

Infection Control Requirements Under the Final Phase of Implementation

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In 2016, the Centers for Medicare and Medicaid Services (“CMS”) made revisions to the requirements for long term care facilities under the conditions of participation. The implementation of these new requirements would take place in three phases. Implementation of Phase I and II occurred on November 28, 2016 and 2017, respectively. Phase III will be implemented on November 28, 2019. On this date, surveyors will begin using the infection control requirements detailed in 42 C.F.R. § 483.80(b) and (c) to determine a facility’s compliance with the conditions of participation.

Infection control requirements are specified in 42 C.F.R. § 483.80. As part of Phase III of the CMS changes to the conditions of participation, 42 C.F.R. § 483.80(b) will be implemented. Under this regulation, a facility must designate one or more individuals as the facility’s infection preventionist (“IP”). The IP is responsible for the facility’s infection prevention and control program (“IPCP”).

The IP must meet the following requirements under the subparts of 42 C.F.R. § 483.80(b):

- (1) Have primary professional training in nursing, medical technology, microbiology, epidemiology, or other related field;
- (2) Be qualified by education, training, experience or certification;
- (3) Work at least part-time at the facility; and
- (4) Have completed specialized training in infection prevention and control.

Notably, on July 18, 2019, CMS requested comments on a proposed rule that would remove the “part-time” requirement of the IP. Published in the Federal Register, CMS acknowledged that “part-time” could be interpreted in many ways by facilities, causing confusion. CMS’s intent was to impose a requirement that gives the IP sufficient time to achieve the objectives of the IPCP. Therefore, CMS believes “sufficient time at the facility” to be a more appropriate description of the time required of the infection preventionist.

While CMS solicits comments on how to determine whether an infection preventionist has sufficient time at the facility, it made clear that there would be no delay in the implementation of the requirements under 42 C.F.R. § 483.80(b). The IP’s role and training requirements would remain unchanged. Only the requirement related to the

amount of time the IP spends devoted to the program will be delayed one year from the effective date of any final rule on this matter.

Lastly, under 42 C.F.R. § 483.80(c), the IP must be a member of the facility's quality assessment and assurance committee, reporting to the committee on the IPCP on a regular basis.

Practical Takeaways

- Ensure that the facility has designated an Infection Preventionist who has completed specialized infection prevention and control training.
- Add the Infection Preventionist to the facility's quality assessment and assurance committee, if not already a member.
- At each quality assessment and assurance committee meeting, ensure that the Infection Preventionist reports on the Infection Prevention and Control Program.

For more information, please do not hesitate to contact Emily R. Studebaker, Esq. (estudebaker@studebakernault.com) or Hanie J. Kim, Esq. (hkim@studebakernault.com).

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