



Alerts

CMS Begins Enforcement of New State Surveyors Requirement-Resident Abuse through Photography

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Hinshaw Alert

On August 5, 2016 CMS issued new guidance advising survey teams to request and review facility policies and procedures that prohibit staff from taking, keeping and/or distributing photographs and recordings that demean or humiliate a resident. This guidance was based on several federal nursing home regulations prohibiting abuse of residents and requiring staff training. ***Regular enforcement of this provision by survey teams has now been reported and should be expected during any upcoming traditional surveys or quality indicator surveys.***

The Impact: During all traditional or quality indicator surveys, survey teams will now request to review and/or ensure that facilities have policies and procedures that prohibit staff from taking, keeping and/or distributing photographs and recordings that demean or humiliate a resident.

Facilities **must** have written policies and procedures that prohibit all forms of abuse, including mental abuse. The policy **must now** specifically include provisions that prohibit staff from taking, keeping and/or distributing photographs and recordings that demean or humiliate a resident. This includes using any type of equipment (e.g., cameras, smart phones, and other electronic devices).

Each facility must also now provide training on abuse prohibition policies for all staff that provide care and services to residents. This training must include prohibiting staff from using equipment to take, keep, or distribute photographs and recordings. The facility must provide ongoing oversight and supervision of staff in order to assure these policies are implemented.

What this Change Means for your Facility: Each facility must now have a written policy expressly outlining the prohibition, training, and reporting requirements in place to prevent staff from taking demeaning photographs or recordings of residents. When your facility is surveyed, the survey team will request the policies and procedures to ensure compliance. While many facilities may have policies and procedures in place preventing mental abuse generally, the new guidance requires specific policies to prohibit demeaning photographs and recordings.

Why this Change: Recent media reports have highlighted occurrences of nursing home staff taking unauthorized photographs or video recordings of nursing home residents, sometimes in compromised positions. These

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Service Areas

Complex Tort & General
Casualty



photographs are then posted on social media or sent through messaging.

CMS emphasizes the need for nursing homes to establish an environment that is as homelike as possible and includes a culture and environment that treats each resident with respect and dignity. This policy furthers the federal regulatory goal of focusing on a person-centered environment for all residents.

The Regulations Behind CMS' New Policy Enforcement:

42 C.F.R § 483.10(e) Privacy and Confidentiality: The resident has the right to personal privacy and confidentiality of his or her personal and clinical records. Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident.

42 C.F.R § 483.13(b) Abuse: The Resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

42 CFR § 483.13(c) Staff Treatment of Residents: The facility must not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

42 CFR §§ 483.75(e)(2) to (e)(4) Nurse Aid Competency: Nurse aids must have received initial and annual abuse prevention training, in accordance with sections 1819(f)(2)(A)(i)(I) and 1919(f)(2)(A)(i)(I) of the Social Security Act.

For more information and guidance, please contact [David J. Alfini](#) or [Adam S. Guetzow](#).

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