

EXTENDED CARE LINK

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NEW BILL COULD IMPACT WORKFORCE SHORTAGES

This past September, Wisconsin Republican Representative Sean Duffy introduced a bill (H.R. 6986) that would amend the Social Security Act to change the mandatory Certified Nurse Assistant (CNA) training prohibitions that are imposed by the Centers for Medicare and Medicaid Services (CMS). According to Rep. Duffy, the CNA training lockout that penalizes Skilled Nursing Facilities (SNF) "is counterintuitive because it limits a SNF's ability to train new qualified staff, which can perpetuate a substandard quality of care, if facilities are not able to recruit qualified nurses."¹

Nursing homes that do not comply with Federal requirements are subject to enforcement actions referred to as remedies. The Social Security Act (SSA) and the Code of Federal Regulation (CFR) indicate that CMS or the State may impose remedies when a facility is out of compliance.² Which remedies are imposed depends on the scope and severity of the specific deficiency or non-compliance. Four factors determine the severity of a deficiency:

- **Level 1 - No actual harm with potential for minimal harm:** A deficiency that has the potential for causing no more than a minor negative impact on the residents or employees;
- **Level 2 - No actual harm with a potential for more than minimal harm that is not immediate jeopardy:** Noncompliance with the requirements that results in the potential for no more than minimal physical, mental, and/or psychosocial harm to the residents or employees and/or that result in minimal discomfort to the residents or employees of the facility, but has the potential to result in more than minimal harm that is not immediate jeopardy;
- **Level 3 - Actual harm that is not immediate jeopardy:** Noncompliance with the requirements that results in actual harm to residents or employees that is not immediate jeopardy;
- **Level 4 - Immediate jeopardy to resident health or safety:** Noncompliance with the requirements that results in immediate jeopardy to resident or employee health or safety in which immediate cor-

rective action is necessary because the provider's noncompliance with one or more of those requirements has caused, or is likely to cause, serious injury, harm, impairment or death to a resident receiving care in a facility or an employee of the facility.³

The scope of deficiency is determined by three levels, which describe how many individuals were affected by the deficiency:

- **Isolated:** When one or a very limited number of residents or employees is/are affected and/or a very limited area or number of locations within the facility are affected;
- **Pattern:** When more than a very limited number of residents or employees are affected, and/or the situation has occurred in more than a limited number of locations but the locations are not dispersed throughout the facility;
- **Widespread:** When the problems causing the deficiency are pervasive (affect many locations) throughout the facility and/or represent a systemic failure that affected or has the potential to affect, a large portion or all of the residents or employees.⁴

The SSA requires that substantial compliance with Federal requirements be achieved within six months or the facility will be terminated from participation in Medicare and/or Medicaid.⁵ If substantial compliance is not obtained within three months then the SSA requires that Medicare and Medicaid payment be denied for any individual admitted to the facility.⁶ According to §483.151(b)(2), the State may not approve a nurse aide training and competency evaluation program in a facility which, in the previous two years has been subject to an extended or partial extended survey or has been assessed a civil monetary penalty or the facility has been subject to imposition of a denial of payment, temporary manager or termination.⁷

Taking away a facilities ability to train nurse aides has long been criticized as it limits a facilities ability to ensure that appropriately certified staff are available to care for residents. For example, late in 2016, 90% of nursing homes in Kansas were under a training ban and as of late 2017, there continued to be 35%-50% under the ban.⁸ These types of statistics have a significant effect on a facilities ability to find qualified staff to meet the needs of the residents leading to severe workforces shortages. "CNA's are the backbone of quality care and the jobs that nursing homes and assisted living communities provide are often integral to the community, particularly in rural and small communities where they are the major employer in the area."⁹

If passed, H.R. 6986 would modify the mandatory CNA training lockout mandated by the by the Omnibus Budget Reconciliation Act of 1997 (OBRA) and allow CMS greater flexibility in reinstating providers' valuable CNA training programs.¹⁰ LeadingAge and the American Health Care Association/National Center for Assisted Living support the bill stating that. "This bill will help everyone be more responsive to the needs of residents and providers."¹¹

¹ Duffy's bill would ensure American's seniors receive quality care in skilled nursing services (16 October 2018). Available at <https://riponadvance.com/stories/duffys-bill-would-ensure-americas-seniors-receive-quality-care-in-skilled-nursing-facilities/>

² CMS- Nursing Home Enforcement <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationEnforcement/Nursing-Home-Enforcement.html>

³ CMS: Nursing Home Enforcement- Frequently asked questions. Available from <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationEnforcement/Downloads/NH-Enforcement-FAQ.pdf>

⁴ Indem

⁵ Ibid #3

⁶ Ibid #3

⁷ S&C: 18-02-NH Available at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-18-02.pdf>

⁸ Flynn, M. (2018). New bill before congress could mitigate skilled nursing staffing woes. Available at <https://skillednursingnews.com/2018/10/new-bill-congress-mitigate-skilled-nursing-staffing-woes/>

⁹ LeadingAge and AHCA Statement on the Nursing Home Workforce Quality Act. Available from <https://www.leadingage.org/press-release/leadingage-and-ahca-statement-nursing-home-workforce-quality-act>

¹⁰ Duffy's bill would ensure America's seniors receive quality care in skilled nursing facilities. Available from <https://riponadvance.com/stories/duffys-bill-would-ensure-americas-seniors-receive-quality-care-in-skilled-nursing-facilities/>

¹¹ Ibid #9

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