

# New Facility Assessment Requirements

May 9, 2024

# History of Facility Assessment Requirement

- Originated in the October 4, 2016, extensive rewrite of SNF Requirements of Participation
- Paragraph (e) of 42 CFR 483.70, Administration
- CMS summary: We require facilities to conduct, document, and annually review a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies. Facilities are required to address in the facility assessment the facility's resident population (that is, number of residents, overall types of care and staff competencies required by the residents, and cultural aspects), resources (for example, equipment, and overall personnel), and a facility-based and community-based risk assessment.

# Existing Facility Assessment Requirement

- Tied into current staffing regulation (42 CFR 483.35) that requires sufficient staffing: 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).**
- Intent of facility assessment is to measure sufficiency of staffing in absence of minimum staffing requirements – now being changed to be *on top of* minimum staffing

# Existing Interpretive Guidance in State Operations Manual Appendix PP (F838)

- Includes recommendations on facility personnel who should participate, involvement of residents/families:
  - To ensure the required thoroughness, individuals involved in the facility assessment should, at a minimum, include the administrator, a representative of the governing body, the medical director, and the director of nursing. The environmental operations manager, and other department heads (for example, the dietary manager, director of rehabilitation services, or other individuals including direct care staff should be involved as needed.
  - Although not required, facility staff are strongly encouraged to seek input from the resident/family council, residents, their representative(s), or families and incorporate that information as appropriate when formulating their assessment.
- Elaborates somewhat on required elements

# Existing Guidance for Surveyors

- Includes surveyor probes and examples of non-compliance
- Process-oriented: deficiencies are to be cited if facility assessment not done or not updated timely or lacking one or more of the required elements
- Infrequently cited:
  - National FY 2024: 83 total citations
  - Ohio FY 2024: 3 total citations (1 C, 2 F)

# CMS Final Minimum Staffing Rule

- Final rule initially published April 22, 2024, formal publication to be May 10, 2024
- Establishes required minimum staffing levels:
  - 24/7 RN coverage
  - 3.48 HPRD total nurse staffing
  - 0.55 HPRD RN staffing
  - 2.45 HPRD nurse aide staffing
  - Waivers and exemptions
- These mandates are not applicable for between 2 and 5 years, depending on the specific requirement and where the SNF is located
- Legislation or litigation could stop these requirements long before they become applicable

# Revisions to Facility Assessment Regulation

- Emphasis heightened by moving into its own section: [42 CFR 483.71](#)
- Expressly stated as going beyond the minimums
- Establishes new requirements for facility assessment
- Includes cross-references to facility assessment in numerous other regulations
- Important: changes apply 90 days from official publication (August 8, 2024)
- As of that date, assessments not meeting the new requirements will be non-compliant, so every SNF needs to review its facility assessment before then and revise as necessary to meet the new standards

# Interpreting the New Requirements

- Interpretive guidance expected before August 8 but not available yet
- CMS provides some guidance in the preamble to the final rule
- AHCA/NCAL Action Brief
  - Comprehensive overview of new requirements and compliance tips
  - <http://webdata.ohca.skyoffices.com/webdata/News%20Bites/FA%20Action%20Brief%201.pdf>



# Administrative Burden

- CMS did not estimate the amount of time it would take to update the facility assessment because of the new requirements, with two exceptions
- They view most of the changes as clarifications even though they previously were not required
- CMS estimated it will take 40 hours (cost of \$3,109) to create the newly-required recruitment and retention plan
- CMS estimated it will take 3 hours (cost of \$182) to notify residents and families of the opportunity to have input into the facility assessment

# Introductory Paragraph (No Change)

Nursing Facilities 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 (including nights and weekends) and emergencies. The facility must review and update the assessment, as necessary, and at least annually. The facility must also review and update the assessment whenever there is, or the facility plans for, any change that would require a substantial modification to any part of the assessment.

# Resident Population

(a) The facility assessment must address or include the following:

(1) The facility's resident population including, but not limited to:

(i) Both the number of residents and the facility's resident capacity;

(ii) The care required by the resident population, **using evidence-based, data-driven methods** that consider the types of diseases, conditions, physical **and behavioral** needs, cognitive disabilities, overall acuity, and any other pertinent facts that are present within that population, **consistent with and informed by individual resident assessments as required under §483.20**;

(iii) The staff competencies **and skill sets** that are necessary to provide the level and types of care needed for the resident population;

(iv) The physical environment, equipment, services, and other physical plant considerations that are necessary to care for this population; and

(v) Any ethnic, cultural, or religious factors that may potentially affect the care provided by the facility, including, but not limited to, activities and food and nutrition services.

# CMS Responses to Comments

- Behavioral health is stressed
- Staff training is to be informed by facility assessment
- What are the “evidence-based, data-driven methods” that SNFs are supposed to use to determine resident care needs?
  - CMS does not define in the rule
  - AHCA/NCAL’s Action Brief conflates the words as “evidence-based data” and lists suggested ways to gather information about care needs
- While CMS intentionally added “skill sets” after “competencies,” they did not explain what if anything more they intended to require

# Facility Resources

(2) The facility's resources, including but not limited to the following:

- (i) All buildings and/or other physical structures and vehicles;
- (ii) Equipment (medical and non-medical);
- (iii) Services provided, such as physical therapy, pharmacy, **behavioral health**, and specific rehabilitation therapies;
- (iv) All personnel, including managers, nursing and other direct care staff (both employees and those who provide services under contract), and volunteers, as well as their education and/or training and any competencies related to resident care;
- (v) Contracts, memorandums of understanding, or other agreements with third parties to provide services or equipment to the facility during both normal operations and emergencies; and
- (vi) Health information technology resources, such as systems for electronically managing patient records and electronically sharing information with other organizations.

# Risk Assessment

- (3) A facility-based and community-based risk assessment, utilizing an all-hazards approach **as required in § 483.73(a)(1)**.
- This change is a clarification that cross-references emergency preparedness

# Mandatory Participants

(b) In conducting the facility assessment, the facility must ensure:

(1) Active involvement of the following participants in the process:

(i) Nursing home leadership and management, including but not limited to, a member of the governing body, the medical director, an administrator, and the director of nursing; and

(ii) Direct care staff, including but not limited to, RNs, LPNs/LVNs, NAs, and representatives of the direct care staff, if applicable.

(iii) The facility must also solicit and consider input received from residents, resident representatives, and family members.

# Key Changes

- The previous rule did not specify who must participate in the resident assessment process. Instead, CMS made recommendations.
- Now the required “active” participants are listed. They include facility management, direct care workers, and representatives.
- While residents/families are listed under “active participants,” the regulation states that the facility is only required to solicit and consider any input they may provide.



# CMS Responses to Comments: Mandatory Participants

- All levels of nursing staff need to be included
- Member of governing body and medical director essential to process
- Representatives of direct care staff:
  - Third-party elected local union representatives, business agents, safety and health specialists, or a non-union worker's designated representatives from a worker advocacy group, community organization, local safety organization, or labor union
  - Direct care staff may be hesitant to criticize staffing decisions of management or fear retaliation. Their representatives would generally be able to speak more freely and can reflect concerns that they have heard across a number of staff members.

# CMS Responses to Comments: Direct Care Staff Participation

- Means more than nursing staff.
- We encourage LTC facilities to solicit input or even active participation from other direct care staff, especially physicians, nurse practitioners, physician assistants, social workers, activity directors, dietitians/nutritionists, and other therapists.
- Also, if the LTC facility has specialized units, such as, memory care, behavioral health, sub-acute, or ventilator/trach dependent, we encourage the inclusion or input of staff from those units.

# CMS Responses to Comments: Active Participation

- Active participation does not require that all identified staff or their representatives are at every meeting or discussion or must approve the final facility assessment.
- At a minimum, all identified staff should have the opportunity to present their views and have those views considered by the other staff that are actively participating in the process.
- Facilities should determine the level of active participation for each individual thereafter. For example, if some meetings would focus on nurse staffing, the facility would not necessarily have to require a physical therapist or a member of the food and nutrition staff to attend.
- The facility could limit the staff who would be responsible for the final approval of the facility assessment.
- Individuals could participate in-person or virtually. For example, the medical director or member of the governing body could participate by phone in meetings or provide their input and comments on drafts in written form.

# CMS Responses to Comments: Input from Residents, Resident Representatives, Family Members

- The facility should actively solicit input from identified participants.
- The facility should determine the best way to contact these individuals to solicit their input.
- The input should then be shared with all of the individuals who are actively participating in the facility assessment process in time for there to be a discussion of the received input.
- The time period for providing input should be reasonable. The individuals from whom input is being sought would likely need more than a few days or a week to contemplate what input they want to provide.

# Mandatory Uses of Assessment

(c) The facility must use this facility assessment to:

(1) Inform staffing decisions to ensure that there are a sufficient number of staff with the appropriate competencies and skill sets necessary to care for its residents' needs as identified through resident assessments and plans of care as required in § 483.35(a)(3).

(2) Consider specific staffing needs for each resident unit in the facility and adjust as necessary based on changes to its resident population.

(3) Consider specific staffing needs for each shift, such as day, evening, night, and adjust as necessary based on any changes to its resident population.

**(4) Develop and maintain a plan to maximize recruitment and retention of direct care staff.**

(5) Inform **contingency planning** for events that do not require activation of the facility's emergency plan, but do have the potential to affect resident care, such as, but not limited to, the availability of direct care nurse staffing or other resources needed for resident care.

# Key Changes

- Much of the new regulatory language codifies the essence of previous CMS recommendations
- Emphasizes analysis at the unit and shift levels
- New requirement: recruitment and retention plan
- Contingency planning

# CMS Responses to Comments: Uses of Facility Assessment

- If the facility assessment indicates that a higher (but not lower) HPRD for either total nursing staff or an individual nursing category is necessary for sufficient staffing, the facility must comply with that determination to satisfy the requirement for sufficient staffing.
- The facility assessment requirement will *often* result in facilities needing to staff higher than the minimum staffing requirements.
- It should enable facilities to adjust their staffing and other resources to compensate for resident acuity and changes needed in daily staffing.

# CMS Responses to Comments: Uses of Facility Assessment

- The facility assessment must be used to:
  - Inform decision making, especially about staffing decisions.
  - Develop and maintain the staffing plan or the plan to maximize recruitment and retention of direct care staff.
  - Identify the numbers of staff, types of staff, the required competencies and skill sets that staff require to care for the resident population.
  - Inform contingency planning. Facilities will likely encounter different events that have the potential to affect resident care. These events, however, do not necessarily require activation of the facility's emergency plan. For example, facilities must have contingency plans for when direct care staff cannot come into work.



# Facility Assessment Process

- Basic process is similar, but CMS wants it to be more in-depth and extensive
- More for surveyors to check off about process
- Will they judge outcome as well as process?
- For a detailed, step-by-step outline of how to do the facility assessment, see AHCA/NCAL's [Action Brief](#)