



**National Association of State Long-Term Care Ombudsman Programs**

November 15, 2018

Administrator Verma  
Centers for Medicare & Medicaid Services  
Department of Health and Human  
Services Room 445-G, Hubert H.  
Humphrey Building 200 Independence  
Ave. S.W.  
Washington, D.C. 20201  
Submitted electronically through <http://www.regulations.gov>

RE: Medicare and Medicaid Programs; Regulatory Provisions to Promote Program  
Efficiency, Transparency, and Burden Reductions, CMS–3346–P, RIN 0938–AT23

Dear Administrator Verma:

The National Association of State Long-Term Care Ombudsman Programs (NASOP) thanks the Centers for Medicare and Medicaid Services (CMS) for the opportunity to comment on this proposed rule. NASOP is the association of 53 ombudsmen who oversee the state long-term care ombudsman programs in the 50 states, District of Columbia, Guam, and Puerto Rico. Our program mission is to protect the health, safety, welfare, and rights of long-term care residents. Consequently, our comments are focused on the proposed changes to the emergency preparedness requirements for nursing facilities. Every resident in every nursing facility across the country is vulnerable to the negative effects of a disaster, whether the event is weather related or man-made.

NASOP opposes the changes regarding long-term care facilities' emergency preparedness in proposed 42 CFR §483.73 because the changes are inconsistent with CMS' stated purpose of allowing health care professionals to devote resources to improving patient care by eliminating or reducing requirements that impede quality patient care or that divert resources away from furnishing high quality patient care. Instead, the proposed changes would increase the risk of harm to residents and impede quality care.

The current emergency preparedness regulations require nursing facilities to update their emergency plans, policies, procedures, communications plans; to provide staff training in emergency preparedness; and to conduct testing of the preparedness program --- all on an annual basis. Proposed §42 CFR 483.73 reduces that timeline to once every two years. With this change, CMS is in effect encouraging nursing facilities to be inadequately trained and ill-prepared to respond to emergencies.

Melanie McNeil, NASOP President  
Georgia State Long-Term Care Ombudsman  
Office of the State Long-Term Care Ombudsman  
2 Peachtree Street, 33rd Floor, Atlanta, GA 30303  
404-657-5327  
[Melanie.McNeil@oslco.ga.gov](mailto:Melanie.McNeil@oslco.ga.gov)



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A nursing facility's resident population changes significantly over the course of a year. Different residents have different needs and abilities. Additionally, nursing facility management and direct care staff frequently turn over. Different residents AND different staff should be reason enough to continue the requirement for annual updates, training, and testing. But the changes do not stop with the residents and staff. Other crucial elements can change over the course of a year including facility ownership and management arrangements, contact information for facility staff and emergency personnel, transportation resources, medical suppliers and other critical vendors. In order to effectively respond to an emergency, nursing facility staff must regularly identify all of the changes; codify them in current policy/procedure; modify plans, policies, and procedures to reflect the current needs and abilities of residents and staff; communicate the changes and modified response through training; and test that response to assure its adequacy. Even if a nursing facility could guarantee stable staffing, performing these tasks every two years is not simply not frequent enough to maintain readiness.

Furthermore, communities learn from every disaster or emergency. The current emergency preparedness regulations reflect lessons learned from recent disasters and the changes needed to save residents' lives. Nursing facilities must be required to update their emergency preparedness systems, including policies/procedures, communication and training plans; and rehearse those systems. Delaying those updates for two years could jeopardize the entire emergency preparedness program. Preparation for emergencies and disasters directly affects the lives of residents and is crucial for a health care business whose job it is to provide 24-hour nursing services to vulnerable adults who are not able to care for themselves. The emergency preparedness plan is a fluid system that must reflect the current resident/staff population and incorporate best practices learned from actual emergencies. A plan that is permitted by regulation to remain stagnant for two years is neither current nor effective.

We recognize that annual revision, training, and rehearsal of the emergency preparedness plan requires more resources than every-other-year requirements, but the increased effort and expense has a very real direct benefit to residents --- it saves lives! As Benjamin Franklin said, *"Failing to plan, is planning to fail."* This was never more applicable than in emergency planning for nursing facilities, where our most vulnerable and dependent citizens live. By eliminating the requirement for annual revisions, training, and rehearsal of the emergency plan proposed 42 CFR §483.73 CMS endorses a failure to plan adequately and sets facilities up with a plan to fail --- an outcome totally inconsistent with quality care.

NASOP cautions CMS about taking proposed regulatory action that decreases emergency preparedness in the name of burden reduction. Surely the lives of our residents, who are dependent on adequate facility care, justify the additional regulatory burden of more frequent revision, training, and rehearsal of the emergency preparedness plan.

Melanie McNeil, NASOP President  
Georgia State Long-Term Care Ombudsman  
Office of the State Long-Term Care Ombudsman  
2 Peachtree Street, 33rd Floor, Atlanta, GA 30303  
404-657-5327  
Melanie.McNeil@oslco.ga.gov



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Thank you for your consideration of our recommendations. We strongly urge CMS to withdraw proposed 42 CFR §483.73, and leave the emergency preparedness regulation in its current form.

Sincerely,

A handwritten signature in black ink that reads "Patty Ducayet". The signature is written in a cursive, flowing style.

Patty Ducayet, Chair  
NASOP Advocacy Committee  
Texas State Long-Term Care Ombudsman

Melanie McNeil, NASOP President  
Georgia State Long-Term Care Ombudsman  
Office of the State Long-Term Care Ombudsman  
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