

OBRA 1987 Requirements for Nursing Facilities

Effective October 1, 1990

Comparison of Differences in OBRA 1987 Statutory Requirements, HCFA Regulations, and Current State Requirements

California Department of Health Services
Medi-Cal Policy Division

OBRA 1987 Requirement	HCFA Regulation (2/2/89)	Previous Federal Regulation	State Statute/Regulation	Analysis
Management of Personal Funds				
Management of personal funds - Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the resident's personal funds deposited with the facility as follows:	Upon written authorization of a resident, the facility must hold, safeguard, manage and account for the personal funds of the resident deposited with the facility ... (483.10(c)(2))	N/A	Each facility shall maintain safeguards and accurate records of a patient's monies and valuables entrusted to the facility's care, including the maintenance of a detailed inventory and at least a quarterly accounting of financial transactions made on the patient's behalf. (Title 22, 72529(a)(2))	Currently, management of a resident's personal funds is an optional facility service. Increased administrative cost for those facilities not currently managing patient trust accounts in accordance with OBRA provisions.
o Deposit - The facility must deposit any amount of personal funds in excess of \$50 with respect to a resident in an interest bearing account that is separate from any of the facility's operating accounts and credits all interest earned to that account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.	The facility must deposit a resident's personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on the resident's account to his or her account. (483.10(c)(3)(1))	N/A		

OBRA 1. Requirement	HCFA Regulation (2/2/89)	Previous Federal Regulation	State Statute/Regulation	Analysis
Nursing Facility Consolidation				
Required Nursing Care; and Facility Waivers -	Facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:	SNF 405.1124 ICF 442.1124 442.338 442.342	For NFs licensed as SNFs: Nursing service personnel shall be employed and on duty in at least the number and with the qualifications determined by the Department to provide the necessary nursing services for patients admitted for care. (Title 22, 72329(a))	The increased staffing for licensed nurses will impact only NFs currently licensed as ICFs. ICFs will also require a medical director, as defined in OBRA.
(1) General Requirements - With respect to NF services, a NF:	o licensed nurses, except when waived, as specified below; o other nursing personnel; o facility must designate a licensed nurse to serve as charge nurse on each shift. (483.30(a))		The Department may require the facility to provide additional professional, administrative or supportive personnel when the Department determines through a written evaluation that additional staff is needed to provide for the health and safety of patients. (Title 22, 72501(g))	Because of more stringent state licensing standards, the licensed nurse staffing and medical director requirements will not impact NFs currently licensed as SNFs.
o except as provided in (2) below, must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents, and	RN - o Facility must use an RN for at least 8 consecutive hours a day, 7 days a week (except when waived as specified below). o Facility must designate an RN to serve as DNS on a full-time basis. o The DNS may serve as charge nurse only when the facility has an average daily occupancy of 60 or fewer residents. (483.30(b))		- Facilities licensed for 59 or fewer beds shall have at least 1 RN or a licensed vocational nurse, awake and on duty, in the facility at all times, day and night. - Facilities licensed for 60 to 99 beds shall have at least 1 RN or LVN, awake and on duty, in the facility at all times, day and night, in addition to the director of nursing. The director of nursing shall not have charge nurse responsibilities. - Facilities licensed for 100 or more beds shall have at least 1 RN, awake and on duty, in the facility at all times, day and night, in addition to the director of nursing. The director of nursing shall not have charge nurse responsibilities. (Title 22, 72329(b,c,d))	
(2) Facility Waivers -	A facility may request a waiver from <u>either</u> the requirement that a facility provide an RN for at least 8 consecutive hours a day, 7 days a week, <u>or</u> the requirement that a facility provide licensed nurses on a 24-hour basis, including a charge nurse as specified in 483.30(a) above, if the following conditions are met:			
o A state may waive the requirements in (1) above, if the facility demonstrates to the satisfaction of the state that the facility has been unable, despite diligent efforts, to recruit appropriate personnel; if the state determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility; and if the state finds that, for any such periods in which licensed nursing services are not available, an RN or physician is obligated to respond immediately to telephone calls from the facility.	1) The facility demonstrates to the satisfaction of the state that it has been unable, despite diligent efforts (including offering wages at the community prevailing rate for facilities), to recruit appropriate personnel; 2) The state determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility; 3) The state finds that, for		Each facility shall employ sufficient nursing staff to provide a minimum daily average of 3.0 nursing hours per patient day. (Title 22, 72393(f))	
A waiver under this clause shall be subject to annual review and to the review of the Secretary and subject to			For NFs licensed as ICFs: - Nursing service personnel shall be employed in the num-	

waiver authority by Secretary, shall be accepted to the same extent as is the state's certification of the facility. In granting or renewing a waiver, a state may require the facility to employ other qualified, licensed personnel.

o If the Secretary determines that a state has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements, the Secretary shall assume and exercise the authority of the state to grant waivers.

(SSA, 1919(b)(4)(C))

any periods in which licensed nursing services are not available, an RN or physician is obligated to respond immediately to telephone calls from the facility;

4) A waiver granted under these conditions is subject to annual state review; and
5) In granting or renewing a waiver, a facility may be required by the state to use other qualified, licensed personnel.

ber and with the qualifications determined by the Department to provide the necessary services for those patients admitted for care. The Department may require a facility to provide additional staff whenever the Department determines through a written evaluation of patients and patient care in the facility that such additional staff are needed to provide adequate nursing care and treatment or to provide for the safety of the patients.

- Facilities shall employ an RN or LVN 8 hours per day on day shift, 7 days per week. In case of facilities where an LVN serves as supervisor of health services, consultation shall be provided by an RN, through formal contract, at regular intervals, but not less than 4 hours weekly.

- Facilities with 100 or more beds shall employ an RN 8 hours per day, on the day shift, 7 days per week. In addition, an RN or LVN employed 4 hours per day, 7 days per week, during the day for each 50 beds or portion thereof in excess of 100.

- Nursing stations shall be staffed by nursing personnel day and night when patients are housed in the nursing unit.

(Title 22, 73319(a,b,c,d))

OBRA . Requirement

HCFA Regulation (2/2/89)

Previous General Regulation

State Statute/Regulation

Analysis

N/A

Medical Director - The facility must designate a physician to serve as medical director. The medical director is responsible for: 1) implementation of resident care policies; and 2) the coordination of medical care in the facility. (483.75(k))

SNF 405.1122

Medical Director - The facility shall have a medical director who shall be responsible for standards, coordination, surveillance, and planning for improvement of medical care in the facility. The medical director shall act as a liaison between administration and attending physicians; be responsible for reviewing and evaluating administrative and patient care policies and procedures; act as a consultant to the Director of Nursing in matters relating to patient care services; and be responsible for reviewing employees' preemployment and annual health examination reports. (Requirement applies to Skilled Nursing Facilities) (Title 22, 72305)

OBRA 1987 Requirement	HCFA Regulation (2/2/89)	Previous Federal Regulation	State Statute/Regulation	Analysis
Social Worker				
<p>Required Social Services -</p> <p>In the case of a facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services. (SSA, 1919(b)(7))</p>	<p>A facility must provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. (483.15(g)(1))</p> <p>A facility with more than 120 beds must employ a qualified social worker on a full-time basis. (483.15(g)(3))</p> <p>Qualifications of a SW: A qualified social worker is an individual with:</p> <ol style="list-style-type: none"> 1) Bachelor's Degree in social work; or 2) 2 years of social work supervised experience in a health care setting working directly with individuals; or 3) Similar professional qualifications. (483.15(g)(4)) 	<p>SNF 405.1130 ICF 442.344(d)</p> <p>N/A</p> <p>N/A</p>	<p>A social worker is defined as:</p> <ol style="list-style-type: none"> 1) clinical social worker (which requires a Master's Degree) - licensed by the California Board of Behavioral Science Examiners. 2) social work assistant - baccalaureate degree in the social sciences or related fields and who receives supervision, consultation and in-service training from a social worker. 3) social work aide - a staff person with orientation, on-the-job training, and who receives supervision from a social worker or social work assistant. (Title 22, 72105) <p>Social Service Work Unit -</p> <p>Each social work service unit shall employ a staff for the number of hours to meet the needs of the patients. The social work service unit shall be organized, directed and supervised by a social worker, who is responsible for supervision of other social work staff, including social work assistants and social work aides. Social work service staff may include the social work assistant or the social work aide. Assigned functions and tasks shall be supervised by the social worker. Under conditions specified in the written patient care policies, procedures and job descriptions, the social work aide may be under the supervision of the social work assistant. (Title 22, 72437(a,b,c))</p>	<p>Increased staffing costs for those NFs with more than 120 beds to comply with Social Worker requirements, as defined in federal regulations.</p>

OBRA Requirement	HCFA Regulation (2/2/89)	Previous Federal Regulation	State Statute/Regulation	Analysis
Nurse Aide Training				
Required Training of Nurse Aides -				
<p>A NF must not use (on any basis) any individual who is not a licensed health professional as a nurse aide in the facility on or after 1/1/90, for more than 4 months unless the individual:</p> <ul style="list-style-type: none"> o has completed a training and competency evaluation program, or a competency evaluation program, approved by the state, and o is competent to provide such services. <p>(SSA, 1919(b)(5)(A))</p>	<p>Effective 1/1/90, a facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time, temporary, per diem, or other basis, unless:</p> <ul style="list-style-type: none"> o that individual has completed a training and competency evaluation program, or a competency evaluation program approved by the state, and o that individual is competent to provide nursing and nursing related services. <p>(483.75(g)(1))</p>	<p>SNF 405.1124 ICF 442.342</p>	<p>A nurse assistant precertification training program shall be conducted by a SNF, agency, or public education institution whose precertification program meets state requirements and is approved by the Department. (Title 22, 72331(i)(1))</p>	<p>California's current Nurse Aide certification program is comparable with OBRA requirements in all areas except the time period in which NFs must require NAs to complete a facility-based training and certification program.</p>
<p>Current employees - A NF must provide, for individuals used as a nurse aide by facility as of 7/1/89, for a competency evaluation program approved by the state, and such preparation as may be necessary for the individual to complete such a program by 1/1/90. (SSA, 1919(b)(5)(B))</p>	<p>Effective 7/1/89, a facility must provide, for individuals used as nurse aides, a competency evaluation program approved by the state, and preparation necessary to complete the program by 1/1/90. (483.75(g)(2))</p>	<p>N/A</p>	<p>No precertification training program to be conducted by a facility shall be approved unless the program meets the following:</p> <ol style="list-style-type: none"> 1) The program shall be started within 3 months of employment of an uncertified nurse assistant in that facility; and 2) The program shall be presented in its entirety and completed no later than 6 months from the date of employment of any uncertified nurse assistant in the program. (Title 22, 72311(i)(11)(A,B)) 	
<p>Competency - The NF must not permit an individual, other than in a training and competency evaluation program approved by the state, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use the individual as a nurse aide unless the facility has inquired of the state registry (see 1919(e)(2)(A)) as to information in the registry concerning the individual. (SSA, 1919(b)(5)(C))</p>	<p>Effective 1/1/90, a facility must permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when 1) the individual is in a training and competency evaluation program approved by the state, and 2) the facility has asked and not yet evaluated a reply from the state registry for information concerning the individual. (483.75(g)(3))</p>	<p>N/A</p>	<p>A precertification training program shall consist of at least the following:</p> <ol style="list-style-type: none"> 1) 100 hours of clinical practice under the direct supervision of the instructor or a licensed nurse which shall usually be conducted during normal working hours and which shall include demonstrations of theory and basic nursing skills. Return demonstrations by the student shall be under the immediate supervision of the instructor or a licensed nurse. During clinical practice, there shall be no more than 15 students to each instructor at any time. Clinical practice shall take place in a skilled nursing facility or intermediate care facility and shall be conducted concurrently with classroom instruction. 	
<p>Re-training Required - 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 performed paid nursing or nursing-relat-</p>	<p>Effective 1/1/90, when an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility must require the</p>	<p>N/A</p>		

OBRA 1987 Requirement

ed services, the individual shall complete a new training and competency evaluation program. (SSA, 1919(b)(5)(D))

HCFA Regulation (2/2/89)

individual to complete a new training and competency evaluation program. (483.75(g)(4))

2) 50 hours of classroom instruction which may be conducted in a SNF, ICF, or educational institution and shall consist of content and for the duration of hours as specified in state regulations...
(Title 22, 72331(i)(19)(A,B))

A nurse assistant shall be certified by the Department if the nurse assistant has satisfactorily completed an approved precertification training program. The course instructor shall notify the Department in writing no later than 10 working days after the completion of each program of the names, current address and social security numbers of these nurse assistants who successfully completed the program. The notification shall include the dates on which the course began and ended and the signature of the course instructor. The Department shall then issue the certificate.
(Title 22, 72331(j))

Expiration and Renewal -
Nurse aide certificates shall be renewed every 2 years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 24 hours of in-service training per year obtained through an approved training program or as approved by the state department.

A certificate which is not renewed within 4 years after its expiration cannot be renewed, restored, reissued, or reinstated except upon completion of a certification program unless deemed otherwise by the state department...
(H&S Code, 1337.6(a,h))

OBRA 1	Requirement	HCFA Regulation (2/2/89)	Previous Federal Regulation	State Statute/Regulation	Analysis
Resident Assessment	<p>Requirement - A NF must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which a) describes the resident's capability to perform daily life functions and significant impairments in functional capacity; b) is based on a uniform minimum data set (MDS) specified by the Secretary; c) uses an instrument specified by the state; and d) includes the identification of medical problems.</p>	<p>The facility must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. (483.20)</p>	<p>SNF 405.1124(d) 405.1124(e) 405.1125 405.1129 405.1129(b) 405.1121(h) 405.1121(k)(5)</p>	<p>Nursing service shall include planning of patient care, including identification of care needs based upon an initial written and continuing assessment of the patient's needs with input from health professionals involved in the care of the patient. Initial assessments shall commence at the time of patient admission and be completed within 7 days of admission. (Title 22, 72311(a)(1))</p>	<p>It is California's understanding that HCFA will be promulgating its resident assessment instrument and the uniform MDS in regulation in the near future. California assumes the instrument and MDS will mirror the draft HCFA released in September 1990.</p>
<p>Certification - Each assessment must be conducted or coordinated by an RN who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.</p>	<p>Comprehensive assessment - The facility must make a comprehensive assessment of a resident's needs, which a) effective 10/1/90, is based on a uniform data set specified by the Secretary and uses an instrument that is specified by the state; and b) describes the resident's capability to perform daily life functions and significant impairments in functional capacity.</p>	<p>The comprehensive assessment must include at least the following information:</p> <ul style="list-style-type: none"> o Medically defined condition and prior medical history; o Medical status measurement; o Functional status; o Sensory and physical impairments; o Nutritional status and requirements; o Special treatments or procedures; o Psychosocial status; o Discharge potential; o Dental condition; o Activities potential; o Rehabilitation potential; o Cognitive status; and o Drug therapy. <p>(483.20(b)(1))</p>	<p>Written and signed orders for diet, care, diagnostic tests and treatment of patients by others shall be required as a physician service in the facility. (Title 22, 72303(b)(5))</p>	<p>Planning of patient care shall include the development of an individual, written patient care plan which indicates the care to be given, the objectives to be accomplished and the professional discipline responsible for each element of care. Objectives shall be measurable and time-limited. Care planning shall also include reviewing, evaluating, and updating of the patient care plan by the nursing staff and other professional personnel involved in the care of the patient at least quarterly, and more often if there is a change in the patient's condition. (Title 22, 72311(a)(1)(B,C))</p>	
<p>Frequency - An assessment must be conducted promptly upon admission (within 14 days) and by not later than 10/1/91 for each current resident; promptly after a significant change in the resident's physical or mental condition; and in no case less often than once every 12 months. The NF must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.</p>	<p>Accuracy of assessments - Each assessment must be conducted or coordinated, with the appropriate participation of health professionals. Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment. (483.20(c)) (F-260-261)</p>				
<p>Use - The results of the assessment shall be used in developing, reviewing, and revising the resident's plan of care.</p>					

Miscellaneous One-Time Start-Up Expenses

Various OBRA provisions will require one-time implementation costs, such as forms development, computer software upgrades, and staff orientation and training.

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State Statute/Regulation

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Because of more stringent written notice requirements, documentation, medical recordkeeping, and resident assessment requirements, California recognizes facilities will need to make miscellaneous changes initially to implement OBRA, including staff orientation and training on the various new provisions.

Resident Behavior and Facility Practices

OBRA 199 Reform	HCFA Regulation (2/2/89)	Previous F Regulation	State Statute/Regulation	is
<p>Restraints - Resident has the right to be free from physical or mental abuse, corporal punishment, involuntary seclusion and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed a) to ensure the physical safety of the resident or other residents, and b) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary) until such an order could reasonably be obtained.</p>	<p>The resident has the right to be free from any physical restraints imposed; or psychoactive drug administered for purposes of discipline or convenience, and not required to treat the resident's medical symptoms. (483.13(a))</p>	<p>405.1121(k)(7) 442.311(f)</p>	<p>Resident has the right to be free from mental and physical abuse and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician or other person lawfully authorized to prescribe care for a specified and limited period of time, or when necessary to protect the patient from injury to himself or to others. (Title 22, 72527(a)(8))</p> <p>Restraints of any type shall not be used as punishment, as a substitute for more effective medical and nursing care, or for the convenience of staff. (Title 22, 72319(d))</p> <p>Written policies and procedures concerning the use of restraints and postural supports shall be followed. No restraints with locking devices shall be used or available for use. Restraints shall be used in such a way as not to cause physical injury to the patient and to ensure the least possible discomfort to the patient. Full documentation of the episode leading to the use of the physical restraint, the type of restraint used, the length of effectiveness of the restraint time and the name of the individual applying such measures shall be entered in the patient's health record. When drugs are used to restrain or control behavior or to treat a disordered thought process, the specific behavior or manifestation of disordered thought process to be treated with the drug is identified in the health record. (Title 22, 72319 (in part))</p>	<p>The existing California regulations are comparable and in some cases exceed the OBRA requirement. The OBRA statute and regulation impose no additional requirements. As a result, there is no added facility cost to comply with this OBRA provision.</p>

Quality of Care and Quality of Life

Provision of Services and Activities -

To the extent needed to fulfill all plans of care described in 1919(b)(2), a facility must provide or arrange for the provision of:

o nursing and related services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

o medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

o pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

o dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

o an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident; and

o routine dental services (to the extent covered under the state plan) and emergency dental services to meet the needs of each resident.

Quality of Care -

Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) Activities of Daily Living (ADLs) - Based on the comprehensive assessment of a resident, the facility must ensure that:

1) a resident's abilities in ADLs do not diminish unless circumstances of the resident's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to:

- (i) bathe, dress and groom;
- (ii) transfer and ambulate;
- (iii) toilet;
- (iv) eat; and
- (v) to use speech, language or other functional communication systems.

2) A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (a)(1) of this section; and

3) A resident who is unable to carry out ADLs receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene. (483.25(a))

405.1124(e)
442.342
442.343(a),(c)

Each patient shall be encouraged and/or assisted to achieve and maintain the highest level of self-care and independence. Every effort shall be made to keep patients active, and out of bed for reasonable periods of time, except when contraindicated by physician's orders.
(Title 22, 72315(e))

The supportive and restorative nursing and personal care needed to maintain maximum functioning of the patient shall be provided.
(Title 22, 72315(f))

Nursing service personnel shall be employed and on duty in at least the number and with the qualifications determined by the Department to provide the necessary nursing services for patients admitted for care. The Department may require a facility to provide additional professional, administrative or supportive personnel whenever the Department determines through a written evaluation that additional staff is needed to provide for the health and safety of patients.
(Title 22, 72319(a))

If a facility does not employ qualified personnel to render a specific service to be provided by the facility, there shall be arrangements through a written agreement with outside resources which shall meet the standards and requirements of these regulations.
(Title 22, 72511(a))

Written arrangements shall be made for obtaining all necessary diagnostic and therapeutic services prescribed by the attending physician, podiatrist, dentist, or clinical psychologist If the ser-

In an analysis of the OBRA requirements, California has determined that current standards (in statute and regulation) are comparable to the OBRA requirements. As a result, no added facility cost is foreseen in order to comply with these OBRA quality of care and quality of life provisions.

vices cannot be brought into the facility, the facility shall assist the patient in arranging for transportation to and from the service location.
(Title 22, 72301(d))