

POLICY TO PRACTICE:

TRANSLATING NATIONAL POLICY
TO OMBUDSMAN PRACTICE



The National Long-Term Care
Ombudsman Resource Center

CMS GUIDANCE AND PROPOSED RULES TO ENSURE RIGHTS OF SAME-SEX SPOUSES

POLICY

CMS has issued guidance and proposed regulatory revisions that provide equal treatment to all spouses, regardless of sex, of a valid marriage, even if the state where the individual lives or receives services does not recognize same sex marriage. Both the proposed rules and revised language for the [State Operations Manual, Appendix PP](#) – Guidance to Surveyors for Long-Term Care Facilities were issued December 12, 2014. (See the proposed rule and guidance language in the Resource section below). Comments on the proposed rule are due February 10, 2015. An advanced copy of the revisions to Appendix PP was issued in a Letter from CMS to State Survey Agency Directors ([S&C: 15-13-ALL](#)) and is effective immediately.

For all Medicare and Medicaid certified long-term care facilities, CMS is clarifying definitions and rights' provisions to ensure equal rights for legally married spouses. For terms such as: *spouse, marriage, family, and relative*, and words often associated with the spousal relationship, like *representative, support person, surrogate, and next-of-kin*, CMS intends that these terms include spouses from all lawful marriages, including same-sex marriages, regardless of where the couple resides or where the services are provided to the individual.

In the Interpretive Guidelines, CMS states, "A nursing facility is expected to recognize all lawful marriages and spouses for purposes of compliance with the Conditions of Participation, regardless of any laws to the contrary of the state or locality or other jurisdiction where the nursing facility is located or where the spouse lives." Through the proposed rule, CMS seeks to ensure that definitions and rights provisions in the Nursing Home Reform regulations that currently defer to State law instead provide equal rights for same-sex spouses in legally-valid marriages in facilities participating in Medicare and/or Medicaid. To that end, the proposed rule recommends a change to section 483.10 Resident's rights and 483.128 PASARR evaluation criteria by adding language that "the same-sex spouse of a resident must be afforded treatment equal to that afforded an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated."

In addition to LTC Facilities, the proposed rules and guidance also apply to Ambulatory Surgical Centers, Hospice Care, Hospitals, and Community Health Centers.

WHAT DOES THIS MEAN FOR OMBUDSMAN PRACTICE?

- Educate residents, family members, and staff about resident and spousal rights
- Support same-sex spouses in asserting their rights
- Advocate for residents and same-sex spouses whose rights are being violated
- Discuss guidance during in-service trainings for facilities regarding resident rights
- Add information from the revised guidance to residents' rights training for initial certification and continuing education training for LTCO
- Create and distribute a fact sheet regarding rights of same-sex spouses in LTC facilities
- Communicate with state and local licensing and survey staff regarding the guidance

RESOURCES

[Proposed Rules](#) (comments are due February 10, 2015)

[Revised Guidance](#) (CMS Letter to State Survey Agency Directors: Clarification of Terms Implicating the Spousal Relationship in Regulations and Guidance for Medicare-and Medicaid-certified Providers and Suppliers)

CONTACT US

If you have questions about this brief or would like to share some of your LTCOP's activities regarding this guidance or proposed rule, please email ombudcenter@theconsumervoice.org or call 202-332-2275.