

## **NURSING HOME DEREGULATION CONTINUES, DESPITE SUBSTANTIAL RISK TO RESIDENTS**

SEPTEMBER 2019

**Background.** Under the Trump Administration, the Centers for Medicare & Medicaid Services (CMS) has been advancing efforts to deregulate the nursing home industry by rolling back the rights and protections of nursing home residents. These efforts include reducing accountability for substandard care, such as by [shifting](#) the default financial penalty for the most serious health violations from a daily fine for every day of noncompliance to just a single fine, no matter how long the violation persists. Unfortunately, CMS has now followed up such damaging efforts by issuing a proposed rule rolling back the nursing home Requirements of Participation, proposing to reduce survey frequency for so-called “top-performing” facilities, and reversing the ban on pre-dispute arbitration agreements. This alert provides information on some of the key areas of concern for residents and families.

**Requirements of Participation.** In 2016, for the first time in 25 years, CMS [revised](#) the federal minimum standards of care for nursing homes, known as the Requirements of Participation, “in an effort to improve the quality of life, care, and services in LTC facilities, optimize resident safety, reflect current professional standards, and improve the logical flow of the regulations.” However, soon after the 2016 elections, the leading nursing home industry association sent a [letter](#) to then President-Elect Donald Trump urging his Administration to implement “burden” reduction for providers. CMS responded to this request in July 2019 by issuing a [notice of proposed rulemaking](#) to roll back the Requirements. While the 32-page proposal references so-called provider burdens 102 times, CMS made little effort to meaningfully explain how the changes would improve resident health, safety, or welfare.

**Proposed Changes.** The proposed rule rolls back Requirements dealing with critical health care standards and residents’ rights. The far-reaching proposal would reduce standards for **infection control, behavioral health services, facility assessments, bed rail safety, food and nutrition management**, as well as **transfers and discharges**, to name a few.

While CMS claims that these proposals will not harm residents, that claim does not hold up to even modest scrutiny. For example, important efforts to improve dementia care and reduce the widespread use of dangerous antipsychotic drugs are weakened by the proposed rule, which would make it easier to administer antipsychotic drugs to residents. Though antipsychotic drugs carry a FDA “black box” warning against use on elderly people with dementia (due to increased risks of falls, Parkinsonism, and death), too many nursing home residents are administered these drugs every day as a form of chemical restraint to sedate them for the convenience of staff.

To improve efforts to address this problem, in 2016, CMS limited the administration of these drugs PRN (*pro re nata* or “as needed”) to a maximum of 14 days. PRN orders for antipsychotic drugs can be extended beyond 14 days if “the attending physician or prescribing practitioner evaluates the resident for the appropriateness of that medication.” The proposed rule would reverse this protection, making it easier for nursing homes to

administer antipsychotic drugs to residents by allowing facilities to extend PRN antipsychotic orders without a direct examination and assessment of the resident.

For more information about the proposed rule and why our organizations oppose it, please visit:  
<https://nursinghome411.org/consumer-comments-proposed-nursing-home-requirements-2019/>.

**Reducing Survey Frequency.** CMS's proposed rule is only one the latest efforts under the Trump Administration to roll back the rights and protections of nursing homes residents. In a recent blog [post](#), CMS Administrator Seema Verma also indicated that CMS is interested in reducing the frequency of standard nursing home surveys (health inspections) for so-called "top performing" facilities. The proposal would allow such facilities to be inspected every 30 to 36 months instead of every year, as is currently required under the law. Unfortunately, CMS's proposal seems to disregard numerous reports indicating that even high-rated nursing homes have serious health violations. **For instance, a recent federal [report](#) suggests that more than 1 in 5 nursing homes that CMS considers "above average" and "much above average" have been cited for abuse in a single year.**

To learn more about why such proposals are dangerous, please visit:

<https://nursinghome411.org/nursing-home-residents-at-risk-proposals-to-reduce-survey-frequency-for-top-performing-nursing-homes-is-dangerous/>.

**Pre-Dispute Arbitration.** CMS recently issued a final rule allowing nursing homes to include pre-dispute arbitration clauses in residency contracts. When a resident or representative signs such a clause, they are agreeing to settle future disputes outside of court for any type of abuse or neglect, no matter how heinous or harmful. While facilities cannot require residents to enter a pre-dispute arbitration agreement as a condition of admission or continued care, given the stress associated with admission to a facility, it is unlikely that people will know that they can reject such a provision and, even if they do, they may feel too intimidated by the setting to say so. From our perspective, this rule robs residents and their families of a right long considered essential. In addition, by sheltering nursing homes from legal accountability for abuse and neglect, it is likely to exacerbate problems with substandard care.

For more information about pre-dispute arbitration agreements, please visit:

<https://nursinghome411.org/fact-sheet-pre-dispute-arbitration/>.

**Take Action.** Given that about half of all seniors will need nursing home care at some point in their lives, it is incumbent upon every family in the United States to speak out in support of nursing home quality and safety. Please take a moment to speak out in support of nursing home residents and help us make a difference by contacting your legislators today.

To speak out in support of nursing home residents, please visit LTCCC's Action Center:

<https://nursinghome411.org/action-center/>.