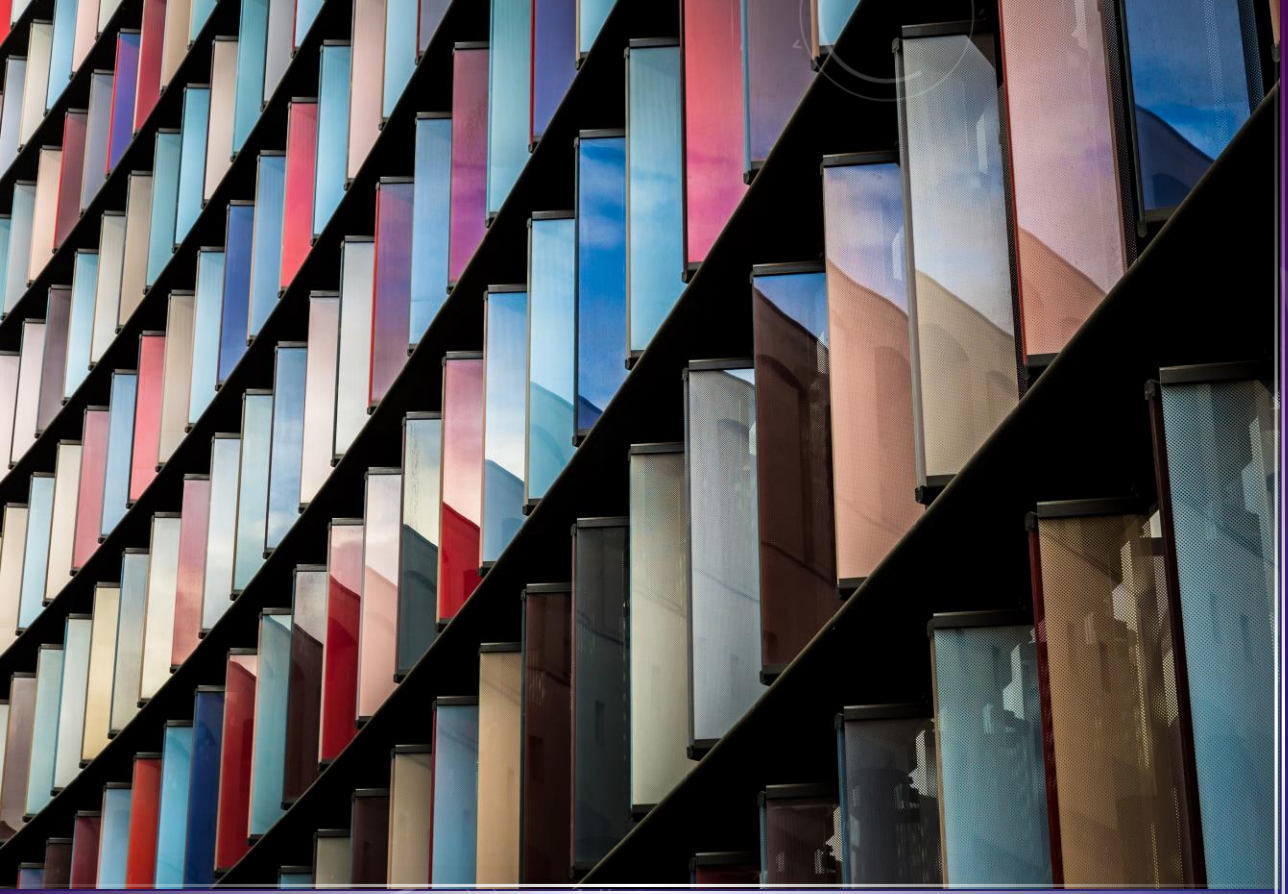


REGULATORY UPDATE

CMDA MEETING 6/6/2023

JENNY ALBERTSON, NHA, QCP

DIRECTOR OF QUALITY AND REGULATORY AFFAIRS

CMS REMOVED COVID TESTING AND STAFF VAX REQUIREMENTS

On May 31, 2023, CMS announced a final rule. This rule will be effective 60 days after it is published in the federal register, which is scheduled to happen on June 5, 2023.

CMS will <u>not</u> be enforcing the staff vaccination provisions between now and the effective date of this final rule.

CMS COVID-19 Vaccine Regulatory Changes

CMS is withdrawing all requirements to **have all staff vaccinated for COVID-19 or receive a medical exemption.**

CMS is finalizing the requirement from the "COVID-19 Vaccine Educate and Offer rule" which **maintains requirements for LTC facilities to educate staff and residents about, and offer, the COVID-19 vaccine**.

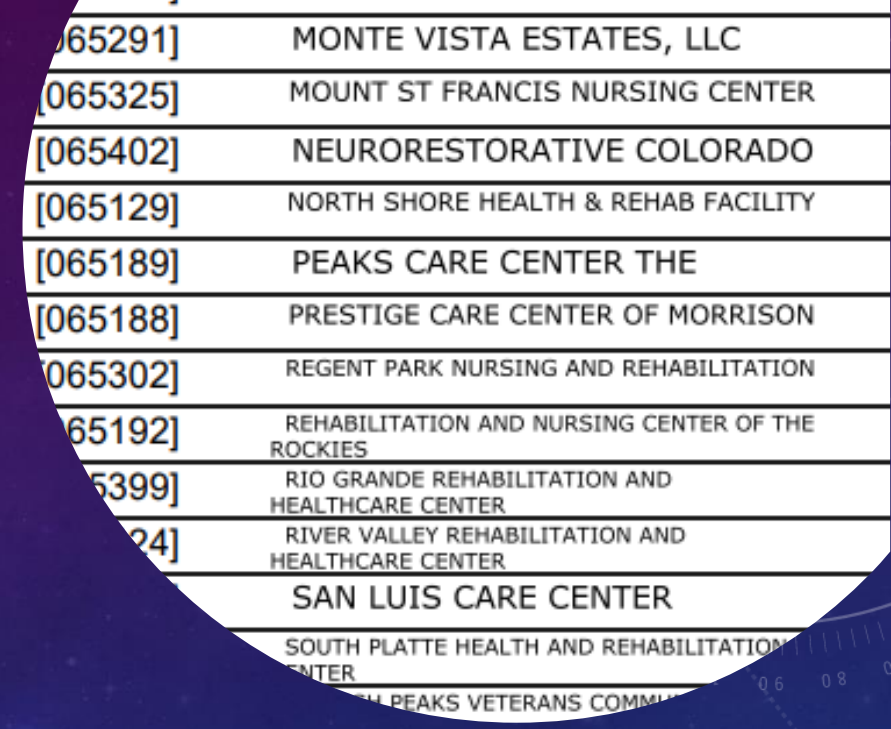
Facilities are still required to report COVID-19 vaccine status for residents and staff to NHSN - will be reported through the SNF Quality Reporting Program (QRP).

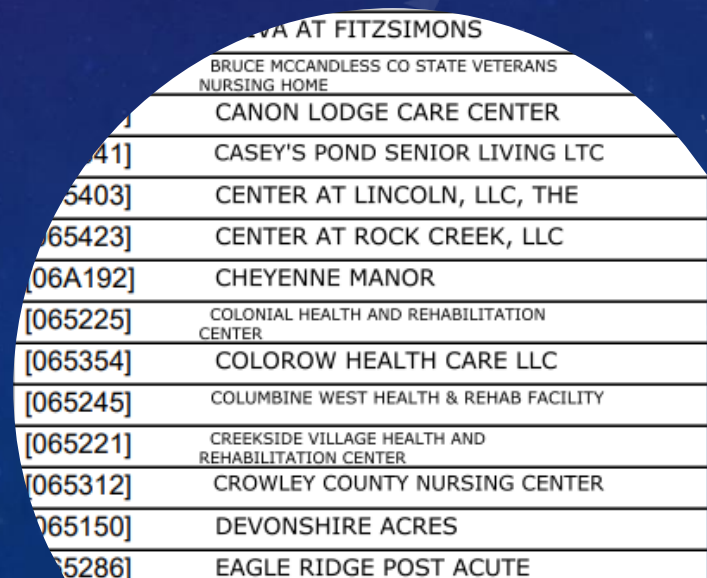
CMS COVID-19 Testing Changes

- CMS is removing all testing requirements issued in the interim final rule (IFR) on September 2, 2020. This removes section 483.80(h) of the Requirements of Participation.
- Testing is to be done based on symptoms and/or exposure, per CDC Guidance.

OVERDUE ANNUAL SURVEYS

- 51 in CO (23% of providers) beyond 3 years
- CDPHE says they are trying to keep up with complaints and I.J.s, which slows their progress in catching up on annuals.
- Their employment vacancies don't help (8 RNs, 1 Generalist). 19 of their surveyors have less than 8 months of experience.
- AL Surveys
  - swamped in complaints (200+ per year average)
  - 2-3 revisits is becoming commonplace due to not correcting deficiencies
  - only surveying for recert every 3 years





DISCRETIONARY DENIAL OF PAYMENT

• Beginning July 1, 2023 the CDPHE will begin imposing the discretionary denial of payment (DDPNA) remedy for applicable nursing facility **surveys with harm, substandard quality of care, and immediate jeopardy findings**. During the public health emergency, CMS required all states to impose DDPNA for applicable surveys, consequently, this practice will be familiar to many of our providers. The CMS Denver location has offered Denver location states the opportunity to impose DDPNA **in order to encourage speedier return to compliance through the selection of more prompt completion dates for all deficiencies cited** during an applicable survey.

•In keeping with the State Operations Manual Chapter 7 - Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities, DDPNA will be imposed **15 days from the date of the state enforcement letter**. CDPHE will review state imposition of DDPNA with CMS to ensure this practice is achieving the intended goal. After the review, adjustments may be made to ensure this enforcement is practicable and operates in the manner intended.

Denial of all Payment for all Medicare and Medicaid Residents (DPAA) (Discretionary). - See §7508 of this chapter. Only CMS has the authority to deny all payment for Medicare and/or Medicaid residents. This is in addition to the authority to deny payment for all new admissions (discretionary) noted above. This is a severe remedy. Factors to be considered in selecting this remedy include but are not limited to:

1. Seriousness of current survey findings;
2. Noncompliance history of the facility; and
3. Use of other remedies that have failed to achieve or sustain compliance.

CMS HAS TOLD CDPHE TO FOCUS ON 4 AREAS

Infection Control & IP Nurse

Abuse and Neglect

Inappropriate Use of Psych Meds

Insufficient Staffing

- This may become an automatic citation from CMS with a fine attached based on Payroll Based Journal data entry from the previous quarter.
- Watch for weekend staffing vs. weekday and RN Coverage 8 hrs/day, 7 days/week

CDPHE SEEKING LICENSE FEE INCREASES

Their budget shortfall is estimated at $11 million per year

Pay for surveyors does not meet industry standards – creates turnover

Demands of survey/licensing needs exceeds what they can do with their funding

Proposed possible fee increases across all provider types of one set amount

Also considering relating the fee increases to the resources the provider type uses (enforcement and recertification)

CHCA wants to see improved efficiencies on the part of the Department, such as other means of resolving complaints without on-site visits, shorter surveys, etc.

CHCA reminds the Department that our Medicaid reimbursement has only just been increased and still will not fully meet our costs so a fee increase will not make sense to our members.

Imposing new costs on a largely Medicaid-funded system is circular and pulls dollars away from improved patient care.

MEDICAID FUNDING LEGISLATION PASSED - TAKES EFFECT ON JULY 1, 2023.

HB 1228 NURSING FACILITY REIMBURSEMENT RATE SETTING

This bill increases Medicaid nursing home reimbursement rates for 2023-2024

The current rate setting methodology will be used.

- The aggregate average statewide per diem rate will increase by 10%
- Nursing homes with 75%-84.9% Medicaid census will receive a $5 per bed day add-on payment.
- Nursing homes with 85% and greater Medicaid census will receive a $10 per bed day add-on payment.

NEW PROVIDER REQUIREMENTS

The Department of Health Care Policy and Finance (HCPF) may require the following from Medicaid providers:

- Annual audited financial statements
- Details on transactions between related parties.
- Disclosure of ownership interest real estate, management companies, facility operators and all related parties.

COLORADO
Department of Public Health & Environment

Communicable Disease

Respiratory Protection Program

Facility Checklist

Does your facility need a Respiratory Protection Program?	
Does your facility provide health care services? • Examples include: hospital, urgent care, specialty outpatient centers (dentist, dialysis, pain clinic, surgery, etc), rehabilitation facilities, long term care centers, nursing homes, group homes, home health care.	☐ Yes ☐ No
Does your facility have any of the following employee groups? • Employees who provide direct patient care. • Employees who support health care services (dietary, housekeeping/EVS, facility maintenance, security, etc). • Employees required to wear a respirator.	☐ Yes ☐ No
Is your facility a non-healthcare setting with any of the following requirements? • Respirator use required to protect the health of employees. • Respirator use mandated by the employer. • Respirator use required to protect employees against contaminants in the air.	☐ Yes ☐ No

CDPHE PUSHING RESPIRATORY PROTECTION PROGRAM

- The CDPHE plan is OSHA compliant
- Facilities should Self-evaluate
- Attend webinars or review instructions slide deck from CDPHE or videos on OSHA site

OIG FOCUS - INVOLUNTARY DISCHARGES

https://www.mcknights.com/news/nursing-home-eviction-review-added-to-oig-work-plan/

The OIG will issue a report later this year on evictions, calling them a potentially “unsafe and traumatic experience” for residents.

…it has “ongoing work” looking at whether nursing homes are meeting the CMS requirements for “facility-initiated discharges.

The announcement noted that recent media stories have “highlighted a rise in nursing homes eviction” and that data from 2011 to 2016 from the Long-Term Care Ombudsman Program found that evictions are the most frequently cited complaint about facilities, it said on its website.

THE OCTOBER 2022 UPDATE TO REGULATIONS IMPACTED HOW WE DISCHARGE RESIDENTS

CLARIFICATIONS ABOUT INVOLUNTARY DISCHARGES & YOUR ROLE AS A PROVIDER

EMERGENCY TRANSFERS

When a resident is temporarily transferred on an emergency basis to an acute care facility, this type of transfer is **considered to be a facility-initiated transfer and a notice of transfer must be provided to the resident and resident representative as soon as practicable**, according to 42 CFR §483.15(c)(4)(ii)(D).

Copies of notices for emergency transfers must also still be sent to the ombudsman, but they may be sent when practicable, such as in a list of residents on a monthly basis.

INVOLUNTARY DISCHARGES
D/C TO HOSPITAL, REFUSAL TO READMIT

The facility must have evidence that:

- the resident's **status at the time the resident seeks to return to the facility** (not at the time the resident was transferred for acute care) meets one of the discharge criteria at §483.15(c)(i).
- **Must provide notice of a transfer or discharge** to ensure residents and their representatives receive complete and accurate information in the notice of transfer and discharge.
- **The resident has the right to return to the facility pending an appeal** of any facility-initiated discharge unless the return endangers the health or safety of the resident or other individuals in the facility.
- **Must document the danger that the failure to transfer or discharge would pose.** Residents who are sent to the acute care setting for routine treatment/ planned procedures must also be allowed to return to the facility.

Documentation in the resident's medical record must include:

The basis for the transfer (refer to which regulation allowed element).

This documentation must be made before, or as close as possible to the actual time of transfer or discharge.

In the case of needs exceeding what the facility can provide, **the physician must document**:

- the specific resident need(s) that cannot be met,
- facility attempts to meet the resident needs, and
- the service available at the receiving facility to meet the need(s).

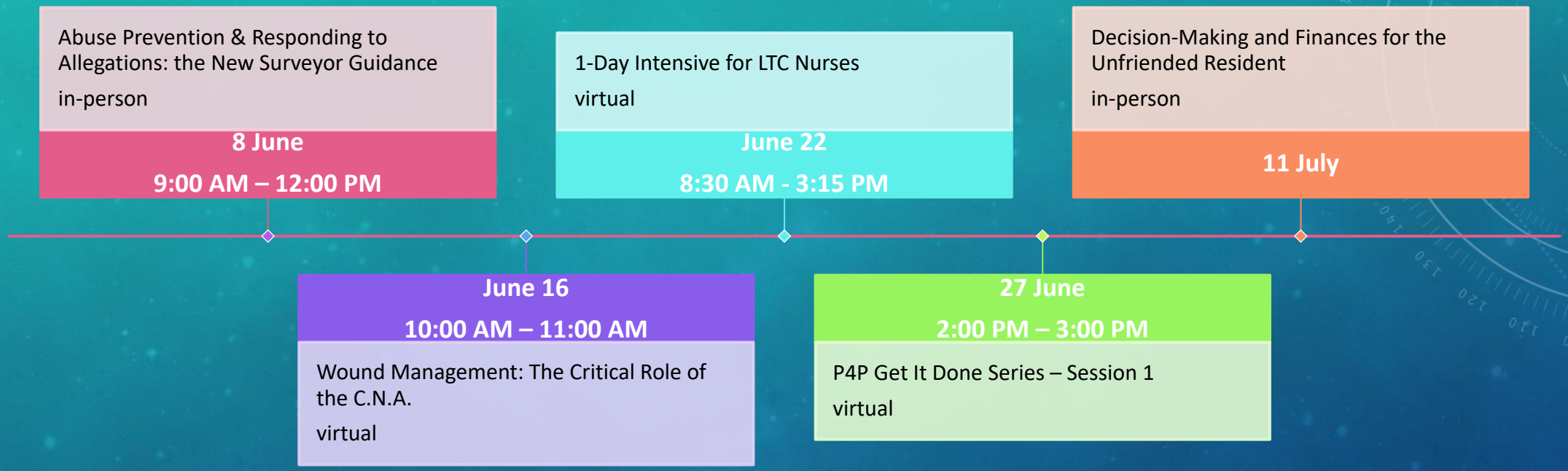
PHYSICIAN ROLE IN DOCUMENTATION

Documentation regarding the reason for the transfer or discharge **must be provided by a physician**, not necessarily the attending physician, in the following circumstances.

NOTE: Documentation of the transfer or discharge may be completed by a non-physician practitioner (NPP) in accordance with State law.

- welfare and the resident's needs cannot be met
- resident's health has improved sufficiently
- safety of individuals in the facility is endangered
- health of individuals in the facility would otherwise be endangered

[Basically, anything that has to do with provision of care - all types of discharge but non-payment or facility closure/de-licensure]



UPCOMING TRAINING & EVENTS