

A Closer Look at the Revised Nursing Facility Regulations

Grievances and Resident/Family Councils

Executive Summary

Residents have the right to file grievances and the facility must work to resolve those concerns promptly. A grievance official at the facility is responsible for complaint handling. Each facility must have a grievance policy and provide residents with information about how to file a grievance, how to contact the grievance official, a time frame for complaint review, a written decision, and information about other entities with which grievances can be filed. Written decisions must include, but are not limited to, the steps the facility took to investigate the complaint, the findings, whether the complaint was confirmed or not, and the action the facility has taken or will take to correct the problem.

The resident has a right to: form and participate in a resident council; have family member(s) or other resident representative(s) meet in the facility with the families or resident representative(s) of other residents; and participate in the family council. There must be a staff person assigned to assist both resident and family councils and

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the council, along with the facility, must approve this person. The councils must be given a private space in which to meet and no one outside of a resident or family member can attend without invitation. The facility must act upon council concerns and recommendations and provide a reason for its decision, although it does not have to implement all that the councils request.

Introduction

On September 28, 2016, the Centers for Medicare & Medicaid Services (CMS) released revised nursing facility regulations. These regulations govern most aspects of nursing facility operations, and apply nationwide to any nursing facility that accepts Medicare and/or Medicaid reimbursement.

The revised nursing facility regulations expand and strengthen the ability of residents, their representatives, and advocates to resolve grievances within the nursing home through a facility's grievance process and resident/family councils.

Grievances

Rights

Residents continue to have the right to file complaints and to have the facility make prompt efforts to resolve those complaints. Recognizing that retaliation is a serious concern, the revised regulations strengthen residents' right to be free not just from discrimination or reprisal but even from

the *fear* of discrimination or reprisal.

Nursing facilities must inform residents they have the right to file a complaint orally, in writing, or anonymously; these complaints are directed to a staff member in a newly-created position of grievance official, discussed below. The facility must provide residents with contact information for the grievance official that includes his or her name, business address (mailing and email) and business phone number.

Residents must also be told the reasonable expected time frame for completing the review of a grievance. Although the rules simply refer to “prompt efforts” and do not require any specific time frames, most people would probably agree that 10 days to two weeks is “reasonable,” with more urgent complaints being addressed more quickly. At the conclusion of the investigation, the resident must be given a written decision regarding his or her grievance.

Residents must also be informed about independent entities (such as the state survey agency or the long-term care ombudsman program) with which grievances may be filed, and contact information for those entities.

Grievance Official

Each nursing facility is required to designate a person to serve as a grievance official. According to CMS, the purpose of a grievance official is to ensure that there is a person who has both the responsibility and authority for guaranteeing that grievances are appropriately managed and resolved. CMS notes that facilities do not have to hire a new, full-time person to perform this function, but can assign this role to a current employee with other responsibilities.

A grievance official handles grievances from beginning to end. This involves: receiving complaints; leading any investigations by the facility; tracking the progress of the grievance; maintaining the confidentiality of all information associated with a grievance; and coordinating with state and federal agencies as necessary depending on the nature of the grievance.

Written Grievance Decisions

Whenever a resident files a grievance, he or she must receive a summary of the investigation and its results. The written decision must include the following information:

- The date the grievance was received;
- A summary statement of the grievance;
- The steps taken to investigate the grievance;
- A summary of the pertinent findings or conclusions regarding the resident’s concern(s);
- A statement as to whether the grievance was confirmed or not confirmed;
- Any corrective action taken or to be taken by the facility as a result of the grievance; and
- The date the written decision was issued.

Facility Response to Resident Rights Violations, Abuse, Neglect, and Misappropriation of Resident Property

Whenever there is a potential violation of any resident right, the facility must prevent further violations during the course of an investigation, and correct the violation if it is confirmed by the facility or an outside entity (e.g., state survey agency).

The facility must immediately report all alleged incidents of neglect or abuse, including injuries of unknown source, and/or misappropriation of resident property, to the administrator and as mandated by state law.

Facility Grievance Policy

For the first time, nursing facilities are required to develop a written grievance policy which must include each of the points described above: rights; the grievance official; written decisions; and the facility's response to resident rights violations, abuse, neglect, and misappropriation of resident property.

The policy must be provided to residents upon request.

Resident and Family Councils

Right to Form a Council

Under the revised nursing facility regulations, residents continue to have the right to form and participate in a resident group (referred to as a "council" henceforth). Family members are still permitted to organize a family council, but it is now the *resident* who has the right to have his or her family meet with other families, rather than the family having this right as was the case in the prior regulations. According to CMS, the right of family members to participate in a family group is a result of and subordinate to residents' rights. As an example, CMS notes that there may be situations where a resident would not want to allow a family member, such as an estranged spouse, to join the family council. In addition, this resident right has been expanded to include resident representatives.

Council Privacy and Attendance

The nursing facility must provide a private space for the resident council and the family council to meet in the facility, although the councils can meet outside the facility if they wish. Each council controls who attends its meetings. Anyone other than a resident or family member (and now a representative) must be invited in order to attend the resident council or family council, respectively. This includes staff. The one exception is that residents now have the right to participate in family councils.

Facility Assistance and Support

The facility must assign a staff person to assist each council and respond to written council requests. In a change from previous regulations, the employee must be approved by both the facility *and* the council. The relationship between the staff liaison and the council is important and the designated staff person needs to be someone with whom the council wants to work. Having some control over who assumes this responsibility could help improve the council's functioning and effectiveness.

Another new provision requires the facility to make residents and family members (and resident representatives) aware of upcoming resident and family council meetings. The way in which this is done must be approved by the council. This provision addresses the difficulty councils face in publicizing their meetings. Residents or families interested in starting a council or participating in an existing council must rely heavily on facility administration and staff to advertise and promote the council. However, there are nursing facilities that will not assist in getting the word out, particularly for family councils. Raising awareness of meetings will support council development and growth.

Responding to Grievances and Recommendations from Councils

The regulations regarding council grievances have been strengthened in several ways. Nursing facilities must now act promptly upon grievances and recommendations received from the resident or family council. Facility response time has long been a concern, with residents and family members reporting that they often must wait for weeks for a response. While “prompt” is not defined, use of the word strengthens council advocacy for facility action to be taken more quickly. Furthermore, the facility must be able to demonstrate its response to the grievance/recommendation and the rationale for its decision. Although the revised regulations also say that the requirement to “act” does not mean the facility has to carry out all the council’s requests, the need to show and justify its action or inaction may create an incentive for a facility to be more responsive to council concerns.

Effective Dates

The grievance and resident/family group (council) provisions became effective on November 28, 2016.

Finding the Regulations

The grievance and resident/family group (council) provisions are found at subsections 483.10(j) and 483.10(f)(5)-(7), respectively, of Title 42 of the Code of Federal Regulations.

Tips for Residents and Advocates

Individual Grievances

Request the facility's grievance policy. Residents and their representatives should obtain a copy of the facility grievance policy, which has to be provided upon request. They should make sure they know who the grievance official is and how to contact him or her, should they wish to file a complaint.

File complaints in writing if possible. Putting a grievance in writing permits the resident or his/her representative to control how the concern is expressed rather than relying on someone's interpretation of what was said orally. It also better ensures that the details provided by the resident and/or representative are included. If it is not possible to file the complaint in writing, residents and representatives should consider asking the grievance official to read back to them what they said to confirm its accuracy.

Continue to pursue the grievance if the decision is not satisfactory. If residents and representatives are not satisfied with the decision and/or the problem is not resolved, they should continue to push for the problem to be corrected. They can do this by taking the results of the grievance process to the administrator. They should also consider contacting the local long-term care ombudsman and filing a complaint with the state survey agency.

Council Grievances and Recommendations

Work with the facility administrator to determine the best way for the council to convey its concerns. It's important that both the council and the administrator are clear about how grievances/problems will be handled. For instance, will council issues go directly to the administrator and/or department heads or will the grievance process be used?

Request that the facility respond in writing to council concerns and indicate the rationale for its decision. Council members should have a record of how the facility responded and why. This is already required for individual concerns — council concerns deserve the same level of response. A written response is important in order to track the facility's actions over time and to show state surveyors, if necessary. Written responses also seem to be taken more seriously.

Go up the chain of command or seek outside help if the facility is not adequately addressing concerns. If the nursing facility is not responsive to council concerns, council members should consider other approaches. They can go further up the facility chain of command by taking the concern to the person above the administrator, such as the facility owner, the board of directors, or a corporate regional director. Members can also turn to the long-term care ombudsman for assistance or file a complaint with the state survey agency.