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# **CMS Can Help You Prepare for Surveys: Do You Know How? Part 1: The New Survey**

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# Mandatory Survey Tasks

- Dining
- Infection control
- SNF Beneficiary Protection Notification review
- Resident Council meeting
- Kitchen
- Medication administration
- Medication storage
- Sufficient and competent nurse staffing
- QAA/QAPI

# CMS Surveyor Training

- “A review of sufficient and competent nurse staffing will be conducted on every survey. This task is required to be investigated on every survey since surveyors are always considering whether staffing issues can be linked to resident complaints, or quality of life (QOL) and care (QOC) concerns. In addition, Phase 2 of the new rule puts a lot of emphasis not only on sufficient numbers of staff, but also the competence of staff.”

# Areas of Focus: Restraints; Resident Representatives

- Restraints – F604, 483.12(a)(2)
  - Position change alarms
  - Side rail enablers
- Understanding the authority and limits or authority of Guardian, Powers of Attorney, Resident Representatives –
- F551, 483.10(b)(6)
  - Must report to state if resident representative is making decisions not in the best interest of resident

## Can this occur....

When CMS has said that they are not banning side rails or alarms but the provider has had a resident event with a negative outcome with one or both of these, can the DOH surveyors tell the provider to change policy and not allow alarms in the facility or not allow side rails in the facility?

# Abuse Reporting Guidelines

	F608 42 CFR 483.12(b)(5) and Section 1150B of the Act (ELDER JUSTICE ACT)	F609 42 CFR 483.12(c)
<b>What?</b>	Any reasonable suspicion of a crime against a resident	1) All alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property  2) The results of all investigations of alleged violations
<b>Who is required to report?</b>	Any covered individual, including the owner, operator, employee, manager, agent or contractor of the facility	The facility
<b>To whom?</b>	State Survey Agency (SA) and one or more law enforcement entities for the political subdivision in which the facility is located (i.e., police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners)	The facility administrator and to other officials in accordance with State law, including to the SA and the adult protective services where state law provides for jurisdiction in long-term care facilities
<b>When?</b>	Serious bodily injury- Immediately but not later than 2 hours* after forming the suspicion  No serious bodily injury-not later than 24* hour	All alleged violations-Immediately but not later than  1) 2 hours- if the alleged violation involves abuse or results in serious bodily injury  2) 24 hours- if the alleged violation does not involve abuse and does not result in serious bodily injury.

# Determination of Findings and Potential to Foresee Abuse

“It has been reported that some facilities have identified that they are in compliance with F600 . . . - because they could not foresee that abuse would occur and they have “done everything to prevent abuse,” such as conducted screening of potential employees, assessed residents for behavioral symptoms, monitored visitors, provided training on abuse prevention, suspended or terminated employment of the perpetrator, developed and implemented policies and procedures to prohibit abuse, and met reporting requirements. However, this interpretation would not be consistent with the regulation, which states that “the resident has the right to be free from verbal, sexual, physical, and mental abuse...”



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# What do we do if.....

How should providers respond when DOH surveyors say that x staff members should be fired because they are the cause of the deficiency or the provider will not be found in substantial compliance?



# Elder Justice Reporting Requirements

- Penalties for covered individual's failure to notify
  - CMP up to \$200,000
  - Possible exclusion from participation
  - If failure exacerbates harm to victim or results in harm to another individual
    - ▶ CMP up to \$300,000
    - ▶ Possible exclusion from participation
- Penalties for retaliation

# Elder Justice Act Reporting: Be Prepared For The Media

- Develop a media response for all “crisis” situations
- Identify and train staff about internal procedure for crisis management, including press statements and spokespersons



# Should we.....

Should providers report staff to licensing board when their actions have been substantiated as neglect or abuse of a resident and they are in process of disciplinary action or have terminated (for abuse)?

# PA Nurse Practice Act Regulations

## 49 Pa. Code § 21.18. Standards of nursing conduct.

- (a) A registered nurse shall: . . . .
  - ▶ (3) Act to safeguard the patient from the incompetent, abusive or illegal practice of any individual.
  - ▶ (4) Safeguard the patient's dignity, the right to privacy and the confidentiality of patient information. This standard does not prohibit or affect reporting responsibilities under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law), the Older Adults Protective Services Act (35 P.S. § § 10211—10224) and other statutes which may mandate reporting of this information.



# PA Nurse Practice Act Regulations

- (b) A registered nurse may not:
  - ▶ (1) Knowingly aid, abet or assist another person to violate or circumvent a law or Board regulation.

# What if.....

- What if the provider does report the staff member for substantiated abuse/neglect and the licensing board does nothing and says that nothing will be charged against the license – why does the DOH still cite the provider?

# Reporting to the State Nurse Aide Registry or Licensing Authorities

F606

- If facility determines that actions by a court of law against an employee are such that they indicate that the individual is unsuited to work in a SNF, facility must report that individual to State nurse aide registry (if CNA) or to State licensing authorities
  - Unfitness to work include child abuse, sexual assault, theft, and assault with a deadly weapon

# Reporting to the State Nurse Aide Registry or Licensing Authorities

- CNA found guilty of neglect, abuse, mistreatment, misappropriation of property, or exploitation by a court of law, must have his/her name entered into the State nurse aide registry
- Licensed staff member found guilty of the above must be reported to his/her licensing board



# Am I OK if .....

Our facility policy says that LPNs can complete admission assessments and can assess wounds. We complete annual competency testing for them. So would that meet the regulatory requirements at at F726 for competent staff?

# Thank You!

Please attend the afternoon sessions  
for additional information and the  
Department of Health session on Friday  
morning