

42 CFR 483.75

This section is current through the March 20, 2014 issue of the Federal Register

Code of Federal Regulations > TITLE 42-- PUBLIC HEALTH > CHAPTER IV-- CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES > SUBCHAPTER G-- STANDARDS AND CERTIFICATION > PART 483-- REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES > SUBPART B-- REQUIREMENTS FOR LONG TERM CARE FACILITIES

§ 483.75 Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

- (a) Licensure. A facility must be licensed under applicable State and local law.
- (b) Compliance with Federal, State, and local laws and professional standards. The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.
- (c) Relationship to other HHS regulations. In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR part 80); nondiscrimination on the basis of handicap (45 CFR part 84); nondiscrimination on the basis of age (45 CFR part 91); protection of human subjects of research (45 CFR part 46); and fraud and abuse (42 CFR part 455). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.
- (d) **Governing body.**
 - (1) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and
 - (2) The governing body appoints the administrator who is --
 - (i) Licensed by the State where licensing is required; and
 - (ii) Responsible for management of the facility.
- (e) Required training of nursing aides -- (1) Definitions.

Licensed health professional means a physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; physical or occupational therapy assistant; registered professional nurse; licensed practical nurse; or licensed or certified social worker.

Nurse aide means any individual providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants as defined in § 488.301 of this chapter.

- (2) General rule. A facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time basis, unless:
- (i) That individual is competent to provide nursing and nursing related services; and
 - (ii)
 - (A) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State as meeting the requirements of §§ 483.151-483.154 of this part; or
 - (B) That individual has been deemed or determined competent as provided in § 483.150 (a) and (b).
- (3) Non-permanent employees. A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the requirements in paragraphs (e)(2) (i) and (ii) of this section.
- (4) Competency. A facility must not use any individual who has worked less than 4 months as a nurse aide in that facility unless the individual --
- (i) Is a full-time employee in a State-approved training and competency evaluation program;
 - (ii) Has demonstrated competence through satisfactory participation in a State-approved nurse aide training and competency evaluation program or competency evaluation program; or
 - (iii) Has been deemed or determined competent as provided in § 483.150 (a) and (b).
- (5) Registry verification. Before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements unless --
- (i) The individual is a full-time employee in a training and competency evaluation program approved by the State; or
 - (ii) The individual can prove that he or she has recently successfully completed a training and competency evaluation program or competency evaluation program approved by the State and has not yet been included in the registry. Facilities must follow up to ensure that such an individual actually becomes registered.
- (6) Multi-State registry verification. Before allowing an individual to serve as a nurse aide, a facility must seek information from every State registry established under sections 1819(e)(2)(A) or 1919(e)(2)(A) of the Act the facility believes will include information on the individual.
- (7) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency

evaluation program.

- (8) Regular in-service education.** The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must --
- (i)** Be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year;
 - (ii)** Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff; and
 - (iii)** For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.
- (f) Proficiency of Nurse aides.** The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.
- (g) Staff qualifications.**
- (1)** The facility must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements.
 - (2)** Professional staff must be licensed, certified, or registered in accordance with applicable State laws.
- (h) Use of outside resources.**
- (1)** If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement described in section 1861(w) of the Act or (with respect to services furnished to NF residents and dental services furnished to SNF residents) an agreement described in paragraph (h)(2) of this section.
 - (2)** Arrangements as described in section 1861(w) of the Act or agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for --
 - (i)** Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and
 - (ii)** The timeliness of the services.
- (i) Medical director.**
- (1)** The facility must designate a physician to serve as medical director.
 - (2)** The medical director is responsible for --
 - (i)** Implementation of resident care policies; and
 - (ii)** The coordination of medical care in the facility.
- (j) Laboratory services.** (1) The facility must provide or obtain laboratory services to

meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

- (i) If the facility provides its own laboratory services, the services must meet the applicable requirements for laboratories specified in part 493 of this chapter.
- (ii) If the facility provides blood bank and transfusion services, it must meet the applicable requirements for laboratories specified in part 493 of this chapter.
- (iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of services in accordance with the requirements of part 493 of this chapter.
- (iv) If the facility does not provide laboratory services on site, it must have an agreement to obtain these services from a laboratory that meets the applicable requirements of part 493 of this chapter.

(2) The facility must --

- (i) Provide or obtain laboratory services only when ordered by the attending physician;
- (ii) Promptly notify the attending physician of the findings;
- (iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and
- (iv) File in the resident's clinical record laboratory reports that are dated and contain the name and address of the testing laboratory.

(k) Radiology and other diagnostic services. (1) The facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

- (i) If the facility provides its own diagnostic services, the services must meet the applicable conditions of participation for hospitals contained in § 482.26 of this subchapter.
- (ii) If the facility does not provide its own diagnostic services, it must have an agreement to obtain these services from a provider or supplier that is approved to provide these services under Medicare.

(2) The facility must --

- (i) Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;
- (ii) Promptly notify the attending physician of the findings;
- (iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and
- (iv) File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(l) Clinical records. (1) The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices that are --

- (i) Complete;

- (ii) Accurately documented;
 - (iii) Readily accessible; and
 - (iv) Systematically organized.
- (2) Clinical records must be retained for --
 - (i) The period of time required by State law; or
 - (ii) Five years from the date of discharge when there is no requirement in State law; or
 - (iii) For a minor, three years after a resident reaches legal age under State law.
 - (3) The facility must safeguard clinical record information against loss, destruction, or unauthorized use;
 - (4) The facility must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by --
 - (i) Transfer to another health care institution;
 - (ii) Law;
 - (iii) Third party payment contract; or
 - (iv) The resident.
 - (5) The clinical record must contain --
 - (i) Sufficient information to identify the resident;
 - (ii) A record of the resident's assessments;
 - (iii) The plan of care and services provided;
 - (iv) The results of any preadmission screening conducted by the State; and
 - (v) Progress notes.
- (m) Disaster and emergency preparedness.**
- (1) The facility must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.
 - (2) The facility must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.
- (n) Transfer agreement.** (1) In accordance with section 1861(l) of the Act, the facility (other than a nursing facility which is located in a State on an Indian reservation) must have in effect a written transfer agreement with one or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures that --
- (i) Residents will be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician; and

- (ii) Medical and other information needed for care and treatment of residents, and, when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.
 - (2) The facility is considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible.
- (o) Quality assessment and assurance. (1) A facility must maintain a quality assessment and assurance committee consisting of --
 - (i) The director of nursing services;
 - (ii) A physician designated by the facility; and
 - (iii) At least 3 other members of the facility's staff.
 - (2) The quality assessment and assurance committee --
 - (i) Meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and
 - (ii) Develops and implements appropriate plans of action to correct identified quality deficiencies.
 - (3) A State or the Secretary may not require disclosure of the records of such committee except in so far as such disclosure is related to the compliance of such committee with the requirements of this section.
 - (4) Good faith attempts by the committee to identify and correct quality deficiencies will not be used as a basis for sanctions.
- (p) Disclosure of ownership.**
 - (1) The facility must comply with the disclosure requirements of §§ 420.206 and 455.104 of this chapter.
 - (2) The facility must provide written notice to the State agency responsible for licensing the facility at the time of change, if a change occurs in --
 - (i) Persons with an ownership or control interest, as defined in §§ 420.201 and 455.101 of this chapter;
 - (ii) The officers, directors, agents, or managing employees;
 - (iii) The corporation, association, or other company responsible for the management of the facility; or
 - (iv) The facility's administrator or director of nursing.
 - (3) The notice specified in paragraph (p)(2) of this section must include the identity of each new individual or company.
- (q) Required training of feeding assistants. A facility must not use any individual working in the facility as a paid feeding assistant unless that individual has successfully completed a State-approved training program for feeding assistants, as specified in § 483.160 of this part.

- (r) Facility closure-Administrator.** Any individual who is the administrator of the facility must:
- (1)** Submit to the State Survey Agency, the State LTC ombudsman, residents of the facility, and the legal representatives of such residents or other responsible parties, written notification of an impending closure:
 - (i)** At least 60 days prior to the date of closure; or
 - (ii)** In the case of a facility where the Secretary or a State terminates the facility's participation in the Medicare and/or Medicaid programs, not later than the date that the Secretary determines appropriate;
 - (2)** Ensure that the facility does not admit any new residents on or after the date on which such written notification is submitted; and
 - (3)** Include in the notice the plan, that has been approved by the State, for the transfer and adequate relocation of the residents of the facility by a date that would be specified by the State prior to closure, including assurances that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.
- (s) Facility closure.** The facility must have in place policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a facility closure, as required at paragraph (r) of this section.
- (t) Hospice services.** (1) A long-term care (LTC) facility may do either of the following:
- (i)** Arrange for the provision of hospice services through an agreement with one or more Medicare-certified hospices.
 - (ii)** Not arrange for the provision of hospice services at the facility through an agreement with a Medicare-certified hospice and assist the resident in transferring to a facility that will arrange for the provision of hospice services when a resident requests a transfer.
- (2)** If hospice care is furnished in an LTC facility through an agreement as specified in paragraph (t)(1)(i) of this section with a hospice, the LTC facility must meet the following requirements:
- (i)** Ensure that the hospice services meet professional standards and principles that apply to individuals providing services in the facility, and to the timeliness of the services.
 - (ii)** Have a written agreement with the hospice that is signed by an authorized representative of the hospice and an authorized representative of the LTC facility before hospice care is furnished to any resident. The written agreement must set out at least the following:
 - (A)** The services the hospice will provide.
 - (B)** The hospice's responsibilities for determining the appropriate hospice plan of care as specified in § 418.112 (d) of this chapter.
 - (C)** The services the LTC facility will continue to provide, based on each

resident's plan of care.

- (D) A communication process, including how the communication will be documented between the LTC facility and the hospice provider, to ensure that the needs of the resident are addressed and met 24 hours per day.
- (E) A provision that the LTC facility immediately notifies the hospice about the following:
 - (1) A significant change in the resident's physical, mental, social, or emotional status.
 - (2) Clinical complications that suggest a need to alter the plan of care.
 - (3) A need to transfer the resident from the facility for any condition.
 - (4) The resident's death.
- (F) A provision stating that the hospice assumes responsibility for determining the appropriate course of hospice care, including the determination to change the level of services provided.
- (G) An agreement that it is the LTC facility's responsibility to furnish 24-hour room and board care, meet the resident's personal care and nursing needs in coordination with the hospice representative, and ensure that the level of care provided is appropriately based on the individual resident's needs.
- (H) A delineation of the hospice's responsibilities, including but not limited to, providing medical direction and management of the patient; nursing; counseling (including spiritual, dietary, and bereavement); social work; providing medical supplies, durable medical equipment, and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and all other hospice services that are necessary for the care of the resident's terminal illness and related conditions.
- (I) A provision that when the LTC facility personnel are responsible for the administration of prescribed therapies, including those therapies determined appropriate by the hospice and delineated in the hospice plan of care, the LTC facility personnel may administer the therapies where permitted by State law and as specified by the LTC facility.
- (J) A provision stating that the LTC facility must report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by hospice personnel, to the hospice administrator immediately when the LTC facility becomes aware of the alleged violation.
- (K) A delineation of the responsibilities of the hospice and the LTC facility to provide bereavement services to LTC facility staff.

- (3) Each LTC facility arranging for the provision of hospice care under a written agreement must designate a member of the facility's interdisciplinary team who is responsible for working with hospice representatives to coordinate care to the resident provided by the LTC facility staff and hospice staff. The interdisciplinary team member must have a clinical background, function within their State scope of practice act, and have the ability to assess the resident or have access to someone that has the skills and capabilities to assess the resident. The designated interdisciplinary team member is responsible for the following:
- (i) Collaborating with hospice representatives and coordinating LTC facility staff participation in the hospice care planning process for those residents receiving these services.
 - (ii) Communicating with hospice representatives and other healthcare providers participating in the provision of care for the terminal illness, related conditions, and other conditions, to ensure quality of care for the patient and family.
 - (iii) Ensuring that the LTC facility communicates with the hospice medical director, the patient's attending physician, and other practitioners participating in the provision of care to the patient as needed to coordinate the hospice care with the medical care provided by other physicians.
 - (iv) Obtaining the following information from the hospice:
 - (A) The most recent hospice plan of care specific to each patient.
 - (B) Hospice election form.
 - (C) Physician certification and recertification of the terminal illness specific to each patient.
 - (D) Names and contact information for hospice personnel involved in hospice care of each patient.
 - (E) Instructions on how to access the hospice's 24-hour on-call system.
 - (F) Hospice medication information specific to each patient.
 - (G) Hospice physician and attending physician (if any) orders specific to each patient.
 - (v) Ensuring that the LTC facility staff provides orientation in the policies and procedures of the facility, including patient rights, appropriate forms, and record keeping requirements, to hospice staff furnishing care to LTC residents.
- (4) Each LTC facility providing hospice care under a written agreement must ensure that each resident's written plan of care includes both the most recent hospice plan of care and a description of the services furnished by the LTC facility to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being, as required at § 483.25.

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

Secs. 1102, 1128I and 1871 of the Social Security Act ([42 U.S.C. 1302](#), 1320a-7j, and 1395hh).

History

[56 FR 48877, Sept. 26, 1991, as amended at 56 FR 48918, Sept. 26, 1991; 57 FR 7136, Feb. 28, 1992; [57 FR 43925](#), Sept. 23, 1992; 59 FR 56237, Nov. 10, 1994; [63 FR 26252, 26311](#), May 12, 1998; [68 FR 55528, 55539](#), Sept. 26, 2003; [74 FR 40288, 40363](#), Aug. 11, 2009; [76 FR 9503, 9511](#), Feb. 18, 2011, as confirmed and amended at [78 FR 16795, 16805](#), Mar. 19, 2013; [78 FR 38594, 38605](#), June 27, 2013]

Annotations**Notes****[EFFECTIVE DATE NOTE:**

[78 FR 16795, 16805](#), Mar. 19, 2013, amended paragraph (r), effective Apr. 18, 2013; [78 FR 38594, 38605](#), June 27, 2013, added paragraph (t), effective Aug. 26, 2013.]

Case Notes**LexisNexis® Notes**

Case Notes Applicable to Entire Part

Administrative Law : Judicial Review : Administrative Record : General Overview

Healthcare Law : Actions Against Facilities : Facility Liability : Nursing Facilities

Healthcare Law : Actions Against Facilities : Standards of Care : Nursing Facilities

Healthcare Law : Business Administration & Organization : General Overview

Public Health & Welfare Law : Healthcare : Services for Disabled & Elderly Persons : Care Facilities :

Public Health & Welfare Law : Healthcare : Services for Disabled & Elderly Persons : Care Facilities :

Public Health & Welfare Law : Social Security : Medicaid : Providers : Payments & Reimbursements :

Public Health & Welfare Law : Social Security : Medicaid : Providers : Types : Nursing Facilities

Public Health & Welfare Law : Social Security : Medicaid : State Plans : Compliance

Public Health & Welfare Law : Social Security : Medicare : Providers : Types : Nursing Facilities

Case Notes Applicable to Entire Part**[Part Note](#)****Administrative Law : Judicial Review : Administrative Record : General Overview**

[Crews v. Shalala, 40 F. Supp. 2d 350, 1999 U.S. Dist. LEXIS 2844](#) (ED Va Feb. 3, 1999).

Overview: A license home administrator who agreed to surrender his expired license pursuant to a consent decree and in lieu of formal disciplinary proceedings, was properly excluded from participating in the Medicare program until he was relicensed.

- Section 1128(b)(4) of the Social Security Act, 42 U.S.C.S. § 1320-7(b)(4), applies equally to "entities." Entities can only provide health care through other individuals. Both federal

regulations, [42 C.F.R. § 483.75\(d\)\(2\)\(i\)](#), and Virginia statutes, Va. Admin. Code § 95-20-270, require nursing homes to be operated by a licensed administrator. The same Virginia Administrative Code section allows for the revocation of a nursing home administrator's license if the administrator conducts the practice of nursing home administration in such a manner as to constitute a danger to the health of the residents. This authority ensures government oversight of a nursing home administrator's primary duties, which include the provision of health care to residents, even if through other professionals. Accordingly, the secretary of the Department of Health and Human Services' application of § 1128(b)(4) to nursing home administrators' licenses is not arbitrary, capricious or otherwise contrary to law. [Go To Headnote](#)

Healthcare Law : Actions Against Facilities : Facility Liability : Nursing Facilities

[Sunbridge Care & Rehab. for Pembroke v. Leavitt, 2009 U.S. App. LEXIS 16287](#) (4th Cir July 22, 2009). *Overview: Substantial evidence under [42 U.S.C.S. § 1320a-7\(e\)](#) supported the imposition of civil monetary penalties on a skilled nursing facility for failing to comply with federal health and safety regulations because there were two incidents wherein facility residents were injured by falling out of wheelchairs while being transported in the facility's van.*

- [42 C.F.R. § 483.75](#) requires a facility to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial wellbeing of each resident. [Go To Headnote](#)

[United States Ex Rel. Swan v. Covenant Care, Inc., 279 F. Supp. 2d 1212, 2002 U.S. Dist. LEXIS 26867](#) (ED Cal Aug. 5, 2002).

Overview: Where essential elements of nursing home reform advocate's qui tam claim were disclosed in a prior lawsuit, and the advocate was not an original source of those disclosures, the court lacked subject matter jurisdiction over her False Claims Act suit.

- The operation of skilled nursing facilities is governed by a comprehensive set of highly detailed and specific Medicare regulations. For example, skilled nursing facilities must formulate a written plan of care for each Medicare resident to ensure that the resident's activities of daily living are maintained and that a resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene. [42 C.F.R. § 483.25\(a\)\(2\) \(2001\)](#). In addition, the skilled nursing facility must have sufficient nursing staff to provide nursing and related services to attain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by the resident's individual plan of care and maintain accurate and complete medical records for each resident in accordance with accepted professional standards and practices. [42 C.F.R. §§ 483.30, 483.75\(1\) \(2001\)](#). [Go To Headnote](#)

Healthcare Law : Actions Against Facilities : Standards of Care : Nursing Facilities

[Life Care Ctr. Tullahoma v. Sec'y of the United States HHS, 2011 U.S. App. LEXIS 25030](#) (6th Cir Dec. 16, 2011) (Unpublished).

Overview: Based on the notes of the nurse practitioners, the Departmental Appeals Board justifiably concluded that the nursing home breached [42 C.F.R. § 483.10\(b\)\(11\)](#) when its nurses failed to immediately consult a doctor about three residents' cardiovascular and diabetic episodes.

- [42 C.F.R. § 483.75](#) requires that a facility be administered in a manner that enables it to

use its resources effectively and efficiently to help its residents attain their highest practicable state of well-being. *Go To Headnote*

- In the context of [42 C.F.R. § 483.75](#), the Secretary of Health and Human Services need show only that conduct supporting breaches of other regulations also supports an inference that a facility's problems were systemic. *Go To Headnote*

[Sunbridge Care & Rehab. for Pembroke v. Leavitt, 2009 U.S. App. LEXIS 16287](#) (4th Cir July 22, 2009).

Overview: *Substantial evidence under [42 U.S.C.S. § 1320a-7\(e\)](#) supported the imposition of civil monetary penalties on a skilled nursing facility for failing to comply with federal health and safety regulations because there were two incidents wherein facility residents were injured by falling out of wheelchairs while being transported in the facility's van.*

- [42 C.F.R. § 483.75](#) requires a facility to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial wellbeing of each resident. *Go To Headnote*

[Century Care of the Crystal Coast v. Leavitt, 2008 U.S. App. LEXIS 12538](#) (4th Cir June 11, 2008).

Overview: *Skilled nursing facility was not in compliance with [42 C.F.R. §§ 483.25\(h\)\(2\)](#) and [483.75 \(2007\)](#) because facility did not adequately investigate smoking policy violations or supervise problem smokers and it was foreseeable that mentally impaired resident who was on oxygen and had history of unsafe smoking behaviors might have fire-related accident.*

- [42 C.F.R. § 483.75 \(2007\)](#) provides that a facility must be administered in a manner that enables it to use its resources effectively and efficiently to maintain its residents' physical, mental, and psychosocial well-being. *Go To Headnote*

Healthcare Law : Business Administration & Organization : General Overview

[Crews v. Shalala, 40 F. Supp. 2d 350, 1999 U.S. Dist. LEXIS 2844](#) (ED Va Feb. 3, 1999).

Overview: *A license home administrator who agreed to surrender his expired license pursuant to a consent decree and in lieu of formal disciplinary proceedings, was properly excluded from participating in the Medicare program until he was relicensed.*

- Section 1128(b)(4) of the Social Security Act, 42 U.S.C.S. § 1320-7(b)(4), applies equally to "entities." Entities can only provide health care through other individuals. Both federal regulations, [42 C.F.R. § 483.75\(d\)\(2\)\(i\)](#), and Virginia statutes, Va. Admin. Code § 95-20-270, require nursing homes to be operated by a licensed administrator. The same Virginia Administrative Code section allows for the revocation of a nursing home administrator's license if the administrator conducts the practice of nursing home administration in such a manner as to constitute a danger to the health of the residents. This authority ensures government oversight of a nursing home administrator's primary duties, which include the provision of health care to residents, even if through other professionals. Accordingly, the secretary of the Department of Health and Human Services' application of § 1128(b)(4) to nursing home administrators' licenses is not arbitrary, capricious or otherwise contrary to law. *Go To Headnote*

Public Health & Welfare Law : Healthcare : Services for Disabled & Elderly Persons : Care Facilities :

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Public Health & Welfare Law : Healthcare : Services for Disabled & Elderly Persons : Care Facilities :

[Resident Councils v. Leavitt, 500 F.3d 1025, 2007 U.S. App. LEXIS 20956](#) (9th Cir Aug. 31, 2007).

Overview: *Congress had not defined "nursing or nursing-related services," and the Secretary of Health and Human Services reasonably concluded that such services did not necessitate the extensive training required of nurse aides and that permitting trained feeding assistants to assume such tasks would advance the overall goals of the Nursing Home Reform Law.*

- With regard to the Nursing Home Reform Law (Reform Law), feeding assistants must first successfully complete a state-approved training course including at least eight hours of training. [42 C.F.R. §§ 483.35\(h\)\(1\)\(i\), 483.75\(q\), 483.160\(a\)](#). In addition, feeding assistants may feed only those residents who have no complicated feeding problems (such as difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings). [42 C.F.R. § 483.35\(h\)\(3\)](#). Resident eligibility to be fed by feeding assistants is based on the charge nurse's assessment and the resident's latest assessment and plan of care. [42 C.F.R. § 483.35\(h\)\(3\)\(iii\)](#). Further, feeding assistants must work under the supervision of a registered, or licensed practical, nurse and must call a supervisory nurse for assistance in the case of an emergency. [42 C.F.R. § 483.35\(h\)\(2\)](#). Finally, the rule clarifies that feeding assistants are meant to supplement, not supplant, nurse aides. 68 Fed. Reg. 55,529. *Go To Headnote*

[United States Ex Rel. Swan v. Covenant Care, Inc., 279 F. Supp. 2d 1212, 2002 U.S. Dist. LEXIS 26867](#) (ED Cal Aug. 5, 2002).

Overview: *Where essential elements of nursing home reform advocate's qui tam claim were disclosed in a prior lawsuit, and the advocate was not an original source of those disclosures, the court lacked subject matter jurisdiction over her False Claims Act suit.*

- The operation of skilled nursing facilities is governed by a comprehensive set of highly

detailed and specific Medicare regulations. For example, skilled nursing facilities must formulate a written plan of care for each Medicare resident to ensure that the resident's activities of daily living are maintained and that a resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene. [42 C.F.R. § 483.25\(a\)\(2\) \(2001\)](#). In addition, the skilled nursing facility must have sufficient nursing staff to provide nursing and related services to attain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by the resident's individual plan of care and maintain accurate and complete medical records for each resident in accordance with accepted professional standards and practices. [42 C.F.R. §§ 483.30, 483.75\(1\) \(2001\)](#). *Go To Headnote*

Public Health & Welfare Law : Social Security : Medicaid : Providers : Payments & Reimbursements :

[United States v. Anderson, 605 F.3d 404, 2010 U.S. App. LEXIS 10174](#) (6th Cir May 19, 2010).

Overview: *A district court properly denied defendant's motion to dismiss the indictment for failing to state an offense (Fed. R. Crim. P. 12(b)(3)(B)), with regard to her conviction for Medicaid fraud under [42 U.S.C.S. § 1320a-7b\(a\)\(3\)](#), as it charged that she had knowledge of an event that affected her facility's right to receive Medicaid payments.*

- A facility's ongoing participation in Medicaid is conditioned on its compliance with various federal, state, and local regulations, [42 C.F.R. § 483.75\(b\)](#), including the requirement that a long-term healthcare facility designate a physician to serve as medical director, pursuant to § 483.75(i)(1). A medical director is responsible for coordinating medical care within the facility and implementing resident-care policies. § 483.75(i)(2). *Go To Headnote*
- The right of a long-term health care facility to participate in Medicaid payments is in fact conditioned on the presence of a medical director. [42 C.F.R. § 483.75\(b\)](#). The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes. § 483.75(i)(1). The facility must designate a physician to serve as medical director. If a facility loses its medical director, then that event would affect the facility's right to Medicaid payments because it would no longer be operating in accordance with federal regulations. *Go To Headnote*

Public Health & Welfare Law : Social Security : Medicaid : Providers : Types : Nursing Facilities

[Life Care Ctr. of Bardstown v. Sec'y of United States HHS, 2013 U.S. App. LEXIS 18657](#) (6th Cir Sept. 6, 2013) (Unpublished).

Overview: *A mere finding a skilled nursing facility's policy was in compliance with the Medicare and Medicaid facility administration requirement in [42 C.F.R. § 483.75](#) was not a finding that all of the facility's staff were properly trained to administer that policy.*

- Where a facility has been shown to be so out of compliance with program requirements that its residents have been placed in immediate jeopardy, the facility was not administered in a manner that used its resources effectively to attain the highest practicable physical, mental, and psychosocial well-being of each resident for purposes of [42 C.F.R. § 483.75](#). *Go To Headnote*

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Public Health & Welfare Law : Social Security : Medicaid : State Plans : Compliance

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Research References & Practice Aids
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NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: Nomenclature changes affecting Chapter IV appear at [45 FR 53806](#), Aug. 13, 1980; [50 FR 12741](#), Mar. 29, 1985; [50 FR 33034](#), Aug. 16, 1985; [51 FR 41338](#), Nov. 14, 1986; [53 FR 6634](#), Mar. 2, 1988; [53 FR 47201](#), Nov. 22, 1988; [56 FR 8852](#), Mar. 1, 1991; [66 FR 39450, 39452](#), July 31, 2001; [67 FR 36539, 36540](#), May 24, 2002; [77 FR 29002, 29028](#), May 16, 2012.]

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