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GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

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GNYHCFA
Autumn Seminar

November 14, 2019

Presented by:

Lourdes Martinez, Esq.
lmartinez@garfunkelwild.com

Eve Green Koopersmith, Esq.
ekoopersmith@garfunkelwild.com

Great Neck, NY (516) 393-2200 | Hackensack, NJ (201) 883-1030 | Stamford, CT (203) 316-0483 | Albany, NY (518) 242-7582

AGENDA

- Updated DOJ Compliance Guidelines
  - What prosecutors look for in an “effective” compliance Program
- New State Resident Discharge Requirements
  - Actions Nursing Homes Need to Take
- Federal Requirements for LTC Facilities – Phase 3
  - Proposed Changes to the Phase 3 Requirements
  - Items Facilities must implement by November 28th.

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U.S. Department of Justice Updated Compliance Guidelines

Background

- U.S. Attorneys look to specific factors laid out in the DOJ's "Principles of Federal Prosecution of Business Organizations" when deciding to bring criminal charges and negotiate pleas/settlements.
  - **One factor is the adequacy and effectiveness of the corporation's compliance program.**
- The U.S. Sentencing Guidelines state that when calculating an appropriate criminal fine, consideration must be given to:
  - **Whether a corporation has an effective compliance program in place.**

Background

- In February 2017, the Department of Justice issued "Evaluation of Corporate Compliance Programs"
  - Outlines key questions that prosecutors should ask in assessing a compliance program.
- In April 2019, DOJ significantly rewrote these guidelines.
  - Added additional factors and a framework for assessment.

DOJ Guidelines

- Prosecutors must examine three fundamental questions:
  - Is the corporation's compliance program well designed?
  - Is the program being applied earnestly and in good faith?
    - **In other words, is the program being implemented effectively?**
  - Does the corporation's compliance program work in practice?

The Guidelines suggest corporations should adopt a "risk-based" approach in implementing and evaluating the effectiveness of a compliance program.

Is the Compliance Program Well Designed?

Risk Assessment

- To what degree has the corporation devoted appropriate scrutiny and resources to its spectrum of risks?
  - Does the company devote a dis-proportionate amount of time to policing low-risk areas instead of high-risk areas?
- Is risk assessment criteria periodically updated?
  - Have there been any updates to P&Ps in light of lessons learned? Do these updates account for risks discovered through misconduct?

Policies and Procedures

- What efforts has the corporation made to monitor and implement P&Ps that reflect/deal with the spectrum of risks it faces (including changes to the legal/regulatory landscape)?
- Who is responsible for integrating P&Ps?
  - Have they been rolled out in a way that ensures employees' understanding? What specific ways are P&Ps reinforced through the corporation's internal control systems?

Is the Compliance Program Well Designed?

Training and Communications

- Have supervisory employees received different or supplementary training?
- Is the training provided online or in-person (or both), and what is the corporation's rationale for its choice?
- Has the training addressed lessons learned from prior compliance incidents?
- Have employees been tested on what they have learned?
  - How has the corporation addressed employees who fail all or a portion of the testing?

Confidential Reporting Structure/ Investigations

- How is the reporting mechanism publicized to the corporation's employees?
  - Has it been used?
- How does the corporation determine which complaints or red flags merit further investigation?
- How does the corporation determine who should conduct an investigation? Who makes that determination?
- Are the reporting and investigating mechanisms sufficiently funded?

Is the Corporation's Compliance Program Being Implemented Effectively?

- Prosecutors are instructed to examine whether:
  - the compliance program is a "paper program" or is one that is "implemented, reviewed, and revised, as appropriate, in an effective manner;"
  - the corporation has provided for a staff sufficient to audit, document, analyze, and utilize the results of the corporation's compliance efforts;
  - the corporation's employees are adequately informed about the compliance program and are convinced of the corporation's commitment to it.

Is the Corporation's Compliance Program Being Implemented Effectively?

Commitment by Senior and Middle Management

- Have managers tolerated greater compliance risks in pursuit of new business or greater revenues?
- Have managers encouraged employees to act unethically to achieve a business objective, or impeded compliance personnel from effectively implementing their duties?
- What actions have senior leaders and middle-management taken to demonstrate their commitment to compliance personnel, including their remediation efforts?
  - Have they persisted in that commitment in the face of competing interests or business objectives?

Is the Corporation's Compliance Program Being Implemented Effectively?

Autonomy and Resources

- Are compliance personnel dedicated to compliance responsibilities, or do they have other, non-compliance responsibilities within the corporation?
  - Why has the corporation chosen the compliance structure it has in place?
- How has the corporation responded to specific instances where compliance raised concerns?
  - Have there been transactions or deals that were stopped, modified, or further scrutinized as a result of compliance concern?
- Who reviews the performance of the compliance function and what is the review process?
- How does the company ensure the independence of the compliance and control personnel?

Is the Corporation's Compliance Program Being Implemented Effectively?

Incentives and Disciplinary Measures

- Is the same process followed for each instance of misconduct, and if not, why?
  - Are the actual reasons for discipline communicated to employees? If not, why not?
- Are there similar instances of misconduct that were treated disparately, and if so, why not?
- Has the company considered the implications of its incentives and rewards on compliance?
  - How does the company incentivize compliance and ethical behavior? Have there been specific examples of actions taken (*e.g.*, promotions or awards denied) as a result of compliance and ethics considerations?
- Who determines the compensation, including bonuses, as well as discipline and promotion of compliance personnel?

Does the Corporation's Compliance Program Work in Practice?

Continuous Improvement, Periodic Testing, and Review

- What is the process for determining where and how frequently internal audit will undertake an audit, and what is the rationale behind that process?
- Has the corporation undertaken a gap analysis to determine if particular areas of risk are not sufficiently addressed in its policies, controls, or training?
- How often and how does the corporation measure its culture of compliance?
  - Does the company seek input from all levels of employees to determine whether they perceive senior and middle management's commitment to compliance? What steps has the corporation taken in response to its measurement of the compliance culture?

Does the Corporation's Compliance Program Work in Practice?

Investigation of Misconduct

– Does a well-functioning and appropriately funded mechanism exist for the timely and thorough investigation of any allegations or suspicions of misconduct by the corporation, its employees or agents?

Analysis and Remediation of Any Underlying Misconduct

– What controls failed?
  - If P&Ps should have prohibited the conduct, were they effectively implemented?
  - Have functions that had ownership of these P&Ps been held accountable?

– Have disciplinary actions for failures in supervision been considered by the corporation?

New NYS Resident Discharge Requirements

Residents' Rights

- Effective October 9, 2019, DOH updated the Nursing Home "Residents' Rights" regulation (10 N.Y.C.R.R. §415.3) to include a new section on the **Right to Information on Home and Community Based Services.**
- The goal:
  - ***Ensure that all residents are afforded the right to exercise their right to live in the most integrated setting.***
    - Furthers the State's compliance with the U.S. Supreme Court's decision in Olmstead v. L.C., 527 U.S. 581 (1999).

Facility Requirements

- Upon admission:
  - Advise all residents of their right to live in the most integrated and least restrictive setting, with considerations for the resident's medical, physical, and psychosocial needs;
  - Provide all residents with information on home and community-based services and community transition programs;

Facility Requirements

- Whenever the resident requests information about returning to the community, or whenever the resident requests to talk to someone about returning to the community during any state or federally mandated assessment:
  - The facility must refer such residents to the "Local Contact Agency" or a community-based provider of the resident or designated representative's choosing.
    - LCAs are designated by DOH to provide referred nursing home residents with information and counseling on available home/community-based services.
      - Also assist residents directly or refer to organizations that can assist with transition services.

NYAIL

- If it is determined feasible, and the nursing home resident expressed interest in returning to the community, the nursing home makes a referral to the New York Association for Independent Living (NYAIL) Transition Center.
  - A local NYAIL Transition Specialist (TS) will meet with the individual in their nursing home to provide them with objective information about home and community based services. If appropriate for the program, the TS will work with the person to help them transition back to the community.

NYAIL Referral Form

- Nursing should use the referral form available at: https://ilny.us/phocadownload/48%20Open%20Doors%20referral%20form%202-9-19.pdf.
  - The form can be emailed or faxed to the Regional Lead Independent Living Center.
  - Referrals may also be sent to NYAIL via email to **secq@ilny.org** or via fax to 518-465-4625.

NEW YORK ASSOCIATION ON INDEPENDENT LIVING

155 WASHINGTON AVE | SUITE 208
ALBANY, NY 12210
518.465.4650 PHONE | 518.465.4625 FAX
INFO@ILNY.ORG | WWW.ILNY.ORG

OPEN DOORS TRANSITION CENTER REFERRAL FORM

☐ Section Q Referral ☐ PASRR Referral ☐ Other Referral

Date: _____

Resident Name: _____

Medicaid # (if available): _____

Resident Phone or best method of contact: _____

Family/Advocate name and contact information: _____
(please indicate if guardian) _____

Facility Contact Information: _____
(name/position)

_____
(Facility name)

_____
(Street, City, State, Zip)

_____
(phone/email)

Date of Birth: _____ County: _____

Room Number: _____

Primary Language: _____

Comments: _____

_____

Please attach a **FACE SHEET** and any other relevant information.
For list of Regional emails and fax numbers to send referrals to go to www.ilny.org
Or send to: Open Doors Transition Center
Fax: 518-465-4625
Email: seeq@ilny.org
Phone: 518-465-4650
If you would confirmation of receipt of a referral, please email seeq@ilny.org

Local Contact Agencies

Regions	Regional Lead Contact Information	Auxiliary Independent Living Centers
Albany North Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Saratoga, Warren, Washington	Dr. James Swanson Director of Advocacy and Transitions Southern Adirondack Independent Living Center (SAIL) 71 Glenwood Ave Queensbury, NY 12804 Email: JamesS@sailhelps.org (518) 792-3537, ext. 1135 Kathryn Been Senior Open Doors/MFP Transition Specialist (518) 792-3537, ext. 1322 (518) 333-2218 Email: KatyB@sailhelps.org Fax: 518-792-0979	North Country Center for Independence, Plattsburgh Lynden Davies 518-563-9058
Albany South Albany, Columbia, Greene, Rensselaer, Schenectady, Schoharie	Debbie Abreu Independent Living Center of the Hudson Valley (ILCHV) 15-17 Third Street, Troy, NY 12180 Email: dabreu@ilchv.org Tel: 518-274-0701 x109 Fax: 518-274-7944	Capital District Center for Independence, Albany Stacey Porter 518-459-6422
Buffalo Cattaraugus, Chautauqua, Erie, Niagara, Orleans, Wyoming	Gerilyn Capps-Anderson Western New York Independent Living (WNYIL) 3108 Main Street Buffalo, NY 14214 Email: gcapps@wnyil.org Tel: (716) 284-4131, ext. 203 Fax: 716-284-3230	Southwestern Independent Living Center, Jamestown David Marg 716-661-3010 Batavia WNYIL 585-815-8501 X410
Long Island Nassau, Suffolk	Michelle Darling-Downs /Eileen Thomas Suffolk Independent Living Organization (SILO) 755 Waverly Road Holtsville, NY 11742 Email: Mdarling-downs@siloinc.org ethomas@siloinc.org Tel: (631) 880-7929 x105 Fax: (631) 946-6377	

Lower Hudson Valley Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	Tracy Marcus Putnam Independent Living Services (PILS) *A Satellite Office of Westchester Independent Living Center, Inc.* 1441 Route 22; Suite 240 Brewster NY 10509 Email: tmarcus@putnamils.org Tel: 845-228-7457 Ext. 1129 Fax: 845-228-7460	Resource Center for Accessible Living, Kingston Chris Al-Nazer 845-331-0541 Rockland Independent Living Center, New City – LaTerra McGee 845-624-1366 Taconic Resources for Independence, Poughkeepsie Kathy Sheehan/Vanessa Dubetsky 845-452-3913 Westchester Disabled on the Move, Yonkers Emmett Zuger 914-968-4717
New York City Bronx, Kings, New York, Queens, Richmond	Dickey Dolma Lama Center for Independence of the Disabled in New York (CIDNY) 80-02 Kew Gardens Rd Suite 400 Kew Gardens, NY 11415 Email: dlama@cidny.org Tel: 646-368-8034 Fax: 347-561-4883	Brooklyn Center for Independence of the Disabled, Brooklyn Yvette Wilson 718-998-3000 Bronx Independent Living Services, Bronx Natasha Davis 718-515-2800 Staten Island Center for Independent Living Javier Reveron 718-720-9016
Rochester Genesee, Livingston Monroe, Ontario, Seneca, Wayne, Yates	Susan Stahl Center for Disability Rights (CDR) 497 State Street Rochester, NY 14608 Email: sstahl@cdrnys.org Tel: 585-546-7510 Fax: 585-546-7542	
Southern Tier Allegany, Broome, Cayuga, Chemung, Chenango Cortland, Delaware, Otsego, Schuyler, Steuben, Tioga, Tompkins	Krystal Pierre- Millien Southern Tier Independence Center (STIC) 135 East Frederick St. Binghamton, NY 13904 Email: krystalp@stic-cil.org Tel: 607-724-2111 Fax: 607-772-3606	AIM Independent Living Center, Corning 607-962-8225 Access to Independence, Cortland Anne Marie Piche 607-753-7363 Catskill Center for Independence, Oneonta Heather Merrill 607-432-8000
Syracuse Madison, Onondaga Oswego, Herkimer, Lewis, Oneida, St. Lawrence, Jefferson	Juanita Clark-Abolafia ARISE Independent Living Center 635 James Street Syracuse, NY 13203 Email: jclark@ariseinc.org Tel: 315-671-2948 Fax: 315-671-2977	Massena Independent Living Center, Massena Tina Laflesh 315-764-9442 Resource Center for Independent Living, Utica Maxine Nasby 315-624-2523

Facility Requirements

- Other General Requirements
  - Each facility must:
    - post contact information for the Local Contact Agency in a public area, at wheelchair height;
    - have staff available to discuss options for discharge planning, with consideration for the resident's medical, physical, and psychosocial needs; and
    - ensure that all discharge activities align with established "transfer and discharge rights" as laid out in 10 N.Y.C.R.R. 415.3(i).

Additional Discharge Requirements

- State regulations require that each facility must:
  - Provide sufficient preparation and orientation to residents to ensure safe and orderly discharge;
  - Develop a discharge plan which addresses the medical needs of the resident and how these needs will be met;
  - Provide a written discharge summary; and
  - Allow the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

MDS Confusion

- The purpose of Section Q of the MDS is to ensure that all individuals:
  - have the opportunity to learn about home and community based services and
  - have an opportunity to receive long term care in the least restrictive setting possible.
- According to the Federal DHHS Office of Civil Rights(OCR), Questions Q0400, Q0500 and Q0600 have been "misunderstood" by many facilities.

Q0400

Discharge Plan
Is active discharge planning already occurring for the resident to return to the community?

- OCR has found many facilities think they do not have to ask this question if the resident has a "discharge plan."
- "**Active** discharge plan" means a plan that is being currently implemented.

Q0400 - OCR recommendations:

- Answer MDS Question Q0400 “yes” only for permitted reasons, such as:
  - The resident is currently being assessed for transition by the Local Contact Agency;
  - The resident has a Transition Plan in place, which has all of the required elements and has been incorporated into the resident’s Discharge Plan; or
  - The resident has an expected discharge date of three (3) months or less, has a discharge plan in place with all the required elements, and the discharge plan could not be improved upon with a referral to the Local Contact Agency.

Q0400 - OCR recommendations:

- Answer MDS question Q0400 “no” for all residents of the facility *unless* a referral to the Local Contact Agency occurred and the Local Contact Agency has met with the resident.
- If the answer to Q0400 is “no” (there is not an **active** discharge plan), proceed to Q0500.

Q0500 - OCR recommendations:

Return to Community
Do you want to talk to someone about the possibility of leaving this facility and returning to live and receive services in the community?

- According to OCR, most facilities never ask this question because all residents have discharge plans in place.
- Again, unless the resident has an **active** discharge plan in place, the resident must be asked this question.
- If the response is "yes," must refer the Resident to the LCA.

➢ Convey that this question is intended to provide the **opportunity** for the resident to obtain information. Residents should be encouraged to learn about the **possibilities** of different settings for receiving care by talking to the Local Contact Agency.

Q0600 - OCR recommendations:

Referral
Has a referral been made to the Local Contact Agency?

- Facilities must recognize that residents can make a free choice about where to receive services and cannot be pressured to remain in the facility.
  - Once a resident expresses interest in learning about living outside the facility (by answering "yes" to Q0500 or telling direct care staff), a referral to the LCA must be made in a "reasonable" amount of time.
  - The referral should be documented in the Resident's discharge plan.

The RAI Manual recommends ten business days as a **reasonable** amount of time for this referral.

Q0600 - OCR recommendations:

- Facilities must not deny residents a referral to the Local Contact agency for inappropriate reasons.
- Inappropriate reasons include, but are not limited to:
  - The facility inserting its judgment and overriding the resident's expressed interest based on factors such as a belief that:
    - the resident's disability is too severe to transition;
    - discharge is not possible because the resident has no home or support in the community, or a previous transition was not successful; and/or
  - The family or caregiver does not want the resident to move.

General OCR recommendations:

- Facilities should ensure that:
  - They know and have a working relationship with their Local Contact Agency.
    - Assign a facility representative as a liaison to the LCA and maintain regular communication.
    - Incorporate the LCA's transition plan for the resident into the resident's facility discharge plan and active care plan.
  - Policies and procedures reflect MDS Section Q information. Update/revise or implement new P&Ps for:
    - Discharge planning
    - MDS administration
    - Local Contact Agency referral process

General OCR recommendations:

- Facilities should ensure that:
  - Staff (including direct care staff, care teams, senior management and other workforce members) are trained on Section Q and:
    - the LCAs which serve the facility's geographic areas;
    - the services the LCAs provide and the role they play in assisting individuals interested in living in a community setting;
    - when and how to contact the LCA;
    - how to work collaboratively with the LCA for the benefit of residents of the facility; and
    - home and community-based services provided by state agencies.

General OCR recommendations:

- OCR also suggests facilities invite the Local Contact Agency to provide seminars/presentations to residents and staff on a regular basis (*e.g.*, every six months) regarding:
  - the services it provides;
  - community-based settings in which residents can choose to receive services; and
  - the residents' opportunity to seek a referral regarding potential transition to the community.

Federal Requirements for LTCFs – Phase 3

July 2019 Proposed Rule

- CMS proposed revisions to several of the requirements for long term care facilities and to also delay implementation of some Phase 3 requirements until one year after it adopts a final rule.
  - Quality assurance and performance improvement
  - Compliance and ethics program
- Keep in mind that until CMS finalizes these proposed revisions, the requirements are in effect as currently written.

Compliance and Ethics Program

- Phase 3 requires the "operating organization" of each LTC facility to have a Compliance and Ethics Program by November 28, 2019.
  - "Operating organization" means the individual(s) or entity that operates a LTC facility.
    - Includes the owners.

CMS' proposed rule would delay Compliance and Ethics Program implementation for one year.

New York Requirements

- NY has long mandated that nursing homes – not the operators – adopt and implement effective compliance programs pursuant to Social Services Law 363-d and related regulations (18 N.Y.C.R.R. **Part 521**).
  - Must include 8 specified elements and be applicable to billings and payments; medical necessity and quality of care; governance; mandatory reporting; credentialing; and other risk areas that are or should with due diligence be identified by the provider.

Definition of "Compliance and Ethics Program"

- A program of the LTC facility's operating organization that—
  - has been reasonably designed, implemented, and enforced so that it is likely to be effective in:
    - preventing and detecting criminal, civil, and administrative violations and
    - In promoting quality of care; and
  - meets specific regulatory requirements.

Specific Compliance Program Requirements

Text in **red** = language that CMS has proposed to **delete**

1. Establish written compliance and ethics standards, policies, and procedures, including, but not limited to those which designate:
   - An appropriate "contact" to which individuals may report suspected violations;
   - A method of reporting anonymously without fear of retribution;
   - Disciplinary standards/consequences for committing violations. Applicable to the operating organization's:
     - entire staff;
     - individuals providing services under a contractual arrangement; and
     - volunteers, consistent with the volunteers' expected roles.

Specific Compliance Program Requirements

Text in **red** = language that CMS has proposed to **delete**

2. Assign specific individuals within the "high-level personnel" of the operating organization with –
   - Overall responsibility to oversee the program's standards, policies, and procedures.
   - Such individual may be, but is not limited to:
     - the chief executive officer (CEO),
     - members of the board of directors, or
     - directors of major divisions in the operating organization; or an individual with substantial ownership interest in the operating organization.

Specific Compliance Program Requirements

3. Provide sufficient resources and authority to the assigned individuals to reasonably assure compliance.
   - CMS: operating organizations should use the facility assessment to determine the resources they need to devote to the compliance and ethics program to reasonably ensure compliance with all requirements.
   - The resources devoted should include both human and financial resources.
     - ***Recommendation:*** Have a budget for compliance.

Specific Compliance Program Requirements

4. Use due care not to delegate substantial discretionary authority to individuals who the operating organization knew, or should have known through the exercise of due diligence, had a propensity to engage in criminal, civil, and administrative violations under the Social Security Act.

Specific Compliance Program Requirements

5. Take steps to effectively communicate the standards, policies, and procedures to the operating organization's entire staff; individuals providing services under a contractual arrangement; and volunteers, consistent with the volunteers' expected roles. Includes, but is not limited to:
   - mandatory participation in training or orientation programs; or
   - disseminating information that explains in a practical manner what is required under the program.

Specific Compliance Program Requirements

Text in **red** = language that CMS has proposed to **delete**

6. Take reasonable steps to achieve compliance with the program's standards, policies, and procedures. Such steps to include, but are not limited to:
   - monitoring and auditing systems reasonably designed to detect criminal, civil, and administrative violations;
   - having in place and publicizing a reporting system whereby individuals could report violations anonymously without fear of retribution; and
   - having a process for ensuring the integrity of any reported data.

Specific Compliance Program Requirements

7. Consistent enforcement of the operating organization's standards, policies, and procedures through appropriate disciplinary mechanisms, including, as appropriate:
   - discipline of individuals responsible for the failure to detect and report a violation to the compliance and ethics program's designated contact.

Specific Compliance Program Requirements

8. After a violation is detected, the operating organization must ensure that all reasonable steps identified in its program are taken to:
   - respond appropriately to the violation, and
   - prevent further similar violations,
     - including any necessary modification to the program to prevent and detect criminal, civil, and administrative violations.

Text in **black** = language that CMS has proposed to **add**

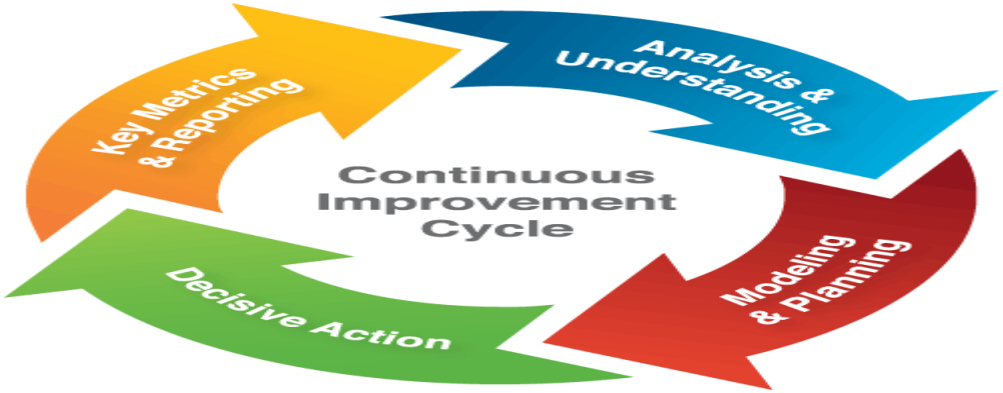
Specific Compliance Program Requirements

Text in **red** = language that CMS has proposed to **delete**

9. The operating organization for each facility must review its compliance and ethics program annually periodically and revise its program to identify necessary as needed to reflect changes in:
   - all applicable laws or regulations and
   - within the operating organization and its facilities
   - to improve its performance in deterring, reducing, and detecting violations and in promoting quality of care.
10. The facility has an alternate method of reporting suspected violations anonymously.

Additional Requirements

- CMS noted in commentary accompanying the adoption of the regulations that LTC facilities should be integrating the information and data they collect or that arises out of the compliance and ethics programs into their QAPI programs.



Text in **black** = language that CMS has proposed to **add**

Additional Requirements

Text in **red** = language that CMS has proposed to **delete**

- Applicable to operating organizations with five or more facilities and facilities with corporate level management of multi-unit nursing home chains – must also:
  - Have a mandatory annual training program on the operating organization's compliance and ethics program;
  - Have a more formal program that includes established written policies defining the standards and procedures to be followed by its employees;

Text in **black** = language that CMS has proposed to **add**

Additional Requirements (continued)

Text in **red** = language that CMS has proposed to **delete**

- a designated compliance officer for whom the operating organization's compliance and ethics program is a major responsibility;
  - Reports directly to the governing body; must not be subordinate to the general counsel, chief financial officer or chief operating officer.
- designated compliance liaisons located at each of the operating organization's facilities.
- Develop a compliance and ethics program that is appropriate for the complexity of the organization and its facilities.

Surveys

- CMS has not yet published any guidance for surveyors reviewing facilities for compliance and ethics program requirements.

Other Phase 3 Requirements - Administration/Quality Assurance and Performance Improvement

- Governing body responsibility for QAPI program (*42 C.F.R. §§483.70 & 483.75*):
  - Can be executive leadership (or organized group or individual who assumes full legal authority and responsibility for operation of the facility).
  - Must be responsible and accountable for ensuring that—
    - An ongoing QAPI program is defined, implemented, and maintained and addresses identified priorities.

CMS' proposed rule would delay this requirement for one year.

Governing body responsibility for QAPI program: (continued)

- The QAPI program is sustained during transitions in leadership and staffing;
- The QAPI program is adequately resourced, including ensuring staff time, equipment, and technical training as needed;
- The QAPI program identifies and prioritizes problems and opportunities that reflect organizational process, functions, and services provided to resident based on performance indicator data, and resident and staff input, and other information.
- Corrective actions address gaps in systems, and are evaluated for effectiveness; and
- Clear expectations are set around safety, quality, rights, choice, and respect.

Other Phase 3 Requirements

- Designation of an Infection Preventionist (IP) responsible for the facility's Infection Prevention and Control Plan;
- The Quality Assessment & Assurance Committee must include the IP.

See 42 C.F.R. §§ 483.75(g)(1)(v), 483.80 (b), (c).

CMS has proposed delays/revisions to other sections of the QAPI regulation that required implementation in Phase I and Phase II. The requirement that an infection preventionist be on the QAA committee is not delayed.

Other Phase III Requirements

- Coordination of residents' right to freedom from abuse, neglect, and exploitation with QAPI Plan (*See 42 C.F.R. §483.12(B)[4]*);
- Comprehensive person-centered care (and treatment) to include trauma informed care (*See 42 C.F.R. §§ 483.21(b)(3)(iii), 483.25(m), 483.40(a)[1]*);
- Call system from each resident's bedside (already a NY requirement) (see *42 C.F.R. §483.90(F)[1]*).

Other Phase III Requirements - Training

- Facilities must develop, implement and maintain an effective training program for:
  - New and existing staff
  - Individuals providing services under a contractual agreement
  - Volunteers, consistent with their expected roles
- Based on the facility assessment – the facility determines the amount and types of training necessary.
  - Many required topics were implemented in Phase I.

Training (continued)

Phase III Required Topics	NY Requirement?
Effective Communications (mandatory for direct care staff)	
Resident Rights and Facility Responsibility to Properly Care for its Residents	Yes
QAPI - elements and goals - **NOTE: CMS has proposed delaying this requirement for one year**	Yes
Infection Control	Yes
Compliance and Ethics	Yes (OMIG requirement)
In-Service Training for CNAs • to address areas of weakness as determined in performance reviews and facility assessment; • may also address the special needs of residents as determined by the facility staff.	
Behavioral Health (must be consistent with § 483.40 and as determined by the facility assessment).	

Questions

Garfunkel Wild Contact Information

Lourdes Martinez
Partner/Director
516.393.2221
lmartinez@garfunkelwild.com

Eve Green Koopersmith
Partner/Director
516.393.2282
ekoopersmith@garfunkelwild.com

THANK YOU!

Office locations

677 Broadway
7th Floor
Albany, NY 12207
(518) 242-7582

111 Great Neck Road
Suite 600
Great Neck, NY 11021
(516) 393-2200

350 Bedford Street
Suite 406A
Stamford, CT 06901
(203) 316-0483

411 Hackensack Ave.
5th Floor
Hackensack, NJ 07601
(201) 883-1030