

How CMS Is Rolling Back Nursing Home Protections

DATE	REQUEST BY NURSING HOME OPERATORS OR CONGRESS, AND ACTION TAKEN BY CMS	DATE(S) OF SUBSEQUENT CMS ACTION COMPLYING WITH REQUEST	DOCUMENTATION
December 15, 2016	Nursing home lobbyists request that the Centers for Medicare & Medicaid Services (CMS) repeal and replace nursing home regulations that became effective in November 2016, eliminate fines when the violation occurred prior to an inspection, and repeal CMS S&C Memo 16-31-NH relating to enforcement actions.	July 7, 2017 October 27, 2017 January 18, 2018 June 15, 2018	American Health Care Ass'n letter to President-Elect Donald Trump (Dec. 15, 2017), http://theconsumervoicework.org/uploads/files/issues/AHCANCAL-Letter-TrumpAdmin-Attachments.pdf .
March 9, 2017	<p>Nursing home lobbyists request that CMS:</p> <ul style="list-style-type: none"> • Repeal and replace the nursing home regulations that became effective in November 2016; • Eliminate numerous regulations, including <ul style="list-style-type: none"> ❖ The ban on arbitration agreements during a resident's admission, and ❖ The requirement that a facility assess the staffing levels needed to care for residents; and • Eliminate fines when the violation occurred prior to inspection or no individual resident suffered harm. 	June 8, 2017 July 7, 2017 October 27, 2017 January 18, 2018	American Health Care Ass'n letter to Secretary Thomas Price (March 9, 2017), http://www.ihca.com/Files/Comm-Pub/AHCA-Final-Price-Ltr-3.9.17.pdf .

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May 4, 2017	<p>CMS solicits comments on three possible areas where nursing home standards might be eliminated or reduced:</p> <ul style="list-style-type: none"> • Notice to Long-Term Care Ombudsman Program when nursing home is evicting resident; • Standards for handling resident grievances; and • Requirement that facilities develop quality improvement programs. <p>CMS also seeks “feedback regarding any additional areas of burden reduction and cost savings in [nursing homes].”</p>		Proposed Rules, 82 Fed. Reg. 21,014, 21,089 (May 4, 2017), https://www.gpo.gov/fdsys/pkg/FR-2017-05-04/pdf/2017-08521.pdf .
June 8, 2017	CMS proposes to eliminate ban of arbitration agreements and instead allow nursing homes to require such agreements as a condition of admission.		Proposed Rules, 82 Fed. Reg. 26,649 (June 8, 2017), https://www.gpo.gov/fdsys/pkg/FR-2017-06-08/pdf/2017-11883.pdf .

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June 26, 2017	<p>Nursing home lobbyists request that CMS</p> <ul style="list-style-type: none"> • Delay regulations; • Eliminate regulation requiring assessment of staffing needs; and • Weaken regulations about <ul style="list-style-type: none"> ❖ Infection control; ❖ Abuse reporting; ❖ Notice to Long-Term Care Ombudsman Program when facility is evicting resident; ❖ Resident grievances; and ❖ Quality improvement programs. 	<p>June 30, 2017</p> <p>November 24, 2017</p> <p>January 18, 2018</p>	<p>LeadingAge comments in response to CMS's solicitation (on May 4, 2017) of ways to eliminate or weaken regulations (June 26, 2017), http://www.leadingagewi.org/media/46354/la-rops-cms.pdf.</p>
June 30, 2017	<p>CMS announces that for one year it will not impose fines or any other meaningful penalties for violations of certain regulations scheduled to go into effect in November 2017.</p>		<p>CMS Survey and Certification (S&C) Memo 17-36-NH (June 30, 2017), https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-36.pdf.</p>

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July 7, 2017	CMS changes its policies to reduce amount and frequency of nursing home fines. Fines will be assessed on a per day basis, rather than a per instance basis, when the violation occurred prior to inspection. In addition, per-instance fines will be used even for an ongoing violation considered a “single isolated incident.”		CMS S&C Memo, 17-37-NH (July 7, 2017), https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-37.pdf .
October 11, 2017	120 Members of the U.S. House of Representatives request that CMS revise the nursing home regulations and give nursing home operators more time to comply.	November 24, 2017 January 18, 2018	Letter to CMS from 120 Members of the U.S. House of Representatives (Oct. 11, 2017), http://renacci.house.gov/cache/files/8ad42967-7fd9-4d12-abaa-f65dda6e0426/renacci-rop-final-letter-10.11.17.pdf .
October 26, 2017	24 Members of the U.S. Senate request that CMS delay by one year the effective date of certain regulations.	November 24, 2017 January 18, 2018	Letter to CMS from 24 Members of the U.S. Senate (Oct. 26, 2017), http://theconsumervoice.org/uploads/files/issues/Senate_ROP_letter_10.26_17_FINAL.pdf .
October 27, 2017	CMS proposes to repeal previous S&C Memo 16-31-NH and reduce imposition of fines against nursing homes. Proposed changes include giving nursing homes more opportunities to delay or potentially avoid fines and, even in “immediate jeopardy” situations, allowing fines only in cases of serious injury or death.		CMS S&C Memo 18-01-NH (Oct. 27, 2017), https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-18-01.pdf .

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October 30, 2017	CMS launches Patients Over Paperwork initiative to eliminate or weaken regulations governing health care providers.		CMS press release (Oct. 30, 2017), https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-10-30.html .
November 24, 2017	<p>Following up on memo of June 30, 2017, CMS announces that for 18 months it will not impose fines or any other meaningful penalties for violations certain regulations scheduled to go into effect in November 2017. These regulations address topics including:</p> <ul style="list-style-type: none"> • Caring for residents with dementia; • Developing a care plan within 48 hours after a resident’s admission; • Developing quality improvement programs; and • Assessing staffing levels needed to care for residents. 		CMS S&C Memo 18-04-NH (Nov. 24, 2017), https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-18-04.pdf .
Fall 2017	CMS indicates intent by June 2018 to issue proposed nursing home regulations that would eliminate or revise regulations that allegedly are excessively burdensome, unnecessary, or obsolete.		Unified Agenda of Regulatory and Deregulatory Actions, RIN 0938-AT36 (Fall 2017), https://goo.gl/xXKGMC

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December 15, 2017	CMS holds closed listening session to hear from nursing home operators only about supposed regulatory burdens.		
January 18, 2018	<p>CMS’s “Patients Over Paperwork” newsletter explicitly states that CMS heard and responded to the requests of nursing home operators in</p> <ul style="list-style-type: none"> • Delaying use of fines and other enforcement mechanisms for violations of regulations that became effective in November 2017, and • Reducing the size of fines by imposing per-instance fines rather than per-day fines for violations that occurred prior to any inspection. 		CMS, Patients Over Paperwork newsletter (Jan. 2018), https://www.cms.gov/Outreach-and-Education/Outreach/Partnerships/Downloads/JanuaryPoPNewsletter011818.pdf .
February 12, 2018	Nursing home lobbyist states intent to seek weakening of regulations to compensate for decrease in Medicare payment rates in federal budget.		Kimberly Marselas, <i>\$1.96 Billion Nursing Homes Cut Will Force Hard Look at Regulation, Payment, Experts Say</i> , McKnight’s Long-Term Care News, February 12, 2018, https://www.mcknights.com/news/196-billion-nursing-homes-cut-will-force-hard-look-at-regulation-payment-experts-say/article/743611/ .

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June 15, 2018	As requested by nursing home lobbyists, CMS replaces 2016 policy guidance (CMS S&C Memo 16-31-NH) with new guidance that limits imposition of penalties against nursing homes. Under the new guidance, CMS eliminates certain mandatory penalties, giving regional CMS offices wide discretion to whether and how to address a particular violation. Also, penalties are lessened in situations when residents were in “immediate jeopardy” but did not suffer harm.		CMS, Quality, Safety & Oversight Group, Final Revised Policies Regarding the Immediate Imposition of Federal Remedies, QSO 18-18-NH (June 15, 2018)