



The National

CONSUMER VOICE

_____ for Quality Long-Term Care

Recent Updates to Federal Nursing Home Surveyor Guidance

January 22, 2025

About the Consumer Voice

The leading national voice representing consumers in issues related to long-term care

- ▶ **Advocate for public policies** that support quality of care and quality of life responsive to consumers' needs in all long-term care settings.
- ▶ **Empower and educate** consumers and families with the knowledge and tools they need to advocate for themselves.
- ▶ **Train and support** individuals and groups that empower and advocate for consumers of long-term care.
- ▶ **Promote the critical role** of direct-care workers and best practices in quality care delivery.

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- ▶ The program is being **recorded**
- ▶ Use the **Q&A feature** for questions for the speakers
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- ▶ Please complete the **evaluation** questionnaire when the webinar is over.
- ▶ Links to **resources** will be posted in the chat box and will be posted to the Consumer Voice website – theconsumervoice.org

Speakers



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Consumer Voice

CMS Guidance QSO-25-12-NH

- ▶ Original release date: November 18, 2024
- ▶ Effective date: March 24, 2025
 - ▶ Revised survey resources will be posted
 - ▶ Surveyors will begin using this guidance to determine compliance with requirements on surveys
- ▶ Revised and released on January 15, 2025
 - ▶ Added new language pertaining to sufficient nursing staff and payroll data

No Financial Guarantees Allowed

- Third-party guarantees cannot be required or requested.
 - This does not prevent third party (adult child, etc.) from signing an agreement as agent for the resident, obligating resident to pay nursing facility charges.
 - 42 C.F.R. § 483.15(a).

Some Facilities Still Seek to Collect Against Family Members

- Agreement purports to create duty by representative to:
 - Use resident's money to pay bill, and
 - Seek Medicaid eligibility as appropriate.
- Facility may file suit based on supposed breach of duty.
 - These suits generally should fail, unless representative was looting resident's finances for representative's own benefit.

Revised Guidance on No-Financial-Guarantees

- Admission agreement language “can be noncompliant even if it does not specifically reference a ‘guarantee’ by a third party. Any language contained in an agreement that seeks to hold a third party personally responsible for paying the facility would violate this requirement.”
 - *Surveyor’s Guidelines, F-Tag F620.*

Examples of Non-Compliance (1 of 3)

- “Language that holds both (1) the resident and (2) the representative or other individual jointly responsible for any sums due to the facility.”
 - *Surveyor’s Guidelines, F-Tag F620.*

More Examples of Non-Compliance (2 of 3)

- “Language that holds the representative or other third-party individual personally liable for breach of an obligation in the agreement, such as (1) failing to apply for Medicaid in a timely and complete manner or (2) allowing someone other than a signatory to the agreement to spend the resident’s resources that would be used to pay the nursing home.”
 - *Surveyor’s Guidelines, F-Tag F620.*

More Examples of Non-Compliance (3 of 3)

- “Language that holds the representative or other individual personally liable for any amounts not paid to the facility in a timely manner because the representative or other individual did not provide accurate financial information or notify the facility of changes in the resident’s financial information.”
 - *Surveyor’s Guidelines, F-Tag F620.*

How Resident Avoids Signing “Bad” Admission Agreement

- Delete or revise improper provisions.
- Explain how provisions violate law.
- No risk of being refused admission if resident already has moved in.
 - Note: My recent personal experience receiving call from admissions department while riding in medical transport

Consent Required

- All medications require informed consent of resident or representative, and denial of consent does not require justification.

Informed Consent Requirements Confirmed in Federal Guidelines

- “... The resident has the right to accept or decline the initiation or increase of a medication. To demonstrate compliance, the resident’s medical record must include documentation that the resident or resident representative was informed in advance of the risks and benefits of the proposed care, the treatment alternatives or other options and was able to choose the option he or she preferred.”
 - Surveyor’s Guideline to 42 C.F.R. § 483.45(d), F-Tag F757.

Guidance on Informed Consent Requirements (cont.)

- "... A written consent form may serve as evidence of a resident's consent to medication, but other types of documentation are also acceptable. If a medication has been initiated or increased, and there is not documentation demonstrating compliance with the resident's right to be informed and participate in their treatment, noncompliance with [the resident's rights regulation] exists.."
 - Surveyor's Guideline to 42 C.F.R. § 483.45(d), F-Tag F757.

TRANSFER AND DISCHARGE

- Always one of the biggest problems for nursing home residents
- New Appendix PP adds some helpful new language
 - It does not explicitly prohibit discharge to a homeless shelter, but, in several places, addresses a discharge location that is unable to meet resident's needs

transfer and discharge, pp. 191-221 in Appendix PP

TRANSFER AND DISCHARGE

- Consolidates 7 F-tags into 2 F-tags
 - F627, Inappropriate Transfers and Discharges
 - F628, Transfer and Discharge Process
- Removes the terms “facility-initiated” and “resident-initiated”
- Reorganizes and revises the guidance

NEW INTENT LANGUAGE

- *Ensure policies are developed and implemented which allow residents to return to the facility following hospitalization or therapeutic leave.*
- *Ensure a facility does not transfer or discharge a resident in an unsafe manner, such as a location that does not meet the resident's needs, does not provide needed support and resources, or does not meet the resident's preferences and, therefore, should not have occurred.*

p. 194

SURVEY TEAM COORDINATOR

- As part of off-site preparation in advance of survey, the survey team coordinator should
 - “contact the local ombudsman and inquire if there are specific residents from whom the ombudsman received complaints related to inappropriate discharge for review.”
 - “review complaints and survey history of the facility for indications of noncompliance with the requirements for transfer and/or discharge”

p. 196

GUIDANCE EXPLAINS REQUIREMENTS FOR F627

- For each permissible basis for transfer or discharge, the guidance requires surveyors to determine whether the facility actually documented in the records that the basis for transfer or discharge was met.
- If documentation does not exist in the record, the discharge is not permitted by the rule.

EVIDENCE THAT DOES NOT SUPPORT DISCHARGE

- *Discharge based on an inability to meet the resident's needs, but there is no evidence of facility attempts to meet the resident's needs, or no evidence of an assessment at the time of discharge indicating what needs cannot be met;*
- *Discharge based on improvement of resident's health such that the services provided by the facility are no longer needed, but documentation shows the resident's health did not improve or actually declined;*

EVIDENCE THAT DOES NOT SUPPORT DISCHARGE

- *Discharge based on the endangerment of the safety or health of individuals in the facility, but there is no documentation in the resident's medical record that supports this discharge;*
- *Discharge based on failure to pay, however there is no evidence that the facility offered the resident to pay privately or apply for Medical Assistance or that the resident refused to pay or have paid under Medicare or Medicaid;*

EVIDENCE THAT DOES NOT SUPPORT DISCHARGE

- *Discharge occurs even though the resident appealed the discharge, the appeal is pending, and there is no documentation to support the failure to discharge would endanger the health and safety of individuals in the facility.*

PROPOSED DISCHARGE TO A CAREGIVER

- Discharge is not appropriate when “There is no evidence that the facility considered the care giver’s availability, capacity, and/or capability to perform needed care to the resident following discharge.”

p. 197

WHAT IF A RESIDENT WINS AN APPEAL

- Resident may choose to file a complaint with the state
- However, state survey agency “cannot take a survey action, such as citing noncompliance exclusively on the ruling of the hearing.” SSA must conduct a survey to cite noncompliance.

p. 200

PROPOSED DISCHARGE TO UNSAFE ENVIRONMENT

- Facility's plan of correction must either
 - “Readmit the resident until a safe and compliant discharge can be done” or
 - “Coordinate a transfer of the resident to another setting where they will be safe.”

p. 200

UNSAFE LOCATION FOR DISCHARGE

- If the location for discharge does not meet the resident's health and/or safety needs,

“enforcement should be implemented immediately. For example, a discretionary denial of payment for new admissions should be imposed to go into effect within 2 or 15 days (as appropriate), and remain in effect until a return to substantial compliance”

p. 208

SEVERITY LEVELS FOR DEFICIENCIES AT F627

- Use *“reasonable person approach in considering psychosocial outcomes as well as likelihood for serious physical harm resulting from an unsafe discharge”*

p. 207

IMMEDIATE JEOPARDY (Level 4)

- includes additional language
 - when a resident is discharged to a setting that could not meet her needs (her daughter’s home) while her appeal was pending;
 - when a resident is discharged to “*an unsafe setting*” that cannot support the resident’s needs;
 - when a facility refuses to allow a resident to return following therapeutic leave and facility does not comply with discharge requirements for notice and appeal rights.

pp. 208-209

ACTUAL HARM (Level 3)

- New language
 - a facility’s refusal to allow the resident to return from an acute care hospital “*saying they could not meet the resident’s needs. Review of the resident’s records did not show the resident had any new needs after hospitalization that could not be met by the facility.*”

p. 209

ACTUAL HARM

- Old, but important, example: Resident's skilled rehabilitation ended (i.e., Medicare coverage), Medicaid application pending, but discharged anyway to a facility further from the resident's family; resident was sad and withdrew from social activities.

p. 209

F628

- New intent language, §483.15(c)(2)-(8), 483.15(d):
 - *The intent of this tag is to ensure the facility adheres to all of the applicable components of the process for transferring or discharging a resident which include documentation and information conveyed to the receiving provider, the notice of transfer or discharge, notice of bed-hold policy, and completing the discharge summary.*

p. 213

F628, IMMEDIATE JEOPARDY

- Language is added to describe a facility's failure to inform a facility to which a resident was transferred that the resident (who had had a stroke) was on a blood thinning medication and the receiving facility failed to administer blood thinning medication.

p. 221

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Nursing Services & Payroll Based Journal

F725

Nursing Services/Payroll Based Journal

- ▶ New definitions added: Licensed nurse, charge nurse and scope of practice
- ▶ New language added: "Facility is required to provide licensed nursing staff 24 hours a day, along with other nursing personnel, including but not limited to nurse aides. Facilities must also designate a licensed nurse to serve as a charge nurse on each tour of duty".
- ▶ Examples added that may identify potential insufficient staffing.
- ▶ States that compliance with state staffing standards does not necessarily determine compliance with federal staffing standards.

Nursing Services/Payroll Based Journal

- ▶ New language: "During the offsite preparation for a recertification survey, the team coordinator must obtain the PBJ (Payroll Based Journal) Staffing Data Report and evaluate the PBJ data submitted by the facility".
- ▶ Must be used on at least every recertification survey.
- ▶ Specifically states "CMS expects every team member to be aware of the offsite preparation information prior to entering the facility".
- ▶ Provides probes to determine if the absence of a licensed nurse caused harm or placed residents in immediate jeopardy (IJ).



Chemical Restraint & Unnecessary Psychotropic Medications

F605

Chemical Restraints & Unnecessary Psychotropic Medications

- ▶ New language was added to the guidance for citations 42 C.F.R §483.45(c)(3) through §483.45(e)(5).
 - ▶ Added definitions of psychotropic drugs and unnecessary drugs.
 - ▶ Residents are not to be given psychotropics unless the medication is necessary; diagnosed and documented in the clinical record.
 - ▶ Gradual dose reductions (GDR) must be used (unless contraindicated) to discontinue the drugs.
 - ▶ New language that limits the use of PRN orders and specifies a limit (14 days) for its use.

Chemical Restraints & Unnecessary Psychotropic Medications

- ▶ Chemical restraints definition was expanded.

Specific language added to the guidance regarding the reduction of chemical restraints:

“Psychotropic medications have the potential to create symptoms consistent with sedation, creating convenience for staff, which would be considered a chemical restraint.”

- ▶ *Cite at severity level 3 (harm) if a medication is identified as causing symptoms of prolonged sedation that is not addressed.*

Convenience and Discipline

- ▶ Reaffirms the rights of residents to be free from physical and chemical restraints for purposes of discipline or convenience.
- ▶ Provides definitions of convenience and discipline.
- ▶ Provides examples of the effects on residents when psychotropic medications are used for staff convenience or discipline: sedation, withdrawal from activities, loss of autonomy and dignity, confusion, weight loss, and decline in physical functioning.

Comprehensive Assessment and Behavioral Interventions

- ▶ Provides language that the resident's physical, behavioral, mental, and psychosocial signs and symptoms must be used when initiating, maintaining, or discontinuing medications.
- ▶ The use of non-pharmacological approaches must be attempted.
- ▶ Resident's medical record should include documentation and rationale for chosen treatment options.
- ▶ The facility needs to ensure that the resident's behavior is not due to some other factor (pain is an example).
- ▶ Examples are provided of circumstances that warrant an evaluation of a resident's medical condition/medication.

Determining the necessity to use psychotropic medications

- ▶ A diagnosis alone does not warrant the use of psychotropic medications.
- ▶ Provides examples of side effects when psychotropic medications may not be warranted.
- ▶ Provides examples of when psychotropic medications may be warranted.
- ▶ Specifies that there must be documentation that the facility attempted behavioral interventions and that they failed.

“Without evidence that non-pharmacological interventions had been ruled out to treat the resident, the psychotropic medication would be deemed not necessary to treat the resident, and noncompliance would be cited.”

Determining the necessity to use psychotropic medications (cont.)

- ▶ Documentation should show the rationale for changes in the medication regimen.
- ▶ Psychotropic medication should be the last resort for treatment.
- ▶ Specifies additional areas of noncompliance to include when the facility is unable to provide documentation that supports the prescribing of the antipsychotic medication.

Dose and Duration, Gradual Dose Reduction


- ▶ Includes new definitions:

“Dose refers to the total amount/strength/concentration of a medication given at one time or over a period of time. The individual dose is the amount/strength/concentration received at each administration.”

- ▶ The clinical rationale for continued use of the medication should be documented in the medical record.
- ▶ Provides examples of inappropriate duration.
- ▶ Added clarification that the time frames and duration of attempts to taper medication must be consistent with accepted standards of practice.
- ▶ The medical record should reflect all GDR (gradual dose reduction) attempts.

Monitoring and Adverse Consequences

- ▶ Outlines proper medication management and ongoing evaluation
- ▶ Provides insight into specific situations such as:
 - ▶ When there are multiple prescribers, the continuation of a medication needs to be evaluated to determine if it remains warranted.
 - ▶ Medications prescribed by a specialist or begun in another setting, must be documented in the medical record.
 - ▶ Without a documented rationale, the use of the medication may be unnecessary and therefore noncompliant.



**Comprehensive Care
Plans,
Mental Health
Disorders/Schizophrenia
Diagnosis**

F658

Comprehensive Care Plans, Mental Health Disorders/Schizophrenia Diagnosis

- ▶ Provides examples of insufficient documentation to support a mental health diagnosis.
- ▶ Lists items that the medical record must include and specifically states the record must include documentation of ALL of these items, if not, this would constitute insufficient documentation.
- ▶ Includes excerpts from the DSM which describes detailed diagnostic criteria for schizophrenia, schizophreniform disorder and schizoaffective disorder.

Schizophrenia Diagnosis

“CMS is aware of situations where residents are given a diagnosis of schizophrenia without sufficient supporting documentation that meets the criteria in the current version of the DSM for diagnosing schizophrenia. If the non-compliance causes actual harm or the likelihood of serious harm to one or more residents or the surveyor identifies a pattern (e.g., three or more residents) by the same practitioner prescribing antipsychotic medication for any new diagnosis (such as schizophrenia) with a lack of supporting documentation, the survey team should discuss their findings with their state survey agency for consideration to refer the individual to the State Medical Board or Board of Nursing.”



Accuracy of Assessments

F641

► Accuracy of Assessments

- ▶ Provides new language for penalty for falsification of records.
- ▶ New language was added when determining if Minimum Data Set (MDS) contains sufficient documentation to support a resident receiving antipsychotic medication.
- ▶ Provides clarification on the use of electronic signatures on MDS forms.
- ▶ Language was added that directs the surveyor to make a referral to the Office of the Inspector General if a pattern (three or more residents) of inaccurate MDS coding by staff has been identified.



Quality Assurance and Performance Improvement (QAPI)

F867

▶ QAPI

- ▶ Health Equity definition was added:

“refers to the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes.”

- ▶ Language was added regarding health equity concerns when obtaining feedback and data.
- ▶ Language was added that facilities should consider factors that affect health equity and outcomes of their resident populations when establishing priorities in their QAPI program.



Pain Management

F697

Pain Management

- ▶ Revisions were made to align acute, chronic and subacute pain with CDC definitions.
- ▶ New language was added about the use of opioid treatment.
- ▶ Resource links on opioid use were updated and expanded.

Infection Prevention and Control



F880

COVID-19

F887

Infection Prevention & Control, COVID-19

- ▶ Guidance relating to two CMS memos was incorporated into Appendix PP:
- ▶ CMS memo [QSO-24-08-NH](#), released on March 20, 2024 addresses Enhanced Barrier Precautions (EBP).
- ▶ CMS memo [QSO-21-19-NH](#), released on May 11, 2021 addresses the benefits and potential side effects of the COVID-19 vaccine.



Resources

Consumer Voice Summary of CMS's Revised Guidance for Nursing Home Surveyors



SUMMARY

Summary of CMS's Revised Guidance for Nursing Home Surveyors

On November 18, 2024, the Centers for Medicare and Medicaid Services (CMS) released revised guidance for nursing home surveyors. The updates appear in [Appendix PP](#) of the State Operations Manual, which state survey agencies are required to follow when surveying and assessing facility compliance with federal regulations. On January 15, 2025, CMS updated the guidance again and revised the effective implementation date. Surveyors will begin using this revised guidance starting March 24, 2025.

The new guidance includes:

- Added revised guidance and training for nursing services and Payroll-Based Journal (PBJ).
- Updated information regarding the prohibition on requiring a third party to guarantee payment for a resident's stay.
- Updated guidance on inappropriate transfers and discharges.
- More detailed guidance on the unnecessary use of psychotropic medications.
- Increased guidance on the misdiagnosis of schizophrenia in residents, particularly to hide the unnecessary use of psychotropic medications.

Below is a detailed summary of the updated guidance. The sections are broken down by "F-Tags," the numbers CMS assigns to violations.

Nursing Services and Payroll Based Journal, 42 C.F.R §483.35 (F725)

New language was added to include the definitions of "licensed nurse", "charge nurse" and "scope of practice". New language was also added to clarify that "facilities are required to provide licensed nursing staff 24 hours a day, along with other nursing personnel, including but not limited to nurse aides. Facilities must also designate a licensed nurse to serve as a charge nurse on each tour of duty".

Examples that may identify potential insufficient staffing were included in the revisions. They are:

- Falls
- Weight loss
- Dehydration
- Pressure ulcers
- Elopement
- Resident altercation

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- ▶ <https://theconsumervoice.org/wp-content/uploads/2025/01/Summary-of-Revised-CMS-Guidance-for-Surveyors.pdf>



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