

ROP 3 DELAYS NEW LAWS

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Phase 3- Where are we?

- ▶ **F659- Qualified persons**

- ▶ 483.21(b) (3) Comprehensive Care Plans

- ▶ The services provided or arranged by the facility, as outlined by the comprehensive care plan must-

- Be provided by qualified persons in accordance with each resident's written plan of care.

- Be culturally- competent and trauma informed.

Trauma Informed Care

- ▶ **F699- TRAUMA INFORMED CARE**

- ▶ 483.25 (m) Trauma-informed care

The facility must ensure that residents who are trauma survivors receive culturally competent, trauma informed care in accordance with professional standards of practice and accounting for residents' experiences and preferences in order to eliminate or mitigate triggers that may cause retraumatization of the resident.

F741- Sufficient/Competent staff- Behavioral Health needs

- ▶ 483.40 (a) The facility must have sufficient staff who provide direct services to residents with the appropriate competencies and skills sets to provide nursing and related services...as determined by residents assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with 483.70 (e).

F949- Behavioral Health Training

- ▶ 483.95 (i) Behavioral health

A facility must provide health training consistent with the requirements at 483.40 and as determined by the facility assessment at 483.70 (e).

F895-Compliance & Ethics Program

- ▶ Beginning on November 28, 2019, the facility organization for each facility must have in operation a compliance and ethics program.
- ▶ 483.85 (a) Definitions.
- ▶ For purposes of this section, the following definitions apply:
Compliance and ethics program means, with respect to a facility, a program of the operating organization that-

delayed

TO AVOID CONFUSION AND PROMOTE TRANSPARENCY COMPLIANCE AND ETHICS WILL BE DELAYED UNTIL NOV 28, 2020

Resident Call System and New Required Training F919, F40, F941, F942, F947



F919 Call System

- ▶ 483.90 (g) Resident call system
- ▶ The facility must be adequately equipped to allow residents to call for staff assistance through a communication system which relays the call directly to a staff member or to a centralized staff work area



F940 Training Requirements

- ▶ Will be implemented beginning November 28, 2019 (Phase3)
- ▶ 483.95 Training Requirements
- ▶ A facility must develop, implement, and maintain an effective training program for all new and existing staff, individual providing services under contractual arrangement, and volunteer, consistent with their expected roles.
- ▶ A facility must determine the amount and types of training necessary based on a facility assessment as specified at 483.70 (e)

F941 Communication

- ▶ **Effective November 28, 2019 (phase 3)**
- ▶ **483.95 (a) Communication**
- ▶ **A facility must include effective communication as mandatory training for direct care staff**

F942 Resident's rights and facility responsibilities

- ▶ 483.95 (b) will be implemented beginning November 28, 2019 (Phase3)
- ▶ 483.95 (b) Resident's rights and facility responsibilities.
- ▶ A facility must ensure that staff members are educated on the rights of the resident and the responsibilities of a facility to properly care for its residents as set forth at 483.10, respectively.

F947 Required in-service training for nurse aides

► In-service training must-

483.95 (g) (1) Be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year.

483.95 (g) (2) Include Dementia management training and resident abuse prevention training.

483.95 (g) (3) Address areas of weakness as determined in nurse aides' performance reviews and facility assessment at and may address the special needs of residents as determined by the facility staff

483.95 (g) (3) will be implemented on November 28, 2019 (phase 3)with the exception of facility assessment which was implemented on Phase 2

483.95 (g) (4) For nurse aides providing services to individuals with cognitive impairments , also address the care of the cognitively impaired.

ARBITRATION AGREEMENT

- ▶ **CANNOT REQUIRE RESIDENTS TO SIGN THE ARBITRATION AGREEMENT AS A CONDITION FOR RECEIVING CARE.**

NEW LAWS 2020

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LEGAL UPDATES

▶ DYNAMEX:

▶ ABC TEST- WORKER IS PROVED YOUR EMPLOYEE UNLESS

- ▶ 1. THE WORKER IS FREE FROM THE CONTROL AND DIRECTION OF THE HIRING ENTITY IN CONNECTION WITH THE PERFORMANCE OF THE WORK, BOTH UNDER THE CONTRACT FOR THE PERFORMANCES OF THE WORK AND IN FACT:
- ▶ 2. THE WORKER PERFORMS WORK THAT IS OUTSIDE THE USUAL COURSE OF THE HIRING ENTITY'S BUSINESS AND
- ▶ 3. THE WORKER IS CUSTOMARILY ENGAGED IN AN INDEPENDENTLY ESTABLISHED TRADE OCCUPATION, OR BUSINESS OF THE SAME NATURE AS THE WORK PERFORMED.
- ▶ LIST ALL VENDORS AND ASSESS FOR EMPLOYEE VERSUS CONTRACT
- ▶ MUST PROVE ALL THREE ABOVE.
- ▶ RD, THERAPY (LIKELY DIFFICULT TO PASS THE ABC TEST)
- ▶ **EFFECTIVE JANUARY 1, 2020 (AB5 THE BORELLO TEST)**

IMPACTS FOR SNFS AND ICF

- ▶ PHYSICAL, OCCUPATIONAL AND SPEECH THERAPISTS
- ▶ DIETITIANS
- ▶ SOCIAL WORKERS
- ▶ NURSES VIA NURSE REGISTRY
- ▶ NURSE PRACTITIONERS
- ▶ BILLING COMPANIES
- ▶ JANITORIAL SERVICES
- ▶ GARDENING SERVICES
- ▶ OTHERS?

NEW CMS ARBITRATION RULE

- ▶ EFFECTIVE 9-16-19
- ▶ REPEALS PROHIBITION AGAINST PRE DISPUTE ARBITRATION AGREEMENTS
- ▶ CANNOT BE A CONDITION OF ADMISSION OR CONTINUED CARE
- ▶ EXISTING AGREEMENTS ENTERED INTO BEFORE SEPT 16, 2019 ARE STILL VALID.
- ▶ MUST EXPLAIN TO RESIDENT OR HIS REPRESENTATIVE IN A FORM AND MANNER THAT HE OR SHE UNDERSTANDS, INCLUDING A LANGUAGE.
- ▶ MUST SIGN THAT THEY ACKNOWLEDGE THAT THEY UNDERSTAND THE AGREEMENT-
- ▶ SURVEYOR GUIDANCE COMING.
- ▶ NEUTRAL ARBITRATOR, VENUE THAT IS CONVENIENT FOR BOTH, 30 DAY RIGHT TO RESCIND, CANNOT CONTAIN LANGUAGE THAT PROHIBITS THE RESIDENT FROM TALKING TO FEDS, STATE, OR LOCAL OFFICIALS.

TRANSFER/DISCHARGE

- ▶ INVOLUNTARY DISCHARGES
- ▶ DISCHARGE HEARINGS
- ▶ LEGAL CHALLENGES, GOVERNMENTAL ENFORCEMENT AND CLASS ACTIONS.

HEALTH AND SAFETY CODE 1418.8/EPPL BILL: PROGRESS AND CHALLENGES

- ▶ **UNFRIENDED AND LACK CAPACITY**
- ▶ ALLOWS SNF IDTS TO AUTHROIZE MEDICAL TREATMENT ORDERED BY A PHYSICIAN FOR AN INCAPACITATED RESIDENT THAT RQUIRES INFORMED CONSENT IF THERE IS NO
 - ▶ AVAILABLE FAMILY MEMBER WILLING TO MAKE HEALTH CARE DECISIONS
 - ▶ COSERVATOR OF THE PERSON
 - ▶ OTHER PERSON WITH LEGAL AUTHROITY TO MAKE HEALTH CAR DECISIONS.

EPPLE BILL CONTINUED

- ▶ ATTENDING PHYSICIAN DETERMINES LACK OF CAPACITY
 - ▶ IF NOT CLEAR, CAN OBTAIN MENTAL HEALTH CONSULTATION
 - ▶ ATTENDING PHYSICIAN DETERMINES THAT THERE IS NO PERSON WITH LEGAL AUTHORITY TO MAKE HEALTH CARE DECISIONS OR NO PERSON WHO IS WILLING TO SERVE IN A DECISION- MAKING CAPACITY.
 - ▶ IDT
 - ▶ EXCEPT IN EMERGENCY=FACILITY HOLDS IDT REVIEW
 - ▶ REVIEW THE PHYSICIAN PATIENT ASSESSMENT
 - ▶ REASON FOR PROPOSED MEDICAL INTERVENTION
 - ▶ DISCUSSION OF PATIENTS DESIRES IF KNOWN (INTERVIEW WITH PATIENT, FAMILY MEMBERS, FRIENDS, REVIEW OF MEDICAL RECORDS)
 - ▶ BEFORE PROCEEDING WITH THE INTERVENTION, FACILITY MUST PROVIDE ORAL AND WRITTEN NOTICE TO THE RESIDENT AND WRITTEN NOTICE TO AT LEAST ONE COMPETENT PERSON WHOSE INTERESTS ARE ALIGNED WITH THE RESIDENT. NEW REQUIREMENT FROM COURT OF APPEAL
 - ▶ 2 FORMS AVAILABLE ON CAHF.ORG

EPPL E BILL CONTINUED

- ▶ MUST FIND ONE COMPETENT PERSON- WILLING AND ABLE TO DISCUSS THE MEANING OF THE NOTICE WITH THE RESIDENT
- ▶ WRITTEN NOTICES WILL GO TO PATIENT IN EFFECT FEB/MARCH

ARE WE PREPARED?

- ▶ Identify before admission if the patient has capacity and has an advance directive.
- ▶ Is there a patient representative
- ▶ If no advance directive strongly encourage and assist potential resident to formulate one (call ombudsman) especially for LTC Resident
- ▶ Make a concerted effort to find a decision maker who is willing to speak for the resident before resorting to 1418.8
- ▶ Identify if the resident has capacity or lacks capacity per MD
- ▶ What about fluctuating capacity? ie good days/bad days with Dementia
- ▶ Maintain open lines of communication with resident and family/friends
- ▶ Discuss end of life wishes in detail and document discussion revisit regularly.

Are we prepared?

- ▶ Consider drafting a form to memorize the proceedings of the meetings.
- ▶ Include a resident representative on IDT (NOW MANDATORY)
- ▶ Recap all IDT Treatment decisions quarterly
- ▶ Consider having 2 MD's when discussing significant treatment decisions being discussed : ie tube Feeding on Advanced Dementia resident,
- ▶ Make sure to notify resident representative when a resident is deemed to lack capacity if EPPLE is going to be invoked (before convening Epple IDT)
- ▶ Consult Legal Counsel
- ▶ Bioethics Resources may be helpful

CHOW CHANGES

- ▶ The prospective licensee shall make a written offer of employment to each employee for the 60 day transition period in the employee primary language. The offer shall state the time within which the employee shall accept the offer, but not less than 10 days.
- ▶ Except for Admin and DON no changes in wages or benefits for the first 60 days are allowed.
- ▶ Cannot discharge without cause for the 60 day transition period.

Labor Laws

- ▶ Organ Donor- AB 1223- Requires employers to provide an additional unpaid leave of absence up to 30 days per year to an employee donating an organ.
- ▶ Domestic Partner- SB 30- changes how CA law defines domestic partner. Any two adults over the age of 18 to enter into a domestic partner (use to be 62)
- ▶ Lactation Accommodation- SB 142- Must provide a location (other than a bathroom) for lactation. Also requires employers to create and implement a lactation policy for employee handbook.
- ▶ Employee Privacy- AB 25- exempts from CA Consumer Privacy Act employee data- ie information collected and used within the context of a person's employment, or application for employment.
- ▶ AB9- Discrimination, Harassment and Retaliation- extends the statute of limitation from one year to 3 years on all discrimination claims.
- ▶ SB 83- Expanded Family Leave- Beginning July 1, 2020 eligible employees will have expanded family leave or paid family leave. PFL for up to 8 weeks (increases from 6 weeks)

AFLS and Letters from CMS

▶ www.CAHF.org

