control program
  - Written standards, policies, and procedures for the program including specified topics
  - Consider relation to current Infection Control Plan already required by Pennsylvania [community representative]
- Annual review of the infection prevention and control program and update as necessary
- Antibiotic stewardship—Phase 2
- Infection Control Preventionist- Phase 3
- Flu & pneumonia vaccines

§483.85 Compliance & Ethics Program

- Written standards for compliance and clear reporting path for suspected violations of compliance and ethics
- Designate a compliance and ethics contact
- Identify a high level person to oversee the program
- Sufficient resources and authority to oversee compliance Regulations have conflicting implementation dates
- CMS is aware and will be issuing clarification
- **Not** a Phase 1 issue

§483.85 Compliance & Ethics Program

- Effective communication of compliance standards to all staff
- Audit and monitoring system
- Publicize a reporting system
- Annual review of program and its efficacy
- Consistent enforcement through appropriate disciplinary action
- Mandatory annual training on compliance & ethics
- Designate Compliance liaisons in each facility (>5)

§483.90 Physical Environment

- After Nov. 28, 2016, for any facility newly certified or approved for construction/major renovation
  - Each resident room must have its own bathroom with at least a commode and sink
  - Two residents to room
- Smoking policies—Phase 2
- Resident call next to bed—Phase 3

§483.95 Training Requirements

- Training program for all new and existing staff, individuals providing services under a contractual arrangement and volunteers, consistent with their expected role
  - Abuse, neglect and exploitation
- In-service training for nurse aides
  - Must include dementia management training and resident abuse prevention training
  - If providing care for individuals with cognitive impairment, training on care of the cognitively impaired

Increased Enforcement a Reality

- Marked increase in citations and sanctions
- ***Marked increase in CMS & DOH civil money penalties***

Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

- Intended to improve "effectiveness" of CMPs and maintain "deterrent effect" of CMPs
- Requires annual "adjustment" of CMPs using October Consumer Price Index for all Urban Consumers (CPI-U)
- First increase was in 2016; most recent increase effective February 3, 2017 (82 Fed. Reg. 9174, 2/3/2017)

Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

- Secretary of covered agency may provide lesser CMP by less than the new formula through a rulemaking only if:
  - Secretary finds that increasing penalty by required amount will have a negative economic impact or that the social costs outweigh the benefits and
  - Director of the Office of Management and Budget (OMB) concurs with this analysis

Impact of Inflation Adjustment Act

- CMS CMPs for surveys have increased astronomically

	Pre-August 2016	August 1, 2016	February 3, 2017
Cat.2 Per Day	$50 -$3,000	$103 - $6,188	**$105 – $6,289**
Cat. 2 Per Instance	$1,000 - $10,000	$2,063 – $20,628	**$2,097 - $20,965**
Cat. 3 Per Day	$3,050 - $10,000	$6,291 - $20,628	**$6,394 - $20,955**
Cat. 3 Per Instance	$1,000 - $10,000	$2,063 – $20,628	**$2,097 - $20,965**

Federal Scope and Severity Grid

	Isolated	Pattern	Widespread
Immediate Jeopardy To Resident Health Or Safety	J PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2	K PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2	L PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2
Actual Harm That Is Not Immediate Jeopardy	G PoC Required: Cat. 2 Optional: Cat. 1	H PoC Required: Cat. 2 Optional: Cat. 1	I PoC Required: Cat. 2 Optional: Cat. 1 Optional: Temporary Mgmt
No Actual Harm With Potential For More Than Minimal Harm That Is Not Immediate Jeopardy	D PoC Required: Cat. 1 Optional: Cat. 2	E PoC Required: Cat. 1 Optional: Cat. 2	F PoC Required: Cat. 2 Optional: Cat. 1
No Actual Harm With Potential For Minimal Harm	A No PoC No remedies Commitment to Correct Not on CMS-2567	B PoC No remedies	C PoC No remedies

Substandard Quality of Care (F221-226; F240-258; F309-334)

Out of Compliance

Substantial Compliance

Federal Remedies Categories

Category 1 (Cat.1)	Category 2 (Cat.2)	Category 3 (Cat.3)
Directed Plan of Correction; State Monitor; and/or Directed In-Service Training *Note: If CMP >$10,4830 or SQC, automatic loss of Nurse Aide Training Competency Evaluation Program (NATCEP)*	Denial of Payment for New Admissions; Denial of Payment for All Individuals imposed by CMS; Termination; Temp. Mgmt and/or Civil Money Penalties: *Old:* $50 - $3,000/day $1,000 - $10,000/ instance *New: ** $105 - $6,289/day $2,097 - $20,628/ instance	Temp. Mgmt.; Termination; Civil money penalties *Old:* 3,050-$10,000/day $1,000 - $10,000/ instance *New:** $6,394 - $20,965/day $2,097 - $20,965/ instance

* Updated effective Feb. 3, 2017

Areas of Potential Substandard Quality Of Care

- Major Expansion
- Resident Rights §483.10
  - Resident Rights
  - Exercise of Rights
  - Respect and Dignity
  - Self-Determination
  - Safe Environment
- F Tags
  - F221 – 226
  - F240 – 258
  - F309 - 334

Pennsylvania Nursing Care Facility Sanctions

	P1 & CP	P2 & CP	P1 Only	P2 Only	P3 Only	P4 Only	BAN	CP Only	Amount Imposed
2014	1	2	4	2				8	**$62,000.00**
2015	6	2	7	2	1	1	1	24	**$176,170.00**
2016	4		31	4				51	**$401,600.00**
Jan. 2017	1	3	1					29	**$284,250.00**

DOH CP "Guideline"

pennsylvania
DEPARTMENT OF HEALTH

Description of the Civil Penalty Assessment Guideline

Please be advised that the Secretary of Health has provided guidance to the Pennsylvania Department of Health (DOH), Bureau of Facility Licensure, Division of Nursing Care Facilities (Division), regarding how to assess civil penalties (CPs) against long term care facilities pursuant to the Health Care Facilities Act (HCFA).

This guidance requires the Division, when issuing CPs, to take into consideration several factors: (1) the statutory provisions authorizing CPs under the HCFA; (2) recommendations contained in the Pennsylvania Auditor General's July 2016 Performance Audit of DOH's regulatory oversight of long-term care facilities; and (3) DOH's interest in effective regulation to promote the highest possible quality of care and services for residents in the Commonwealth's long term care facilities.

Significantly, any facility with a Division survey exit date on or after January 1, 2017, may be subjected – when warranted – to CPs calculated on a per violation per day basis pursuant to 35 P.S. § 448.817. Additionally, when determining whether CPs are warranted, the Department will give specific consideration, among other things, to whether a facility's violations resulted in harm or death to a resident. The Department may also put out a public notice of any Orders, once they become final, where a facility was issued a provisional license or civil penalty pursuant to the HCFA.

The Secretary's guidance preserves the Department's discretion to take into consideration other mitigating or aggravating circumstances. If mitigating or aggravating circumstances warrant deviating from the Secretary's guidance, the Division will be able to propose an alternative CP with a special committee formed by the Secretary. The purpose of this committee is to consider mitigating or aggravating circumstances and what impact they had on the facility and that led to the violations.

The Department recognizes that these changes may result in higher CPs to facilities. The purpose of this is to impress upon long-term care facilities the need to provide quality care to the residents of their facilities.

December 19, 2016

Immediate Jeopardy Citations

IJs	
2012	1
2013	2
2014	11
2015	11
2016	39
Jan-Feb. 2017	8

State IDR v. IIDR

	Tags Disputed	Deleted	Revised	Upheld	Withdrawn
2013 IDR	69	19% (13)	7% (5)	72% (50)	0
2013 IIDR	14	0	7% (1)	86% (12)	7% (1)
2014 IDR	60	15% (9)	20% (12)	63% (38)	2% (1)
2014 IIDR	24	25% (6)	0	75% (18)	0
2015 IDR	131	25% (33)	11% (15)	63% (82)	1% (1)
2015 IIDR	30	20% (6)	10% (3)	70% (21)	0
Jan-Oct. 2016 IDR	172	27% (47)	11% (18)	60% (104)	2% (3)
Jan-Oct. 2016 IIDR	42	17% (7)	7% (3)	69% (29)	7% (3)

New CMS CMP Analytic Tool

- New approach to federal per day (PD) Civil Money Penalties (CMPs)

- Begin CMP on 1st day noncompliance is documented, *even if that date precedes the first day of the current survey*
  - Unless facility can demonstrate that it corrected the noncompliance prior to the current survey (past noncompliance)

CMS Survey & Certification Memo, "Civil Money Penalty (CMP) Analytic Tool and Submission of CMP Tool Cases, S&C: 15-16-NH (Dec. 19, 2014)

Starting the PD CMP

- Calculate the start date for the proposed CMP with the “first supportable date of noncompliance, as determined by the evidence documented by surveyors in the statement of deficiencies (CMS form 2567)”

- Surveyors instructed to “determine the earliest date for which supportable evidence shows that the non-compliant practice began”

Ambiguity About Start of Deficient Practice

- CMS analysts will contact state agency if start date is ambiguous or not clearly identified and supportable, to see if start date can be determined

- CMS analysts required to document their discussions and conclusion with the state agency

If Start Date Not Determinable

- If start date cannot be determined, then PD CMP would start on 1st day during the survey on which the survey team identified the noncompliant practice

- If the team cannot document the first day of noncompliance, then the CMP should start on the day the noncompliance was observed and documented at the time of the current survey

CMS: Past Noncompliance

- Reduce a CMP by 50% if:
  - (i) self-reported noncompliance to CMS or State before it was otherwise identified by or reported to CMS or State; and
  - (ii) correction of the self-reported noncompliance occurred within 15 days of the incident. 42 C.F.R. § 488.438

Get Credit for Correcting Past Noncompliance

- Treat any incident that results in reporting to DOH as you would if it was on your 2567
- Develop corrective action and document monitoring and auditing for ongoing compliance
- Give evidence to surveyors at the time of the survey that a monitoring plan was implemented and maintained to assure continued compliance.

Survey Strategy

- Reevaluate how you approach survey
  - Surveyors may reject any documents not provided at time of survey
  - Where are your critical documents
  - What do your medical records look like
  - How up to date is your filing

- *Review 2567 carefully and prepare IDRs for any factual inaccuracies*

Questions

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