



AMERICAN ASSOCIATION FOR RESPIRATORY CARE
9425 North MacArthur Blvd., Suite 100, Irving, TX 75063, (972) 243-2272, Fax (972) 484-2720
<http://www.aarc.org>, E-mail: info@aarc.org

August 26, 2015

Mr. Andrew Slavitt, Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

**CMS–3260–P: Medicare and Medicare Programs;
Reform of Requirements for Long-Term Care Facilities**

Dear Mr. Slavitt:

On behalf of the American Association for Respiratory Care, I am writing in response to the request for comments on the subject proposed regulation. The AARC is a national professional organization representing 50,000 respiratory therapists who treat patients with chronic lung disease in all care settings and whose organizational activities impact approximately 175,000 practicing respiratory therapists across the country.

The proposed rule aims to recognize and address the need for respiratory-related treatment and therapy in long-term care (LTC) facilities by adding respiratory therapy as a specialized rehabilitative service. The addition of respiratory therapy is intended to reflect more current needs of facility residents who often present with some form of respiratory illness at the time of admission or incur outbreaks as a resident of respiratory tract infections such as pneumonia.

The AARC strongly supports the inclusion of respiratory therapy as a specialized rehabilitative service as part of CMS' LTC facility reform measures, especially in light of the fact that chronic obstructive pulmonary disease (COPD) and pneumonia are on the list of conditions subject to hospital readmission penalties. Thus, our comments focus on this aspect of the proposed rule found in Section II. Q. *Specialized rehabilitative services (§483.65)*.

According to CMS, respiratory therapy furnished under proposed §483.65 (currently §483.45) may be furnished directly by the LTC facility or the required service may be obtained from an outside source. With respect to services from an outside source, CMS requires the outside

source to be “a Medicare and/or Medicaid provider of specialized rehabilitative services” which is consistent with current policy.

At an Open Door Forum held on August 11, 2015, a representative of AARC asked for clarification as to whether respiratory therapists would be considered a provider of specialized rehabilitative services in cases where the LTC facility might obtain the services from an outside source. CMS staff on the call recommended that the issue be submitted as part of the formal public comment period since other staff not on the call needed to be consulted as to the answer.

Given the regulatory language in its entirety, we are trying to ascertain the following:

1. If a LTC facility uses an outside source to furnish respiratory therapy as a specialized rehabilitative service, can respiratory therapists furnish the service as a Medicare/Medicaid provider of such specialized services?
2. If respiratory therapists are not considered a provider in accordance with the regulations for outsourcing, is there any reason that respiratory therapists would not be able to furnish the services as long as they are qualified personnel of a recognized Medicare/Medicaid provider?

Current regulatory language in §483.45(b) dealing with specialized rehabilitative services requires such services to be “furnished under the written order of a physician by qualified personnel”. Further, the facility’s assessment of staff resources includes the “education and/or training and any competencies related to resident care” for both employees and those who provide services under contract (proposed §483.70(e)(2)(iv)).

The AARC wants to make sure that respiratory therapists will be able to provide the specialized rehabilitation services for patients suffering from respiratory illnesses for which they are eminently qualified to perform.

Respiratory therapists are the only allied health care professionals that receive comprehensive formal education in all aspects of pulmonary medicine. These licensed professionals undergo rigorous validated competency testing over the full scope of practice which includes diagnosis, treatment, and management of all respiratory diseases and conditions. They are responsible for management of mechanically ventilated patients, administration of a wide range of prescription medications via aerosol therapy as well as all aspects of oxygen therapy including assessment of the patient’s needs, titrating oxygen dosage and selection of the appropriate oxygen delivery devices. Respiratory therapists by virtue of their education and testing are experts in application and management of physician-ordered treatment for respiratory patients and the selection of the appropriate devices such as ventilators and oxygen systems.

In considering the answer to our questions above, it is important to note that respiratory therapy is included as part of the Comprehensive Outpatient Rehabilitation Facility (CORF) Services benefit. According to 1861(cc)(1) of the Social Security Act, services identified as part of the CORF benefit are services furnished “by a physician or other qualified professional personnel...” Regulations at §485.70 specify qualifications that respiratory therapists must meet in order to furnish services in the CORF setting.

We assume but need written clarification from CMS that the proposed statutory language in §483.65 does not preclude respiratory therapists from furnishing specialized rehabilitative services regardless of whether they are employees of the LTC facility or their services are furnished through an outside source. It would be counterproductive for CMS to add respiratory therapy as a specialized rehabilitative service in the LTC facility and exclude respiratory therapists from furnishing the service if it is not provided in-house.

We specifically request that CMS address this issue in the final rule, particularly since we were directed by CMS staff to raise the question during the public comment period.

We appreciate the opportunity to submit comments on the proposed rule. If you have any questions, please feel free to contact Anne Marie Hummel, AARC’s Regulatory Director at 703-492-9764 or hummel@aarc.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank R. Salvatore". The signature is fluid and cursive, written in a professional style.

Frank R. Salvatore, RRT, MBA, FAARC
President