



To: WHCA/WiCAL Nursing Home Members
From: Brian R. Purtell, Director of Legal Services
Re: CMS S&C Memos Impacting Survey Process
Date: September 20, 2013

Below is a summary of the survey and enforcement developments of note over the past few months. Given the frequency of issuances of late, it is important for members to assure that they are on top of developments and changes. The list below is not exhaustive of all CMS issuances but does provide a listing of the most notable developments of late. Not included are the QAPI related materials given that CMS is providing ongoing updates to resources and information on this issue as they finalize development of the QAPI regulation. Information specific to QAPI can be found [HERE](#).

To assure you are current with the development of late, you are encouraged to review the below materials. There is not particular significance to the order of the materials below; however, all members should pay particular attention to the more recently issued revisions impacting dementia care.

Should you have questions or comments, you may direct them to me directly at brian@whca.com or 608.315.2771 (direct).

1. [S&C 13: Dementia Care in Nursing Homes: Clarification of Appendix P and Appendix PP for F309 and F329](#)

This issuance represents significant additions to the F309 “highest practical care” Guidance and updates the F329-Unnecessary Drugs Guidance by providing additional instructions to providers and surveyors in the area of antipsychotic medications. Notable components:

- Revised Appendix P to assure that the resident sample includes an adequate number of residents with dementia who are receiving antipsychotic medications.
- A new section of F309 interpretive guidance related to the care and services for residents with dementia.
- A surveyor checklist that may be used by surveyors (all facilities should carefully review the Attachment C checklist contained at the end of the guidance document).
- Revisions to the antipsychotic medication section of Table 1 of F329
- Additions and modifications to the severity determination/compliance determination.

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2. [S&C 13-34 Release of Mandatory Surveyor Training Program on Care of Persons with Dementia and Unnecessary Drugs-Release of Third Video](#)

Announces the surveyor training on unnecessary drugs (third of three videos under dementia care efforts). Members are encouraged to access and review the training provided.

3. [S&C 13-02-Clarification of Guidance related to Medication Errors and Pharmacy Services](#)

The memo contains some clarifications that are intended to address several questions that have arisen since the Pharmacy Services and Unnecessary medications Guidance revisions of 2006. Included are clarifications regarding:

- Administration of medications via feeding tubes
- Meter dose inhalers
- Proton pump inhibitors (timing of provision)
- “Borrowing medications”
- Fentanyl patches

4. [S&C 13-15 Physician Delegation of Tasks in SNFs and NFs](#)

This memo provides:

- Clarification of Federal guidance related to physician delegation of certain tasks in SNFs and NFs to non-physician practitioners (NPPs; formerly “physician extenders”) such as nurse practitioners, physician assistants, or clinical nurse specialists.
- Implements section provisions of ACA which adds physician assistants to the list of practitioners that can perform Skilled Nursing Facility (SNF) level of care certifications and re-certifications.
- Clarifies policy on co-signing orders in SNFs and NFs.

5. [S&C 13-09 Clarification of Interpretive Guidance at F441-Laundry and Infection Control](#)

The memo addresses laundry detergents, use of chlorine bleach rinses, water temperatures during the process of washing laundry, maintenance of laundry equipment, and ozone laundry cleaning systems. Members’ laundry, maintenance, and housekeeping personnel should be made aware of this clarification which provides flexibility in several of the areas, most notably being the determination that facilities may use any detergent designated for laundry in the laundry process.

6. [S&C 13-13 Information Only: New Dining Standards of Practice Resources](#)

This memorandum provides communication about the development and availability of new dining practice recommendations for nursing home residents. This standard was developed by the Pioneer Network and the Rothschild Foundation and the memorandum

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is provided simply as a recommendation/resource. The memo includes links to the new Dining Practice Standards, as well as a surveyor training video. Given the increased attention to dementia care, this memorandum and standard may be a useful resource as members seek to improve, enhance and individualize the care and services provided to residents, including those with dementia.

7. [S&C 13-23 Sequestration Adjustments for Survey & Certification](#)

This memo describes some of the modifications to the survey process and instructions to the survey agencies as a result of the Federal sequestration cuts. The most notable information is the impact on the process and CMS approvals required for revisit surveys. Also notable is the modifications to the Special Focus Facility (“SFF”) in that it provides instructions for how survey agencies are to handle current SFF facilities, as well as instructions to not add any additional SFF facilities in the event of facility graduation/termination.

8. [S&C 13-17 F322-Naso-gastric Tubes](#)

In 2012, CMS issued revisions to the F322 related to compliance expectations in the area of feeding tubes. This guidance replaces the earlier issuance and provides some clarification and modification to the previous issuance. The most notable modification is additional clarification related to the expanded definition of “nasogastric tubes” as well as providing an updated Power Point presentation to reflect these revisions.

9. [S&C 13-16 F155-Advanced Directives, Revised Advanced Copy](#)

In 2012, CMS issued S&C 12-47 making significant modifications to the F155 interpretive guidelines related to advanced directives. The 2012 modifications included important changes that members should be aware of and should have implemented. This 2013 memorandum replaces the 2012 issuance and has made the following revisions:

- Remove the term “right to accept” when referring to medical and surgical treatment
- Provided additional guidance specific to experimental research
- Added a clarification that Section 43.10(b)(8) applies only to adult residents and not to all residents regardless of age
- Added to the definition of “investigational or experimental drugs”
- Modified and updated the investigative protocol
- Provided modifications and updates to the training slides previously developed

10. [S&C 13-57 Escrow and Independent and Informal Dispute Resolution \(“IIDR”\) Process for Nursing Homes –Applicable to all Civil Money Penalties \(CMPs\)](#)

This memorandum announced that CMS lifting the prior limitations on the applicability of the escrow requirement for CMPs. The initial implementation of this element of the

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CMP Rule limited the escrow expectation to only significant deficiencies/CMPs. This memorandum announced that effective October 1, 2013, every CMP imposed for a deficiency in a nursing home will be *subject* to escrow.

There is some confusion with regard to the applicability of when an escrow is required. It is not entirely clear in the memorandum but facilities should understand that CMPs can be required to be paid to CMS pending the outcome of an appeal. If you elect to waive your right to an appeal and receive the 35% reduction, the escrow does not apply. If you seek a federal appeal, you may be required to pay the amount in advance while the appeal is pending. If you request an IIDR and do not prevail, **and** seek further federal appeal, the amount of CMP may be requested to be placed in escrow pending the outcome of the appeal.

Members should be aware that the timing of the IIDR results can extend beyond the period in which you must either elect to waive the right to an appeal or submit an appeal. Should you pursue an IIDR, you are advised to seek counsel with regards to the process for and timing of the appeal or waiver to assure that you do not lose any rights available. It is critical to understand that the request for an IIDR does not stay the 60 day time period in which you must either request a waiver of your right to appeal in order to elect the 35% reduction, or make a request for a federal appeal.

11. [S&C 13-58 2000 Edition National Fire Protection Association \(“NFPA”\) 101 Life Safety Code \(“LSC”\) Waiver](#)

CMS has identified several areas of the 2000 Edition of the LSC and 1999 Edition of NFPA 99 that may result in unreasonable hardship on a large number of providers and for which there are alternative approaches that provide an equal level of protection. This memorandum identifies those areas (identified below) and stresses that suppliers must elect to use to waiver and includes the process for doing so.

The categorical waivers that are and available include:

- Medical Gas Master alarms
- Openings in exit enclosures
- Emergency generators and standby power systems
- Doors
- Suites
- Extinguishing requirements
- Clean waste and patient record recycling containers

Members feeling that they may want to elect a waiver for any of the above should review this memorandum closely as to the process for these categorical waivers.

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12. [S&C 13-42 Reminder: Access and Visitation Rights in Long Term Care Facilities](#)

This memorandum reviews current interpretive guidelines for F172 reiterating resident rights surrounding access and visitation. It further discusses facilities' obligations to ensure that all individuals seeking to visit a resident be given full and equal visitation privileges, consistent with resident preferences and within reasonable restrictions that safeguard residents

This memorandum was triggered by federal agencies response to the Supreme Court case rejecting the Defense of Marriage Act and is intended to communicate and remind members that visitation and access rights extend to and include domestic partners, including same-sex domestic partners. Given that Wisconsin has extended this right to individuals under state law, the memorandum should not present any significant departures from existing policies and procedures.