

Making Comments with Impact to the Proposed Federal Rule Changes Governing LTC Facilities

National Nursing Home Social Work Network
A Project of the University of Iowa
School of Social Work & Aging Studies Program



Webinar Series Co-Hosts



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Agenda

- Mercedes - Context of commenting on proposed federal rules (5 min)
- Joan – How to make comments with impact (45 min)
- Bob - What happens to comments after they are submitted (5 min)
- Q/A - 15 minutes
- Resources on NNHSWN website:
 - Federal Register (link to July 16th document)
 - Areas that affect nh social work - 75 page document
 - Link to Regulations.gov for more tips on submitting effective comments
 - Top 10 list (one page)
 - Materials on **National Nursing Home Social Work Network** website— through UI School of Social Work

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Proposed Federal Rule Changes for LTC Facilities

Mercedes Bern-Klug, PhD, M
School of Social Work



Background: Its Democracy in Action

- U.S. constitution lays out the responsibilities of our 3 branches of government: legislative (Congress), executive branch (President), and judiciary (Courts).
- Congress can create federal agencies.
- Agencies have broad authority to make rules that amplify Congressional action. (Congress big picture; agencies details).
- During the FDR and Truman administrations two laws passed that directly affect our webinar today:
 - Social Security Act
 - Administrative Procedure Act

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Social Security Act -

- Enacted in 1935
- Medicare added in 1965 as Title 18 of SS act
- Medicaid added in 1965 as Title 19 of SS act

Both Medicare and Medicaid help fund care in long-term care facilities:

Medicaid - nursing facility care - long-term care

Medicare - skilled nursing facility care - limited post-hospital care

The federal agency-- **The Department of Health & Human Services** is home to the **Centers for Medicare and Medicaid Services (CMS)**, which oversees Medicare and Medicaid. CMS is the federal agency that writes the regulations related to Medicare and Medicaid in LTC facilities

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Social Security

- The rules made by CMS related to Medicare and Medicaid are published in Title 42 of the CODE of FEDERAL REGULATIONS.
42 CFR 483 subpart B
- You can google this Title and see the regs 😊.

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Administrative Procedure Act (APA)

- Passed in 1946
- With all the new federal agencies being added to the federal government since 1900, Congress wanted to specify some parameters for federal agencies to propose and then establish regulations.
- APA requires federal agencies to keep the public informed of the agency's activities and to invite public comment on proposed rules, and consider the comments before the rules are made final. Final rules must also be published.

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Today's webinar: Last major up-date 1991 (24 years)

- CMS is proposing major changes to its rules for nursing facilities
- The proposed rule would revise requirements that LTC facilities must meet to participate in the Medicare & Medicaid programs.
- CMS published these proposed changes in July 16th **Federal Register** and invited public comment.
- Public means ANYONE. Disagree? Suggest alternative. UNINTENDED consequences?
- DEADLINE: In order to be considered, comments MUST be submitted to CMS by the MONDAY September 14, 2015 at 5pm.
- US postal service or electronically or overnight mail. Do not fax.

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Major themes of the proposed rules:

- Quality
- Person-Centered Care
- Facility Assessment, Competency-Based Approach
- Alignment with HHS priorities
- Comprehensive Review and Modernization
- Implementation of Legislation
 - Source: Medicare Learning Network, National Provider Call, Aug. 11, 2015. Presented by the Clinical Standards Group LTC Team: Lisa Parker, Ronisha Blackstone and Diane Corning. CMS

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Developing Comments on Draft Regulations, Reports & Requests for Information: Strategies & Rationales

Joan Levy Zlotnik, PhD, ACSW
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Background



- These comments are mine and are not on behalf of NASW or any other organization or entity.

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Experience

- ◆ Actively involved – 1987 to 1994 – input on psychosocial, social work, quality of life, resident’s rights provisions of nursing home regulations and their implementation that resulted from 1987 nursing home reform legislation
 - ◆ On behalf of NASW
 - ◆ In collaboration with other organizations.
- ◆ Provided comments in response to numerous federal proposed regulations, requests for input (RFI) and other federal requests for comments.

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Strengthening Social Work’s Voice in Public Policy

- ◆ Social workers can offer a unique perspective.
- ◆ If we don’t speak for ourselves, no one else might.
- ◆ Ethical imperative.
- ◆ *“Social workers should advocate for living conditions conducive to the fulfillment of basic human needs and should promote social, economic, political, and cultural values and institutions that are compatible with the realization of social justice.”* (NASW Code of Ethics
<https://www.socialworkers.org/pubs/code/code.asp>)

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Strengthening Social Work's Voice in Public Policy

- ◆ The new rules/regulations can impact (+ or -) our own role.
 - ◆ How we do our job
 - ◆ What we do at our job
 - ◆ Our workload
 - ◆ Our recognition as professionals
 - ◆ Our relationship to other disciplines
- ◆ The new rules/regulations can impact outcomes for clients/consumers & family members.
 - ◆ Autonomy
 - ◆ Rights
 - ◆ Quality of life
 - ◆ Access to services and resources (e.g., mental health services)

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WHY COMMENT

- ✧ Anyone can comment on any part of the proposed rule.
- ✧ Submit comments electronically.
- ✧ Comments are not counted in terms of how many – for or against – on a specific provision.
- ✧ Final rule must take into account – *comments, scientific data, expert opinions, and facts accumulated during the pre-rule and proposed rule stages*. Based on comments - -agency could decide **to change aspects of the rulemaking** when issuing final rules. Agency needs to comment on why they addressed or didn't address issues raised in the comments.

YOUR COMMENTS CAN MAKE A DIFFERENCE

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HOW TO COMMENT

- ✧ Know that your response will be PUBLIC.
- ✧ Identify what you are responding to --
 - ✧ A question – e.g., The draft asks for input about Social Work Qualifications.
 - ✧ Specific requirement – e.g. 483.15 b
- ✧ You can provide input on items that are not addressed by CMS but you have knowledge/data that indicate that they are essential to be included.
- ✧ Edit your response
 - ✧ Have 2 people read it before you submit it.
- ✧ Identify who you are – role, degree(s), years of experience, position.

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HOW TO COMMENT

- ✧ Be as specific as possible
 - ✧ Provide recommended language
 - ✧ Provide rationale for each of your recommendations
 - ✧ Provide data/research/standards/licensing requirements to back-up your recommendations (provide links to resources mentioned).
 - ✧ Report on how being required to be part of the interdisciplinary team or other requirements will impact workload and indicate needs for expanded staffing support.
 - ✧ Identify how professional training and expertise are required to perform certain tasks.
 - ✧ New section on Behavioral Health, e.g.

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COLLABORATE WITH OTHERS

- ✧ Are you part of a larger coalition, peer support group or entity that will also be providing comments?
- ✧ Is there a local, state or national organization that can also incorporate your comments into what they comment on?
- ✧ It is important to have administrators, owners, provider organizations, QIO organizations, advocacy organizations, ombudsmen organizations comment on social work-related issues and to be supportive of addressing social work, mental health, strong interdisciplinary team.

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Accessing the Proposed Rules

- Detailed information and link for submitting comments
- <https://www.federalregister.gov/articles/2015/07/16/2015-17207/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities>
- PDF of Proposed Rules
- <http://www.gpo.gov/fdsys/pkg/FR-2015-07-16/pdf/2015-17207.pdf>
- P. 42211
- "" We propose to relocate the requirement for and qualifications of a social worker from the current § 483.15(g)(3) to proposed § 483.70(p). In addition, there is a list of human services fields from which a bachelors degree could provide the minimum educational requirement for a social worker. We propose to add "gerontology" to that list of human services fields. *We would also welcome comments related to qualifications for the social worker*, especially whether state licensure should remain the threshold requirement or if additional requirements are appropriate.
- ""

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Some Long Standing Issues

- Weak requirement of “social work or related degree”
- 120 resident rule
- Access to Clinical Social Work Services
 - CMS letter to NASW, undated but after release of 2003 OIG report – <https://www.socialworkers.org/practice/aging/agingLetter091003.asp>.
 - December 31, 2002 Federal Register, pp. 79987 - CMS states that they would address comments on Clinical Social Worker Services received on the 10/19/2000 proposed rule at a future time. However, this has never occurred and is still an issue – this might be a time to comment on it.
- New requirements
 - Access to behavioral health services
 - Social work as required member of ID team

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Examples of Comments

- NASW July 2012 Letter to CMS on the LTC Conditions of Participation
http://www.socialworkers.org/advocacy/letters/2012/NASW_Comments_current_Long_Term_Care_Conditions_of_Participation.pdf.
 - The NASW recommendation is that all nursing and skilled nursing facilities be required to have a social worker who possesses the following qualifications:
 - A baccalaureate or master’s degree in social work. A degree in a “human services field” is not adequate preparation for professional social work.
 - Two years of postgraduate, supervised social work experience (working directly with clients) in a long-term care or health care setting.
 - This requirement should apply to all facilities, regardless of size. Psychosocial well-being is integral to residents’ quality of life, and a professional social worker is uniquely qualified to assess and address residents’ psychosocial concerns.
- NOTE: The NASW letter to CMS then goes on to provide a rationale based on findings from research and federal reports.**

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Examples of Comments

- **Excerpt from NASW Comments to CMS on Medicare Shared Savings Program and Accountable Care Organizations; CMS—1345—P**
- <https://socialworkers.org/practice/clinical/2011/110606%20NASW%20Comments%20on%20CMS%20Proposed%20Rule%20CMS-1345-P.pdf>
- **Internal processes for measuring clinical or service performance by physicians; using results to improve care and service.**
- NASW supports inclusion of this criterion as a way to demonstrate patient-centeredness.
- **In addition to supporting CMS's proposed criteria, NASW recommends adding a 10th criterion:**
Collaboration in care provision with family caregivers, as guided by the beneficiary
 Family caregivers—who include, but are not limited to, spouses, partners, significant others, family of origin, extended family, and friends (NASW, 2010)—play a critical role in supporting Medicare beneficiaries. Family caregivers provide physical, psychosocial, financial, and even medical support to people with disabilities and older adults. They also help beneficiaries communicate with health care providers and navigate service delivery systems.
- No health care system can be patient-centered without recognizing and supporting the family caregivers' role in supporting patients' biopsychosocial health and well-being. Opportunities for family collaboration include participation in the assessment process, care planning, service delivery and monitoring, and performance measurement (NASW, 2010). Identification of family members and decision making regarding their involvement in care is the right of each competent beneficiary. If the beneficiary is unable to identify whom she or he wants involved in care, the ACO should follow appropriate legal processes (for example, honoring the beneficiary's choice of health care agent).

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Example of Comments

- **Excerpt from NASW Letter to CMS on Home Health Conditions of Participation (2014)**
http://www.socialworkers.org/advocacy/letters/2015/NASW_Comments-CMS-3819-P_141208.pdf
- **Consolidation of provisions addressing skilled professional services.** NASW strongly supports CMS's goal of supporting interdisciplinary team care. We are extremely concerned, however, that proposed § 484.75 would impede interdisciplinary care by diluting the roles of professionals within the team. Patients' and families' access to HHA social work services is already limited for several reasons:
 - Home health agencies aren't required to offer medical social services. The current conditions of participation (§ 484.14) specify only that "part-time or intermittent skilled nursing services and at least one other therapeutic service (physical, speech, or occupational therapy; medical social services; or home health aide services) [emphasis added] are made available on a visiting basis, in a place of residence used as a patient's home." Similarly, § 484.34 delineates personnel requirements for social workers and social services assistants, but only "if the agency furnishes medical social services"—thereby reinforcing that medical social services are optional in home health care.
 - Even within HHAs that do provide medical social services, access to a social worker or social work assistant is limited because such services must be ordered by a physician based on an initial assessment by a registered nurse (RN). RNs do not have the in-depth training in psychosocial assessment that social workers do. Thus, they may not detect significant psychosocial concerns related to the home health diagnosis, just as a social worker attempting to do a nursing assessment may not detect certain physiological or medical issues. This home health practice contrasts sharply with hospice, where social work is a core service and social workers complete the psychosocial assessment.

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RESOURCES

- Federal Guide to the Rule-Making Process --
https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf
- Examples of Comments
 - NASW Comments on Draft National Quality Forum report
 - http://www.socialworkers.org/advocacy/letters/2015/150727-MAP_Dual_NASW_Comments.pdf
 - Comments to White House Conference on Aging Long Term Services & Supports Policy Issue Brief
 - http://www.socialworkers.org/practice/aging/documents/NASW_Comments_on_2015_WHCoA_LTSS_Policy_Brief_61215.pdf
 - Investing in the Social Work Workforce.
<http://www.socialworkpolicy.org/wp-content/uploads/2011/10/SWPI-Inv-in-the-Wrkforce-Final-Report.pdf> - see pp 33-42 - NASW 6/6/11 Comments to CMS on Accountable Care Organizations

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RESOURCES

- CMS letter to NASW, undated but after release of 2003 OIG report –
<https://www.socialworkers.org/practice/aging/agingLetter091003.asp>.
- HHS Office of Inspector General Report – Psychosocial Services in Skilled Nursing Facilities
<https://oig.hhs.gov/oei/reports/oei-02-01-00610.pdf>
- Evaluating Psychosocial Care in Nursing Homes: Toward Quality Psychosocial Care and its Measurement.
<http://www.socialworkpolicy.org/wp-content/uploads/2007/06/12-NH-Final-Rpt-ahrq-2005.pdf>
- <http://www.socialworkpolicy.org/news-events/enhanced-psychosocial-screening-in-nursing-homes-opportunities-for-social-work-highlighted-in-new-journal-article.html>

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RESOURCES

- Examples of Relevant Institute of Medicine Reports
 - Psychosocial Interventions for Mental and Substance Use Disorders: A Framework for Establishing Evidence-Based Standards -
<http://iom.nationalacademies.org/Reports/2015/Psychosocial-Interventions-Mental-Substance-Abuse-Disorders.aspx>
 - The Mental Health and Substance Use Workforce for Older Adults: In Whose Hands? - See more at:
<http://iom.nationalacademies.org/Reports/2012/The-Mental-Health-and-Substance-Use-Workforce-for-Older-Adults.aspx#sthash.mVkJpL1g.dpuf>
 - Retooling for an Aging America
<https://iom.nationalacademies.org/Reports/2008/Retooling-for-an-Aging-America-Building-the-Health-Care-Workforce.aspx>