



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

**42 CFR Parts 405, 409, 431, 447, 482, 483, 485, 488, and 489**

**[CMS-3260-F2]**

**RIN-0938-AR61**

### **Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule; correction and correcting amendment.

**SUMMARY:** In the October 4, 2016 issue of the **Federal Register**, we published a final rule revising the requirements that Long-Term Care (LTC) facilities must meet to participate in the Medicare and Medicaid programs. The effective date was November 28, 2016. This document corrects technical and typographical errors identified in the October 4, 2016 final rule.

**DATES:** This document is effective [insert date of publication in the **Federal Register**].

#### **FOR FURTHER INFORMATION CONTACT:**

Ronisha Blackstone, (410) 786-6882.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In FR Doc. 2016-23503 which appeared in the October 4, 2016 **Federal Register** (81 FR 68688), entitled "Reform of Requirements for Long-Term Care Facilities," there were technical and typographical errors that are identified and corrected in the Implementation Timeframe table of the preamble and in the regulations text of this

document.

## **II. Summary of Errors**

### A. Summary of Errors in the Preamble

We inadvertently made technical and typographical errors in the preamble as follows:

On page 68725, fourth full paragraph of the second column, we inadvertently referenced proposed §482.11 instead of proposed §483.11.

On page 68729, second paragraph of the third column, we inadvertently referenced §482.15(a) instead of §483.15(a).

On page 68736, second full paragraph of the second column, we inadvertently referenced §482.20(k)(4) instead of §483.20(k)(4).

Under the Implementation Timeframe table we made technical and typographical errors as follows:

On page 68696, under §483.12, we inadvertently referenced the “Coordination with QAPI Plan” instead of the “Coordination with QAPI Program.” We are correcting this error to clarify that the Coordination with QAPI Program will be implemented in Phase 3.

On page 68697, we inadvertently designated existing requirements at §483.45(e)(1) and (2) to be implemented in the second phase of the implementation schedule. Requirements at §483.45(e)(1) and (2) are redesignations and do not reflect a change in policy. We indicated in the final rule (81 FR 68696) that the first phase of implementation will include those requirements that were unchanged or received only minor modification. Therefore, we are correcting the exceptions to the Phase 1

implementation deadlines to specify that the requirements at §483.45(e)(3), (4), and (5) Psychotropic drugs will be implemented in Phase 2.

On page 68697, we inadvertently designated existing requirements at §483.75(g)(2)(i) and (ii) to be implemented in the third phase of the implementation schedule. Requirements at §483.75(g)(2)(i) and (ii) are redesignations and do not reflect a change in policy. We indicated in the final rule (81 FR 68696) that the first phase of implementation will include those requirements that were unchanged or received only minor modification. Therefore, we are correcting the exceptions to the Phase 3 implementation deadlines under “§483.75--Quality assurance and performance improvement” by replacing the paragraph designation (g)(1) with (g), subparagraph designation (iv) with (g)(1)(iv), and clarifying that (g)(2)(iii) will also be implemented in Phase 3. Also, we are correcting the acronym “ICPO” to read “IP.”

#### B. Summary of Errors in the Regulations Text

On page 68847, we inadvertently omitted a conforming change to revise cross-references to part 483 found in part 409. Sections 409.20 and 409.26 include incorrect cross-references to §483.75(n). We inadvertently did not update these cross-references. Therefore, we are revising §409.20 and §409.26 to correct the cross-reference by replacing §483.75(n) with §483.70(j).

On page 68847, we made technical errors in the regulations text for §482.58. We inadvertently used the cross-references from the proposed rule “Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities” (80 FR 42246) rather than the final rule. We are revising §482.58 to correct the cross-references. As we noted

in the proposed rule, the revised citations correspond to cross-references previously set out at §482.58 and make no substantive policy changes.

On page 68848, we made technical errors in the regulations text of §483.5. We inadvertently omitted a conforming change to revise cross-references in the definitions of “composite distinct part” and “distinct part.” We are revising the definition of “composite distinct part” and the definition for “distinct part.” We made no substantive changes.

On page 68854, we inadvertently designated a cross-reference at §483.10(i)(4), and on pages 68856 and 68857, we inadvertently designated cross-references at §483.15(a) through (d).

On page 68856, we made a technical error in the regulations text of §483.15(c)(2)(iii)(F). We inadvertently omitted the apostrophe from the word “resident’s.”

On page 68863, we made a technical error in the amendatory instruction for §483.45. We set out the regulatory text for paragraph (c)(5) but inadvertently omitted the instruction to add paragraph (c)(5) as a new paragraph. We are revising §483.45 by adding an instruction to add paragraph (c)(5).

On page 68863, we made a technical error in the regulations text of §483.50(a)(2)(iii). We inadvertently misspelled the word “assistance.”

On page 68865, we made a technical error in the amendatory instruction for §483.70(i), in which we inadvertently omitted the instruction to revise the paragraph heading for paragraph (i). We are inserting this instruction in this final rule.

On page 68868, we made a technical error in the regulations text for §483.75(g)(1)(iv). In the preamble of the final rule (81 FR 68812), we indicated that in §483.80(b) we were changing our use of “infection control and prevention officer (ICPO)” to “infection preventionist (IP).” Section 483.75(g)(1)(iv) also uses the term “infection control and prevention officer.” We are revising §483.75(g)(1)(iv) by replacing the phrase “infection control and prevention officer” with “infection preventionist.”

On page 68869, we made a technical error in the regulations text for §483.85(b). We incorrectly indicated that the operating organization for each facility must have in operation a compliance and ethics program by November 28, 2017. In the final rule (81 FR 68697) we indicated that all the requirements in §483.85 would be implemented in Phase 3 (November 28, 2019). Therefore, we are revising paragraph §483.85(b) to accurately indicate that the operating organization for each facility must have in operation a compliance and ethics program by November 28, 2019 and removing the reference to November 28, 2017.

On page 68870, we made technical errors in the regulations text for §483.90. We incorrectly designated paragraph §483.90(d) as (c), which resulted in the omission of existing requirements at §483.90(c) in the Code of Federal Regulations (CFR). We are revising §483.90 to correctly designate the paragraphs in this section and add the omitted requirements.

On page 68871, we made a technical error in the amendatory instruction for §485.635. We incorrectly revised the cross-reference to §483.25(i) in

§485.635(a)(3)(vii). We are revising §485.635 to correct the cross-reference by replacing the reference to “§483.25(d)(8)” with “§483.25(g.)”

On page 68871, we made technical errors in the regulations text for §485.645. We inadvertently used the cross-references from the proposed rule “Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities (80 FR 42269) rather than the final rule. We are revising §485.645 to correct the cross-references. As we noted in the proposed rule, the revised citations correspond to cross-references previously set out at §485.645 and make no substantive policy changes.

On page 68871, we made a technical error in the regulations text for §488.56. Section 488.56(b) and (b)(2) include incorrect cross-references to §488.75(i). We inadvertently did not update these cross-references. Therefore, we are revising §488.56 to correct the cross-reference by replacing §488.75(i) with §483.70(h).

### **III. Waiver of Proposed Rulemaking and Delay in Effective Date**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the rule.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay

is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

Our revisions to the requirements for Long-Term Care (LTC) facilities found in part 483 subpart B have previously been subjected to notice and comment procedures. These corrections are consistent with the discussion of the policy in the October 2016 final rule and do not make substantive changes to this policy. This correcting amendment merely corrects technical errors in the regulations text of the October 2016 final rule and makes no substantive policy changes. As a result, this correcting amendment is intended to ensure that the October 2016 final rule accurately reflects the policy adopted in the final rule. Therefore, we find that undertaking further notice and comment procedures to incorporate these corrections into the final rule is unnecessary and contrary to the public interest.

For the same reasons, we are also waiving the 30-day delay in effective date for this correcting amendment. We believe that it is in the public interest to ensure that the October 2016 final rule accurately reflect our revisions to the requirements for LTC facilities. Delaying the effective date of these corrections would be contrary to the public interest. Therefore, we also find good cause to waive the 30-day delay in effective date.

#### **IV. Correction of Errors in the Preamble**

- a. On page 68725, in second column; in the fourth paragraph, line 21 remove “482.11” and add in its place “483.11”.
- b. On page 68729, in the third column; in the second paragraph, line 11 remove “482.15(a)” and add in its place “483.15(a)”.

c. On page 68736, in the second column; in the second paragraph, line 58 remove “482.20(k)(4)” and add in its place “483.20(k)(4)”.

d. On page 68696, in the table under the “Implementation deadline” heading, second column, in the second bullet, after the word “QAPI,” remove the word “Plan” and add “Program” in its place.

e. On page 68697, in the table under the “Implementation deadline” heading, second column--

1. In the sixth bullet, remove the phrase “(e) Psychotropic drugs—Implemented in Phase 2” and add “(e)(3), (4), and (5) Psychotropic drugs—Implemented in Phase 2” in its place.

2. In the sixteenth bullet--

A. Remove the reference to “(g)(1)” and add “(g)” in its place.

B. Remove the phrase “with the exception of subparagraph (iv), the addition of the ICPO, which will be implemented in Phase 3” and add “with the exception of aragraphs (g)(1)(iv) (the addition of the IP) and (g)(2)(iii) (regarding the use of QAPI data), which will be implemented in Phase 3”.

C. Remove the acronym “ICPO” and add “IP” in its place.

**List of Subjects**42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 482

Grant programs-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

**PART 409—HOSPITAL INSURANCE BENEFITS**

1. The authority citation for part 409 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

**§409.20 [Amended]**

2. In §409.20, amend paragraph (a)(6) by removing the cross-reference “§483.75(n)” and adding in its place “§483.70(j)”.

**§409.26 [Amended]**

3. In §409.26, amend paragraph (a)(1) by removing the cross-reference “§483.75(n)” and adding in its place “§483.70(j)”.

**PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS**

4. The authority citation for part 482 continues to read as follows:

**Authority:** Secs. 1102, 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr), unless otherwise noted.

5. In §482.58 revise paragraph (b) to read as follows:

**§482.58 Special requirements for hospital providers of long-term care services (“swing-beds”)**

\* \* \* \* \*

(b) Skilled nursing facility services. The facility is substantially in compliance with the following skilled nursing facility requirements contained in subpart B of part 483 of this chapter.

- (1) Resident rights (§483.10(b)(7), (c)(1), (c)(2)(iii), (c)(6), (d), (e)(2), (e)(4), (f)(4)(ii), (f)(4)(iii), (f)(9), (h), (g)(8), (g)(17), and (g)(18) introductory text.
- (2) Admission, transfer, and discharge rights (§483.5 definition of transfer and discharge, §483.15(c)(1), (c)(2)(i), (c)(2)(ii), (c)(3), (c)(4), (c)(5), and (c)(7)).
- (3) Freedom from abuse, neglect, and exploitation (§483.12(a)(1), (a)(2), (a)(3)(i), (a)(3)(ii), (a)(4), (b)(1), (b)(2), (c)).
- (4) Patient activities (§483.24(c)).
- (5) Social services (§483.40(d) and 483.70(p)).
- (6) Discharge planning (§483.20(e)).
- (7) Specialized rehabilitative services (§483.65).
- (8) Dental services (§483.55).

**PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES**

6. The authority citation for part 483 continues to read as follows:

**Authority:** Secs. 1102, 1128I and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a-7j, 1395hh and 1396r).

7. In §483.5, amend the definition of “Composite distinct part” by revising paragraph (2) introductory text and amend the definition of “Distinct part” by revising paragraph (1) to read as follows:

**§483.5 Definitions.**

\* \* \* \* \*

Composite distinct part—\* \* \*

(2) Requirements. In addition to meeting the requirements of specified in the definition of “distinct part” of this section, a composite distinct part must meet all of the following requirements:

\* \* \* \* \*

Distinct part—(1) Definition. A distinct part SNF or NF is physically distinguishable from the larger institution or institutional complex that houses it, meets the requirements of this paragraph and of paragraph (2) of this definition, and meets the applicable statutory requirements for SNFs or NFs in sections 1819 or 1919 of the Act, respectively. A distinct part SNF or NF may comprise one or more buildings or designated parts of buildings (that is, wings, wards, or floors) that are: In the same physical area immediately adjacent to the institution's main buildings; other areas and structures that are not strictly contiguous with the main buildings but are located within close proximity to the main buildings; and any other areas that CMS determines on an individual basis, to be part of the institution's campus. A distinct part must include all of the beds within the designated area, and cannot consist of a random collection of individual rooms or beds that are scattered throughout the physical plant. The term “distinct part” also includes a composite distinct part that meets the additional requirements specified in the definition of “composite distinct part” of this section.

\* \* \* \* \*

#### **§483.10 [Amended]**

8. In §483.10, amend paragraph (i)(4) by removing the reference “§483.90(d)(2)(iv)” and adding in its place “§483.90(e)(2)(iv)”.

#### **§483.15 [Amended]**

9. In §483.15--
  - a. Amend paragraph (a)(7) by removing the reference “paragraph (b)(10)” and adding in its place “paragraph (c)(9)”.
  - b. Amend paragraph (b)(2) by removing the reference to “§483.10(g)(3)” and adding in its place “§483.10(g)(18)(i)”.
  - c. Amend paragraph (c)(2)(ii)(B) by removing the reference “paragraph (b)(1)(i)(C) or (D)” and adding in its place “paragraph (c)(1)(i)(C) or (D)”.
  - d. Amend paragraph (c)(2)(iii)(F) by removing the word “residents” and adding in its place “resident’s”.
  - e. Amend paragraph (c)(3)(iii) by removing the reference to “paragraph (b)(5)” and adding in its place “paragraph (c)(5)”.
  - f. Amend paragraph (c)(4)(i) by removing the reference “paragraphs (b)(4)(ii) and (b)(8)” and adding in its place “paragraphs (c)(4)(ii) and (8)”.
  - g. Amend paragraph (c)(4)(ii)(A) by removing the reference to “paragraph (b)(1)(ii)(C)” and adding in its place “paragraph (c)(1)(i)(C)”.
  - h. Amend paragraph (c)(4)(ii)(B) by removing the reference to “paragraph (b)(1)(ii)(D)” and adding in its place “paragraph (c)(1)(i)(D)”.
  - i. Amend paragraph (c)(4)(ii)(C) by removing the reference “paragraph (b)(1)(ii)(B)” and adding in its place “paragraph (c)(1)(i)(B)”.
  - j. Amend paragraph (c)(4)(ii)(D) by removing the reference “paragraph (b)(1)(ii)(A)” and adding in its place “paragraph (c)(1)(i)(A)”.
  - k. Amend paragraph (c)(5) introductory text by removing the reference “paragraph (b)(3)” and adding in its place “paragraph (c)(3)”.

l. Amend paragraph (d)(1)(iii) by removing the reference “paragraph (c)(3)” and adding in its place “paragraph (e)(1)”.

m. Amend paragraph (d)(1)(iv) by removing the reference “paragraph (c)(3)” and adding in its place “paragraph (e)(1)”.

n. Amend paragraph (d)(2) by removing the reference “paragraph (c)(1)” and adding in its place “paragraph (d)(1)”.

10. In §483.45 add paragraph (c)(5) to read as follows:

**§483.45 Pharmacy services.**

\* \* \* \* \*

(c) \* \* \*

(5) The facility must develop and maintain policies and procedures for the monthly drug regimen review that include, but are not limited to, time frames for the different steps in the process and steps the pharmacist must take when he or she identifies an irregularity that requires urgent action to protect the resident.

\* \* \* \* \*

**§483.50 [Amended]**

11. In §483.50, amend paragraph (a)(2)(iii) by removing the word “asistance” and adding in its place “assistance”.

12. In §483.70 revise the heading to paragraph (i) to read as follows:

**§483.70 Administration.**

\* \* \* \* \*

(i) Medical records. \* \* \*

\* \* \* \* \*

**§483.75 [Amended]**

13. In §483.75, amend paragraph (g)(1)(iv) by removing the phrase “infection control and prevention officer” and adding in its place “infection preventionist”.

14. In §483.85 revise paragraph (b) to read as follows:

**§483.85 Compliance and ethics program.**

\* \* \* \* \*

(b) General rule. Beginning November 28, 2019, the operating organization for each facility must have in operation a compliance and ethics program (as defined in paragraph (a) of this section) that meets the requirements of this section.

\* \* \* \* \*

15. In §483.90 revise paragraph (c) to read as follows:

**§483.90 Physical environment.**

\* \* \* \* \*

(c) Emergency power. (1) An emergency electrical power system must supply power adequate at least for lighting all entrances and exits; equipment to maintain the fire detection, alarm, and extinguishing systems; and life support systems in the event the normal electrical supply is interrupted.

(2) When life support systems are used, the facility must provide emergency electrical power with an emergency generator (as defined in NFPA 99, Health Care Facilities) that is located on the premises.

\* \* \* \* \*

**PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS**

16. The authority citation for part 485 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

**§485.635 [Amended]**

17. In §485.635, amend paragraph (a)(3)(vii) by removing the reference to “§483.25(d)(8)” and adding in its place “§483.25(g)”.

18. In §485.645--

- a. Revise paragraph (d)(1).
- b. Remove paragraph (d)(2).
- c. Redesignate paragraphs (d)(3) through (10) as paragraphs (d)(2) through (9), respectively.
- d. Revise newly redesignated paragraphs (d)(2) through (9).

The revisions read as follows:

**§485.645 Special requirements for CAH providers of long-term care services**

**(“swing-beds”)**

\* \* \* \* \*

(d) \* \* \*

(1) Resident rights (§483.10(b)(7), (c)(1), (c)(2)(iii), (c)(6), (d), (e)(2), (e)(4), (f)(4)(ii), (f)(4)(iii), (f)(9), (g)(8), (g)(17), (g)(18) introductory text, (h) of this chapter).

(2) Admission, transfer, and discharge rights (§483.5 definition of transfer & discharge, §483.15(c)(1), (c)(2),(c)(3), (c)(4), (c)(5), (c)(7), (c)(8), and (c)(9) of this chapter).

(3) Freedom from abuse, neglect and exploitation (§483.12(a)(1), (a)(2), (a)(3)(i), (a)(3)(ii), (a)(4), (b)(1), (b)(2), (c)(1), (c)(2), (c)(3), and (c)(4) of this chapter).

(4) Patient activities (§483.24(c) of this chapter), except that the services may be directed either by a qualified professional meeting the requirements of §483.24(c)(2), or by an individual on the facility staff who is designated as the activities director and who serves in consultation with a therapeutic recreation specialist, occupational therapist, or other professional with experience or education in recreational therapy.

(5) Social services (§483.40(d) and §483.70(p) of this chapter).

(6) Comprehensive assessment, comprehensive care plan, and discharge planning (§483.20(b), and §483.21(b) and (c)(2) of this chapter), except that the CAH is not required to use the resident assessment instrument (RAI) specified by the State that is required under §483.20(b), or to comply with the requirements for frequency, scope, and number of assessments prescribed in §413.343(b) of this chapter).

(7) Specialized rehabilitative services (§483.65 of this chapter).

(8) Dental services (§483.55 of this chapter).

(9) Nutrition (§483.25(g)(1) and (g)(2) of this chapter).

## **PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT**

### **PROCEDURES**

19. The authority citation for part 488 continues to read as follows:

**Authority:** Secs. 1102, 1128l, 1864, 1865, 1871 and 1875 of the Social Security Act, unless otherwise noted (42 U.S.C 1302, 1320a-7j, 1395aa, 1395bb, 1395hh) and 1395ll.

**§488.56 [Amended]**

20. In §488.56 amend paragraphs (b) introductory text and (b)(2) by removing the reference “§488.75(i)” and adding in its place “§483.70(h)”.

CMS-3260-F2

Dated: June 30, 2017

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**Thomas E. Price**

Secretary,

Department of Health and Human Services.

**BILLING CODE 4120-01-P**

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