Abuse

There are 10 F tags that are related to Abuse in the State Operations Manual (SOM), F223 & F224 are the main 2 tags but the other 8 tags can trigger a more in-depth look.

F151 §483.10(a) Exercise of Rights  
F156 Inform Resident of Services  
F223 §483.13(b) Abuse  
F224 §483.13(c) Staff Treatment of Residents  
F226 §483.13(c) Staff Treatment of Residents  
F225 §483.13(c) Not Employ Persons Guilty Of Abuse  
F323 §483.25(h) Accidents  
F329 §483.25(l) Unnecessary Drugs  
F495 §483.75(e) (4) Nurse Aide Competency  
F496 §483.75(e) (5) Nurse Aide Registry verification

Familiarize yourself and your staff with the interpretive guidelines or comments made in the SOM.

Surveyors will request within the first four hours of the survey the Name of contact person for Abuse Prohibition Policies and Procedures/Complaints/Grievance information.

Abuse will be investigated by resident interview and resident observation and family interview.

Residents being interviewed will need to be identified as interviewable residents. The Cognitive performance scale CMS-20084 should be completed on the resident to identify that they are interviewable. The interviews will be randomly chosen by the Computer system.

The QP253 Abuse will be used to interview the interviewable resident on abuse. If one resident states yes that they have been treated roughly or yelled at by staff this will trigger the facility into Stage II on Abuse Care.

The QP205 Abuse will be used if resident abuse has been observed by the Survey Team. If one incident is noted, it will trigger Stage II Abuse Care.

The Quality Care Indicator QP236 Abuse will be used during a Family Interview to identify if the family has noticed any indications of abuse. If one family member states yes that they have noticed abuse, this will trigger the facility into Stage II on Abuse Care.

The Abuse Prohibition task CMS-20059 is completed only if the resident triggered Abuse. This Care area will be investigated in the Stage II Phase.
If concerns regarding abuse are identified offsite (e.g., complaints) or are identified during any part of the survey, surveyors initiate both the resident(s) for the Abuse Care Area and the facility for Abuse Prohibition.

**Policy & Investigative Review**

Using **CMS-20059**, the surveyors will obtain and review the facility’s written policies and a minimum of three (3) alleged violations to review the written evidence of the facility’s handling of the allegation. They are to include all residents who triggered the Abuse Care Area in the review of the facility’s handling of alleged violations. Determine whether the facility implemented adequate procedures.

**Employee Files**

The Survey Team will obtain a list of all employees hired within the previous four (4) months, and select five (5) employees from this list. Ask the facility to provide written evidence that the facility conducted pre-screening of the five (5) employees based on the regulatory requirements at 42 CFR 483.13(c).

**Interviews**

They will then interview the individual responsible for coordinating the policies and procedures.

The surveyor will interview selected residents regarding their awareness of to whom and how to report allegations, incidents, and/or complaints, unless this information has already been obtained.

Interview at least five (5) direct care staff, representing all three shifts, including activity staff and nursing assistants, to determine training on the Abuse policies and procedures.

Interview at least three (3) front-line supervisors of staff who interact with residents (Nursing, Dietary, Housekeeping, Activities, Social Services) to determine how they monitor care and services and staff interactions and behaviors.

Determination will be made if facility has followed the requirements on abuse.

**Key Components of Systemic Approach to Prevent Abuse and Neglect**

The facility must develop and implement written policies and procedures that include the seven key components: screening, training, prevention, identification, investigation, protection and reporting/response; the facility identifies, corrects and intervenes in situations in which abuse or neglect is more likely to occur, and the facility identifies characteristics of physical environment and deployment of staff and residents (e.g., those with aggressive behaviors) likely to precipitate abuse or neglect.
See Attachment C - Overview - Recommended Key Components of Systemic Approach to Prevent Abuse and Neglect

Survey Tips

Interview the residents and family members upon the MDS schedule. All concerns are addressed and resolved immediately. Keeping the residents and family happy should be the number one goal of the facility.

Employee Files should be reviewed monthly to be sure all new hires files have the appropriate paperwork in the file, i.e., background checks, references. This includes attempting to obtain information from previous employers and/or current employers, and checking with the appropriate licensing boards and registries.

Mandatory Ins-service training annually for all staff on the Abuse Prevention Program and Reporting of Abuse.

Improve work conditions, through adequate staffing, enhanced communication between direct care and administrative staff, and more time to nurture relationships between staff and residents, humane salaries, opportunities for upward mobility, and greater recognition, respect and understanding for the difficult lives many workers lead.

Assure that hiring practices include screening of prospective employees for criminal backgrounds, history of substance abuse and domestic violence, their feelings about caring for the elderly, reactions to abusive residents, work ethics, and their ability to manage anger and stress.

Encourage your staff to come to you or a designated person when the stress is too much. Or a residents behavior can’t be tolerated anymore.

- Train your staff to remain calm and don’t take the resident’s behavior personally.
- Remember there is no excuse for abusing a resident.
- Abuse often occurs when caregivers are tired, overworked, experiencing personal problems, stressed and/or losing control.
- If you are feeling overwhelmed with your assigned duties or a certain resident discuss it with your charge nurse, get help from your co-worker and/or make arrangements to take a break and compose yourself.
- If you see a co-worker who is feeling overwhelmed offer support and assistance if possible, encourage co-worker to report the situation and/or report the situation to the charge nurse yourself.
Caregivers have long been faced with the unsettling experience of being verbally abused, punched, kicked, slapped or bitten by patients/residents with cognitive impairment. This may lead to a sense of bewilderment, frustration or even fear and anger in Caregivers. Caregivers may respond in a variety of ways:

- Provision of minimal care and withdrawal.
- Attempt to stop behaviour by scolding, use an intimidating manner and voice tone.
- Swearing, roughly providing care or physically abusing the patient/resident.
- Patiently enduring the abuse.

Aggressive behaviours may negatively affect the quality of life of patients/residents by alienating family and staff. This may lead to the patient/resident experiencing unmet needs for social interaction, love and self-esteem. The following goals may help to direct interventions aimed at providing appropriate interpersonal relationships and an optimal physical environment. This in turn will reduce agitation and aggressive behaviours.

- **Resident to feel safe** – aggressive behaviour has been found to occur in response to touch or invasion of personal space. Caregivers need to develop verbal and non-verbal communication skills, be alert to precipitants, cue to patterns of behaviour (behaviour charts are useful tools to record responses and note effective interventions), eliminate fearful stimuli, use soothing techniques.

- **Residents to feel physically comfortable** – People with dementia have an inability to articulate the nature and source of pain. It is possible that movement can cause pain and has been found to precede aggressive behaviour. Assessments and treatment of pain should include: careful history of pain expression, use of non-verbal cues to detect the presence of pain, and use of maximum expertise and care when assisting in ADLs.

- **Resident to experience a sense of control** – patients/residents face many frustrations as they attempt to maintain control of their lives. Staff should be flexible and creative in their care provision and spend the time and energy needed to help the patient/resident rather than exert control. Do not insist an activity to be carried out immediately or in a specific way, rather leave and return later or allow the activity to be modified for the individual.

- **Residents to experience optimal stimulation** – too much and too little stimulation can lead to maladaptive behaviour. Insufficient environmental stimulation can lead to boredom with the resident often creating self-stimulating activities such as wandering, disruptive vocalisation, intrusiveness and aggression. Programs have been found to reduce boredom, depression and agitation, lowering the use of restraints and certain medications. Demands, which exceed the capabilities of a patient/resident, may also trigger behavioural difficulties. The following strategies may be implemented to reduce over stimulation:
  - Decrease traffic through living areas.
• Eliminate loud noises such as loudspeakers, blaring radios and televisions.
• Provide an environment, which allows safe movement.
• Use simple commands and prompts when assisting with ADLs.
• Exhibit relaxed and positive body language and attitude.
• Use music, art, animals, and massage for therapeutic interventions.
• Ensure staff educate families on how to make visits a positive experience, as these occasions can be triggers for aggressive behaviours

• *Residents to experience pleasure* – the ability to experience pleasure in the immediate moment becomes crucial, especially when memory loss makes it difficult or impossible to experience joy in recalling the past. Care providers should contribute to the provision of frequent positive stimulation and pleasurable experiences for patients/residents. Interventions include:

  • Knowledge of the resident’s social history (interest, hobbies, likes).
  • Provide individualised activity programs.
  • Ensure compassionate touch/interaction rather than just the routine touch associated with caregiving.

**Online Education Programs Available (See Compliance Continuing Education Program)**

**Managing Behavior**

Course # CCNA015-T

This lesson will provide the student with the necessary information, to identify five influences of behavior, to demonstrate eleven types of behavior and their associated behavior management interventions. To demonstrate four professional codes of conduct and to list six types of abuse and give examples of each.

**Recognizing Elder Abuse: Working Together to Keep Residents Safe**

Course # M217-T

This program describes the importance of recognizing elder abuse, both to assist in the resident’s continuing care and to avoid legal implications. After completing this course, the learner should be able to: Describe the signs and types of elder abuse, identify factors that put elders at risk of becoming abused, identify factors that put caregivers at risk of becoming abusive, and describe the steps that should be taken if elder abuse is suspected. Viewers will also be able to identify when reporting is necessary, as well as how and where to report suspected abuse. CEU’s: 1 credit hours for Nurses

**Recognizing Elder Abuse: Working Together To Keep Residents Safe**

Course # NHAM217-T

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**Articles of Interest**

**Embrace_Healthcare Law**

**News Release**

FOR IMMEDIATE RELEASE

Wednesday, October 6, 2010

Contact: HHS Press Office
(202) 690-6343

**New resources available to improve patient safety and combat abuse in long-term care facilities**

*First round of funding from Affordable Care Act to help states set up background check programs in AK - CT- DE- FL- MO-RI*

In a move aimed at combating abuse and neglect in the nation’s long-term care facilities, the Centers for Medicare & Medicaid Services (CMS) today awarded more than $13 million to six states to design comprehensive applicant criminal background check programs for jobs involving direct patient care.

“Elder abuse and neglect is tragic and intolerable,” said HHS Secretary Kathleen Sebelius. “Workers with a history of abuse or neglect should be identified and prevented from ever working with residents of these facilities.

“The new health care law will help states identify the best, most effective ways to determine which applicants can be trusted with the health and safety of residents and which cannot,” said Donald M. Berwick, M.D., CMS administrator.

Created by the Affordable Care Act, the new National Background Check Program will help identify “best practices” for long-term care providers to determine whether a job seeker has any kind of criminal history or other disqualifying information that could make him or her unsuitable to work directly with residents.

The first round of states to participate in the program are: Alaska, Connecticut, Delaware, Florida, Missouri, and Rhode Island. They each will share a portion of $13.7 million.

An additional 11 states applied and may be funded beginning in October or November. CMS will also issue a second solicitation in October for those states that did not apply but may still do so.

The new law set aside $160 million for the program, which is to run through September 2012, an amount sufficient to enable all states to participate.

The national background check for each prospective direct patient care employee must include a criminal history search of both state and federal abuse and neglect registries and databases, such as the Nurse Aide Registry or FBI files.
Long-term care facilities or providers covered under the new program include nursing facilities, home health agencies, hospice providers, long-term care hospitals, and intermediate care facilities for persons with mental retardation, and other entities that provide long-term care services.

Questions about the National Background Check Program may be sent via e-mail to: Background_Checks@cms.hhs.gov.

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Note: All HHS press releases, fact sheets and other press materials are available at http://www.hhs.gov/news. Last revised: October 06, 2010
F tags concerning Abuse

F151 §483.10(a) Exercise of Rights

Procedures §483.10(a) (2)

Pay close attention to resident or staff remarks and staff behavior that may represent deliberate actions to promote or to limit a resident’s autonomy or choice, particularly in ways that affect independent functioning. Because reprisals may indicate abuse, if the team determines that a facility has violated this requirement through reprisals taken against residents, then further determine if the facility has an effective system to prevent the neglect and abuse of residents. (§483.13(c), F224-F225.)

F156 Inform Resident of Services

Procedures §483.10(b) (5) and (6)

§483.10(b) (7) -- The facility must furnish a written description of legal rights which includes--

(iv) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, and misappropriation of resident property in the facility, and non-compliance with the advance directives requirements.

F223 §483.13(b) Abuse

The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

Intent §483.13(b)

Each resident has the right to be free from abuse, corporal punishment, and involuntary seclusion. Residents must not be subjected to abuse by anyone, including, but not limited to, facility staff, other residents, consultants or volunteers, staff of other agencies serving the resident, family members or legal guardians, friends, or other individuals.

Interpretive Guidelines §483.13(b) and (c)

—Abuse means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. (42 CFR §488.301)
This also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. This
presumes that instances of abuse of all residents, even those in a coma, cause physical harm, or pain or mental anguish.

—Verbal abuse is defined as the use of oral, written or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to: threats of harm; saying things to frighten a resident, such as telling a resident that he/she will never be able to see his/her family again.

—Sexual abuse includes, but is not limited to, sexual harassment, sexual coercion, or sexual assault.

—Physical abuse includes hitting, slapping, pinching and kicking. It also includes controlling behavior through corporal punishment.

—Mental abuse includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation.

—Involuntary seclusion is defined as separation of a resident from other residents or from her/his room or confinement to her/his room (with or without roommates) against the resident’s will, or the will of the resident’s legal representative. Emergency or short term monitored separation from other Residents will not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention to reduce agitation until professional staff can develop a plan of care to meet the resident’s needs.

Investigation of possible involuntary seclusion, may involve one of two types of situations: that in which residents are living in an area of the facility that restricts their freedom of movement throughout the facility, or that in which a resident is temporarily separated from other residents.

If the stated purpose of a unit which prevents residents from free movement throughout the facility is to provide specialized care for residents who are cognitively impaired, then placement in the unit is not considered involuntary seclusion, as long as care and services are provided in accordance with each resident’s individual needs and preferences rather than for staff convenience, and as long as the resident, surrogate, or representative (if any) participates in the placement decision, and is involved in continuing care planning to assure placement continues to meet resident needs and preferences.

If a resident is receiving emergency short-term monitored separation due to temporary behavioral symptoms (such as brief catastrophic reactions or combative or aggressive behaviors which pose a threat to the resident, other residents, staff or others in the facility), this is not considered involuntary seclusion as long as this is the least restrictive approach for the
minimum amount of time, and is being done according to resident needs and not for staff convenience.

If a resident is being temporarily separated from other residents, i.e., for less than 24 hours, as an emergency short-term intervention, answer these questions:

1. What are the symptoms that led to the consideration of the separation?

2. Are these symptoms caused by failure to:
   
   a. Meet individual needs?
   b. Provide meaningful activities?
   c. Manipulate the resident’s environment?

3. Can the cause(s) be removed?

4. If the cause(s) cannot be removed, has the facility attempted to use alternatives short of separation?

5. If these alternatives have been tried and found ineffective, does the facility use separation for the least amount of time?

6. To what extent has the resident, surrogate or representative (if any) participated in care planning and made an informed choice about separation?

7. Does the facility monitor and adjust care to reduce negative outcomes, while continually trying to find and use less restrictive alternatives?

If, during the course of the survey, you identify the possibility of abuse according to the definitions above, investigate through interviews, observations, and record review. (For investigative options, refer to the Guidelines for Complaint Investigation which outlines the steps of investigations for various types of suspected abuse and misappropriation of property.)

Report and record any instances where the survey team observes an abusive incident.

Completely document who committed the abusive act, the nature of the abuse and where and when it occurred. Ensure that the facility addresses the incident immediately.

Properly trained staff should be able to respond appropriately to resident behavior. The CMS does not consider striking a combative resident an appropriate response in any situation.

Retaliation by staff is abuse and should be cited as such.
§483.13(c) Staff Treatment of Residents (F224* and F226**)  

The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property. 

§483.13(c) (1) (i) Staff Treatment of Residents  

(1) The facility must--  

(i) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion; 

F224 *  

* Intent §483.13(c) (F224)  

Each resident has the right to be free from mistreatment, neglect and misappropriation of property. This includes the facility’s identification of residents whose personal histories render them at risk for abusing other residents, and development of intervention strategies to prevent occurrences, monitoring for changes that would trigger abusive behavior, and reassessment of the interventions on a regular basis.  

* Use tag F224 for deficiencies concerning mistreatment, neglect, or misappropriation of resident property.  

* Guidelines §483.13(c) (F224)  

— Neglect means failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness. (42 CFR 488.301)  

— Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent. (42 CFR 488.301)  

F226 **  

** Intent §483.13(c), F226  

The facility must develop and operationalize policies and procedures for screening and training employees, protection of residents and for the prevention, identification, investigation, and
reporting of abuse, neglect, mistreatment, and misappropriation of property. The purpose is to assure that the facility is doing all that is within its control to prevent occurrences.

** Use tag F226 for deficiencies concerning the facility's development and implementation of policies and procedures.

** Guidelines §483.13(c), F226

The facility must develop and implement policies and procedures that include the seven components: screening, training, prevention, identification, investigation, protection and reporting/response. The items under each component listed below are examples of ways in which the facility could operationalize each component.

I. Screening (483.13(c) (1) (ii) (A) & (B): Have procedures to:

Screen potential employees for a history of abuse, neglect or mistreating residents as defined by the applicable requirements at 483.13(c) (1) (ii) (A) and (B). This includes attempting to obtain information from previous employers and/or current employers, and checking with the appropriate licensing boards and registries.

II. Training (42 CFR 483.74(e)): Have procedures to:

Train employees, through orientation and on-going sessions on issues related to abuse prohibition practices such as:

   o Appropriate interventions to deal with aggressive and/or catastrophic reactions of residents;

   o How staff should report their knowledge related to allegations without fear of reprisal;

   o How to recognize signs of burnout, frustration and stress that may lead to abuse; and

   o What constitutes abuse, neglect and misappropriation of resident property.

III. Prevention (483.13(b) and 483.13(c)): Have procedures to:

Provide residents, families and staff information on how and to whom they may report concerns, incidents and grievances without the fear of retribution; and provide feedback regarding the concerns that have been expressed. (See 483.10(f) for further information regarding grievances.)

Identify, correct and intervene in situations in which abuse, neglect and/or misappropriation of resident property is more likely to occur.
This includes an analysis of:

- Features of the physical environment that may make abuse and/or neglect more likely to occur, such as secluded areas of the facility;

- The deployment of staff on each shift in sufficient numbers to meet the needs of the residents, and assure that the staff assigned have knowledge of the individual residents’ care needs;

- The supervision of staff to identify inappropriate behaviors, such as using derogatory language, rough handling, ignoring residents while giving care, directing residents who need toileting assistance to urinate or defecate in their beds; and

- The assessment, care planning, and monitoring of residents with needs and behaviors which might lead to conflict or neglect, such as residents with a history of aggressive behaviors, residents who have behaviors such as entering other residents’ rooms, residents with self-injurious behaviors, residents with communication disorders, those that require heavy nursing care and/or are totally dependent on staff.

IV. Identification (483.13(c) (2)): Have procedures to:

Identify events, such as suspicious bruising of residents, occurrences, patterns, and trends that may constitute abuse; and to determine the direction of the investigation.

V. Investigation (483.13(c) (3)): Have procedures to:

Investigate different types of incidents; and

Identify the staff member responsible for the initial reporting, investigation of alleged violations and reporting of results to the proper authorities. (See §483.13 (c) (2), (3), and (4).)

VI. Protection (483.13(c) (3)): Have procedures to:

Protect residents from harm during an investigation.

VII. Reporting/Response (483.13(c) (1) (iii), 483.13(c) (2) and 483.13(c) (4)): Have procedures to:

Report all alleged violations and all substantiated incidents to the state agency and to all other agencies as required, and take all necessary corrective actions depending on the results of the investigation;
Report to the State nurse aide registry or licensing authorities any knowledge it has of any actions by a court of law which would indicate an employee is unfit for service; and

Analyze the occurrences to determine what changes are needed, if any, to policies and procedures to prevent further occurrences.

F225 Not Employ Persons Guilty Of Abuse

The facility must—

§483.13(c) (1) (ii) Not employ individuals who have been--

(A) Found guilty of abusing, neglecting, or mistreating residents by a court of law; or

(B) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property; and

(iii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities

§483.13(c)(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).

§483.13(c) (3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

§483.13(c)(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

Intent §483.13(c) (1) (ii) and (iii)

The facility must not hire a potential employee with a history of abuse, if that information is known to the facility. The facility must report knowledge of actions by a court of law against an employee that indicates the employee is unfit for duty. The facility must report alleged
violations, conduct an investigation of all alleged violations, report the results to proper authorities, and take necessary corrective actions.

**Interpretive Guidelines §483.13(c) (1) (ii) and (iii)**

Facilities must be thorough in their investigations of the past histories of individuals they are considering hiring. In addition to inquiry of the State nurse aide registry or licensing authorities, the facility should check information from previous and/or current employers and make reasonable efforts to uncover information about any past criminal prosecutions.

—Found guilty ... by a court of law applies to situations where the defendant pleads guilty, is found guilty, or pleads nolo contendere.

—Finding is defined as a determination made by the State that validates allegations of abuse, neglect, mistreatment of residents, or misappropriation of their property.

A certified nurse aide found guilty of neglect, abuse, or mistreating residents or misappropriation of property by a court of law, must have her/his name entered into the nurse aide registry. A licensed staff member found guilty of the above must be reported to their licensing board. Further, if a 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 nursing home (e.g., felony conviction of child abuse, sexual assault, or assault with a deadly weapon), then the facility must report that individual to the nurse aide registry (if a nurse aide) or to the State licensing authorities (if a licensed staff member). Such a determination by the facility is not limited to mistreatment, neglect and abuse of residents and misappropriation of their property, but to any treatment of residents or others inside or outside the facility which the facility determines to be such that the individual should not work in a nursing home environment.

A State must not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

**Interpretive Guidelines §483.13(c) (2) and (4)**

The facility’s reporting requirements under 483.13(c)(2) and (4) include reporting both alleged violations and the results of investigations to the State survey agency.

—Injuries of unknown source – An injury should be classified as an —injury of unknown source when both of the following conditions are met:

The source of the injury was not observed by any person or the source of the injury could not be explained by the resident; and
The injury is suspicious because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) or the number of injuries observed at one particular point in time or the incidence of injuries over time.

—Immediately means as soon as possible, but ought not to exceed 24 hours after discovery of the incident, in the absence of a shorter State time frame requirement. Conformance with this definition requires that each State has a means to collect reports, even on off-duty hours (e.g., answering machine, voice mail, and fax).

The phrase —in accordance with State law modifies the word —officials only. As such, State law may stipulate that alleged violations and the results of the investigations be reported to additional State officials beyond those specified in Federal regulations. This phrase does not modify what types of alleged violations must be reported or the time frames in which the reports are to be made. As such, States may not eliminate the obligation for any of the alleged violations (i.e., mistreatment, neglect, abuse, injuries of unknown source, and misappropriation of resident property) to be reported, not can the State establish longer time frames for reporting than mandated in the regulations at §§483.13(c)(2) and (4). No State can override the obligation of the nursing home to fulfill the requirements under §483.13(c), so long as the Medicare/Medicaid certification is in place.

F323 §483.25(h) Accidents

(Rev. 66, Issued: 10-01-10, Effective: 10-01-10 Implementation: 10-01-10)

Resident-to-Resident Altercations

NOTE: An incident involving a resident who willfully inflicts injury upon another resident should be reviewed as abuse under the guidance for 42 CFR §483.13(b) at F223. —Willful means that the individual intended the action itself that he/she knew or should have known could cause physical harm, pain, or mental anguish. Even though a resident may have a cognitive impairment, he/she could still commit a willful act. However, there are instances when a resident’s willful intent cannot be determined. In those cases, a resident-to-resident altercation should be reviewed under this tag, F323.

Potential Tags for Additional Investigation

During the investigation of 42 CFR 483.25(h) (1) and (2), the surveyor may have identified concerns related to outcome, process, and/or structure requirements. The surveyor should investigate these requirements before determining whether noncompliance may be present. The following are examples of related outcome, process, and/or structure requirements that should be considered:
42 CFR 483.13(b), F223, Abuse

- Determine if the resident was free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

**F329 §483.25(l) Unnecessary Drugs**

*(Rev. 66, Issued: 10-01-10, Effective: 10-01-10 Implementation: 10-01-10)*

Specific considerations related to these circumstances may include the following:

Psychiatric disorders or distressed behavior – As with all symptoms, it is important to seek the underlying cause of distressed behavior, either before or while treating the symptom. Examples of potential causes include:

Psychological stressors (e.g., disruption of the resident’s customary daily routine, grief over nursing home admission or health status, abuse, taunting, intimidation);

<table>
<thead>
<tr>
<th>Medication</th>
<th>Issues and Concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Antipsychotic medications</strong></td>
<td>E. Not due to psychological stressors (e.g., loneliness, taunting, abuse), or anxiety or fear stemming from misunderstanding related to his or her cognitive impairment (e.g., the mistaken belief that this is not where he/she lives or inability to find his or her clothes or glasses) that can be expected to improve or resolve as the situation is addressed</td>
</tr>
<tr>
<td>All classes, e.g., First generation (conventional) agents, e.g. chlorpromazine fluphenazine haloperidol loxapine mesoridazine molindone perphenazine promazine thioridazine thiothixene trifluoperazine triflupromazine</td>
<td></td>
</tr>
<tr>
<td>Second generation (atypical) agents, e.g. aripiprazole clozapine</td>
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Appendix PP - Guidance to Surveyors for Long Term Care Facilities  

| olanzapine  
| quetiapine  
| risperidone  
| ziprasidone  |

**F495 (4) Nurse Aide Competency**

(Rev. 66, Issued: 10-01-10; Effective/Implementation Date: 10-01-10)

*Section 6121 of the Patient Protection and Affordable Care Act (PPACA) of 2010, amending Sections 1819(f)(2)(A)(i)(I) and 1919(f)(2)(A)(i)(I) of the Social Security Act, clarifies that nurse aide training includes initial and annual dementia management and patient abuse prevention training for all nurse aides.*

**F496 §483.75(e) (5) Nurse Aide Registry verification**

(Rev. 66, Issued: 10-01-10; Effective/Implementation Date: 10-01-10)

*Section 6121 of the Patient Protection and Affordable Care Act (PPACA) of 2010, amending Sections 1819(f)(2)(A)(i)(I) and 1919(f)(2)(A)(i)(I) of the Social Security Act, clarifies that nurse aide training includes initial and annual dementia management and patient abuse prevention training for all nurse aides.*
Cognitive Performance Scale (CPS) Calculator

Resident Name: ___________________________________________  Resident Room: ____________
Surveyor Name: ___________________________________________  MDS Date: ____________

If a resident is comatose (B1 = 1), the CPS score is 7 - Stop!
If B1 = 0, proceed to Step 1.

Step 1: Enter points for each MDS item in the table below to calculate Total A.

<table>
<thead>
<tr>
<th>Impairment Level</th>
<th>MDS Item</th>
<th>Step 1 Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impairment</td>
<td></td>
<td></td>
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<tr>
<td>Add one point for each item</td>
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<td></td>
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<tr>
<td></td>
<td>B2a = 1</td>
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<tr>
<td></td>
<td>B4 = 1 or 2</td>
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<tr>
<td></td>
<td>C4 = 1, 2 or 3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total A (0 – 3)</td>
<td>0</td>
</tr>
</tbody>
</table>

Instructions for Scoring Total A:
1. Review item B2a (Short-term memory). If the resident’s B2a = 1, score a 1 in the box to the right.
2. Review item B4 (Cognitive skills for daily decision making). If the resident’s B4 = 1 or 2, score a 1 in the box to the right.
3. Review item C4 (Making self understood). If the resident’s C4 = 1, 2, or 3, score a 1 in the box to the right.
4. Calculate the total for the three boxes. The total cannot exceed 3.

Step 2: Enter points for each MDS item in the table below to calculate Total B

<table>
<thead>
<tr>
<th>Impairment Level</th>
<th>MDS Item</th>
<th>Step 2 Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe Impairment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Add one point for each item</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>B4 = 2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>C4 = 2 or 3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total B (0 – 2)</td>
<td>0</td>
</tr>
</tbody>
</table>

Instructions for Scoring Total B:
1. Review item B4 (Cognitive skills for daily decision making). If the resident’s B4 = 2, score a 1 in the box to the right.
2. Review item C4 (Making self understood). If the resident’s C4 = 2 or 3, score a 1 in the box to the right.
3. Calculate the total for the two boxes. The total cannot exceed 2.

Step 3: Read across table (below) for MDS items B1 and B4, and Totals A and B to determine CPS score.

Instructions for Reading the Table:
1. Review the resident’s MDS, items B1 and B4.
2. Note the impairment total counts from Steps 1 and 2.
3. Using the responses for B1 and B4, and Total A and Total B, read across the table to determine the CPS Score.
4. If B4 = 3 or more, use the resident’s Eating score (G1h) to read across the table to determine the CPS score.
   - If the resident’s G1h = 0 – 3 (not totally dependent in eating), the CPS = 6.
   - If the resident’s G1h = 4 (totally dependent in eating), the CPS = 7.

Date CPS Completed: ______________________  CPS Score: ________

FORM CMS–20084 (06/07)
Care Area: Abuse
QCI Name: Abuse (Resident Interview)

Definition: Resident abused by staff.

Numerator:
Residents in the Census Sample AND
"Have you ever been treated roughly by staff?"=1-Yes
OR
"Has staff yelled or been rude to you?"=1-Yes
OR
"Do you ever feel afraid because of the way you or some other resident is
treated?"=1-Yes

Denominator:
Residents in the Census Sample

Exclusions: Residents who are not interviewable as determined by the Cognitive
Performance Scale (CPS Level=4,5,6,7) and cognitive screen

Comments:

Threshold: >0.0%
Sample: Census
Data Source: Resident Interview
MDS Timepoint: N/A
Updated: 12/03/2007
Quality of Care and Quality of Life Indicator (QCLI) Dictionary - sorted by Care Area

Care Area: Abuse

QCI Name: Abuse (Resident Observation)

Definition: Resident abused by staff.

Numerator: Residents in the Census Sample AND

"Are staff treating the resident in a manner that may indicate abuse (yelling at resident, striking resident, treating resident in a rough manner, etc.)? " =1-Yes

Numerator Exclusions: None

Denominator: Residents in the Census Sample

Denominator Exclusions: None

Comments

Threshold: >0.0%

Sample: Census

Data Source: Resident Observation

MDS Timepoint: N/A

Updated: 12/03/2007

QP205

CMS (03/10)
Quality of Care and Quality of Life Indicator (QCLI) Dictionary - sorted by Care Area

Care Area: Abuse

QCI Name: Abuse (Family Interview)

Definition: Resident abused by staff.

Numerator
Resident in the Family Interview AND

"Have you ever noticed any staff member being rough with, talking in a demeaning way or yelling at (the resident) or any other resident?"=1-Yes
AND
"Did you report it?"=1-Yes
AND
"Did facility staff act promptly to investigate and correct the situation?"=0-No

Denominator
Resident in the Family Interview

Exclusions: Interviewable residents as determined by the cognitive screen

Comments
The Abuse Prohibition task is completed only if the resident-level Care Area, Abuse, is investigated in Stage II. If concerns regarding abuse are identified offsite (e.g., complaints) or are identified during any part of the survey, surveyor initiate both the resident(s) for the Abuse Care Area and the facility for Abuse Prohibition.

<table>
<thead>
<tr>
<th>Interview/Review</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policies and Procedures Review</strong></td>
<td></td>
</tr>
<tr>
<td>Obtain and review the facility’s written policies to determine that they include the following key components:</td>
<td></td>
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<tr>
<td>● Screening of potential new hires,</td>
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<tr>
<td>● Training of employees (both new employees and ongoing training for all employees),</td>
<td></td>
</tr>
<tr>
<td>● Prevention policies and procedures,</td>
<td></td>
</tr>
<tr>
<td>● Identification of possible incidents or allegations which need investigation,</td>
<td></td>
</tr>
<tr>
<td>● Investigation of incidents and allegations,</td>
<td></td>
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<tr>
<td>● Protection of residents during investigations; and</td>
<td></td>
</tr>
<tr>
<td>● Reporting of incidents, investigations, and facility response to the results of their investigations.</td>
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</tr>
<tr>
<td>Evaluate how each component of the policies and procedures is operationalized. If the answers to the following questions are not obvious from the policies, interview the individual responsible for coordinating the policies and procedures. If this person is interviewed, ask how do they:</td>
<td></td>
</tr>
<tr>
<td>● Monitor staff providing and/or supervising the delivery of resident care and services to ensure that care/service is provided as needed to make certain that neglect of care does not occur.</td>
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<tr>
<td>● Determine which injuries of unknown origin should be investigated as alleged occurrences of abuse.</td>
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<tr>
<td>● Ensure that residents, families, and staff feel free to communicate concerns without fear of reprisal.</td>
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<tr>
<td>Interview/Review</td>
<td>Notes</td>
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<td>--------------------------------------------------------------------------------</td>
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<tr>
<td><strong>Facility Handling of Alleged Violations</strong></td>
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<tr>
<td>Review written evidence of the facility’s handling of a minimum of three alleged violations (if any exist) since the previous standard survey or the previous time this review was done by the State. Include all residents who triggered the Abuse Care Area in the review of the facility’s handling of alleged violations. (If less than three (3) residents triggered and the facility has additional allegation, select additional residents to fulfill the minimum of three residents.)</td>
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<tr>
<td>Determine whether the facility implemented adequate procedures for:</td>
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<td>● Reporting:</td>
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<tr>
<td>▪ Reports any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities.</td>
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<tr>
<td>▪ Ensures that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).</td>
<td></td>
</tr>
<tr>
<td>▪ Ensures that results of all investigations are reported to the administrator or his/her designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident.</td>
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<tr>
<td>● Investigating: has evidence that all alleged violations are thoroughly investigated.</td>
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<tr>
<td>● Protection of the resident during the investigation: prevent further potential abuse while an investigation is in progress, and;</td>
<td></td>
</tr>
<tr>
<td>● Provision of corrective action: takes appropriate corrective action for verified violations.</td>
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</tr>
</tbody>
</table>

Determine whether the facility re-evaluated and revised applicable procedures as necessary.
### Resident/Family Interviews

Interview selected residents regarding their awareness of to whom and how to report allegations, incidents, and/or complaints, unless this information has already been obtained.

<table>
<thead>
<tr>
<th>Name of Person Interviewed</th>
<th>Date/Time Interviewed</th>
<th>Aware</th>
<th>Not Aware</th>
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<tbody>
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</table>
Interview at least five (5) direct care staff, representing all three shifts, including activity staff and nursing assistants, to determine whether each staff member is:

- Trained in, and knowledgeable about, how to appropriately intervene in situations involving residents who have aggressive or catastrophic reactions.
- Knowledgeable regarding what, when, and to whom to report, according to the facility policies.

<table>
<thead>
<tr>
<th>Direct-care Staff Interviews</th>
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<tbody>
<tr>
<td>Interview at least five (5) direct care staff, representing all three shifts, including activity staff and nursing assistants, to determine whether each staff member is:</td>
</tr>
<tr>
<td>- Trained in, and knowledgeable about, how to appropriately intervene in situations involving residents who have aggressive or catastrophic reactions.</td>
</tr>
<tr>
<td>- Knowledgeable regarding what, when, and to whom to report, according to the facility policies.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Interview/Review</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Staff Interviewed</td>
<td>Date/Time Interviewed</td>
</tr>
<tr>
<td>1. Name of Staff Interviewed</td>
<td>Date/Time Interviewed</td>
</tr>
<tr>
<td>2. Name of Staff Interviewed</td>
<td>Date/Time Interviewed</td>
</tr>
<tr>
<td>3. Name of Staff Interviewed</td>
<td>Date/Time Interviewed</td>
</tr>
<tr>
<td>4. Name of Staff Interviewed</td>
<td>Date/Time Interviewed</td>
</tr>
<tr>
<td>5. Name of Staff Interviewed</td>
<td>Date/Time Interviewed</td>
</tr>
</tbody>
</table>
Interview at least three (3) front-line supervisors of staff who interact with residents (Nursing, Dietary, Housekeeping, Activities, Social Services). Determine how they monitor:

- Provision of care/services
- Staff/resident interactions;
- Deployment of staff to meet the residents’ needs, and
- Potential for staff burnout, which could lead to resident abuse.

<table>
<thead>
<tr>
<th>1. Name of Supervisor Interviewed</th>
<th>Date/Time Interviewed</th>
<th>Discipline</th>
<th>Shift</th>
</tr>
</thead>
<tbody>
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<table>
<thead>
<tr>
<th>2. Name of Staff Interviewed</th>
<th>Date/Time Interviewed</th>
<th>Discipline</th>
<th>Shift</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>3. Name of Staff Interviewed</th>
<th>Date/Time Interviewed</th>
<th>Discipline</th>
<th>Shift</th>
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</table>
**Pre-screening of New Employees**

Obtain a list of all employees hired within the previous four (4) months, and select five (5) employees from this list.

Ask the facility to provide written evidence that the facility conducted pre-screening of the five (5) employees based on the regulatory requirements at 42 CFR 483.13(c).

Determine whether the facility has NOT employed individuals meeting either of the following criteria:

- Who have been found guilty of abusing, neglecting, or mistreating residents by a court of law, or
- Who have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property.

<table>
<thead>
<tr>
<th>Name of New Employee</th>
<th>Hire Date</th>
<th>Written Evidence of Pre-screening</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Yes</td>
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<tr>
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<td>Yes</td>
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<td>Yes</td>
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<td>Yes</td>
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<td></td>
<td>Yes</td>
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</tbody>
</table>

Notes
## Abuse Prohibition Review

<table>
<thead>
<tr>
<th>Determination of Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Did the facility follow the requirements for:</td>
</tr>
<tr>
<td>- Employment of individuals</td>
</tr>
<tr>
<td>- Reporting, and</td>
</tr>
<tr>
<td>- Investigation of alleged violations?</td>
</tr>
<tr>
<td>2. Did the facility develop and implement policies and procedures in the areas of screening, training, prevention, identification, investigation, protection, and reporting?</td>
</tr>
</tbody>
</table>

NOTE: The CE Worksheet is not consistent with the Critical Elements in the QIS DCT. Pending a revision to the QIS DCT and as an interim procedure, when the facility is not in compliance with either of the above questions, mark the only available CE in the DCT as NO and cite the appropriate F Tag(s). Mark any inapplicable F Tags listed as “Not Applicable”.

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<table>
<thead>
<tr>
<th>Interview/Review</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td>Determination of Compliance</td>
<td></td>
</tr>
<tr>
<td>1. Did the facility follow the requirements for:</td>
<td></td>
</tr>
<tr>
<td>- Employment of individuals</td>
<td></td>
</tr>
<tr>
<td>- Reporting, and</td>
<td></td>
</tr>
<tr>
<td>- Investigation of alleged violations?</td>
<td>Yes No F225</td>
</tr>
<tr>
<td>2. Did the facility develop and implement policies and procedures in the areas of screening, training, prevention, identification, investigation, protection, and reporting?</td>
<td>Yes No F226</td>
</tr>
</tbody>
</table>
New resources available to improve patient safety and combat abuse in long-term care facilities

FOR IMMEDIATE RELEASE
Wednesday, October 6, 2010

Contact: HHS Press Office
(202) 690-6343

News Release

New resources available to improve patient safety and combat abuse in long-term care facilities

First round of funding from Affordable Care Act to help states set up background check programs in AK - CT - DE - FL - MO - RI

In a move aimed at combating abuse and neglect in the nation’s long-term care facilities, the Centers for Medicare & Medicaid Services (CMS) today awarded more than $13 million to six states to design comprehensive applicant criminal background check programs for jobs involving direct patient care.

"Elder abuse and neglect is tragic and intolerable," said HHS Secretary Kathleen Sebelius. "Workers with a history of abuse or neglect should be identified and prevented from ever working with residents of these facilities."

"The new health care law will help states identify the best, most effective ways to determine which applicants can be trusted with the health and safety of residents and which cannot," said Donald M. Berwick, M.D., CMS administrator.

Created by the Affordable Care Act, the new National Background Check Program will help identify "best practices" for long-term care providers to determine whether a job seeker has any kind of criminal history or other disqualifying information that could make him or her unsuitable to work directly with residents.

The first round of states to participate in the program are: Alaska, Connecticut, Delaware, Florida, Missouri, and Rhode Island. They each will share a portion of $13.7 million.

An additional 11 states applied and may be funded beginning in October or November. CMS will also issue a second solicitation in October for those states that did not apply but may still do so.

The new law set aside $160 million for the program, which is to run through September 2012, an amount sufficient to enable all states to participate.

The national background check for each prospective direct patient care employee must include a criminal history search of all states to participate.

Long-term care facilities or providers covered under the new program include nursing facilities, home health agencies, hospice providers, long-term care hospitals, and intermediate care facilities for persons with mental retardation, and other entities that provide long-term care services.

Questions about the National Background Check Program may be sent via e-mail to: Background_Checks@cms.hhs.gov.

###

Note: All HHS press releases, fact sheets and other press materials are available at http://www.hhs.gov/news.

Last revised: October 06, 2010
Attachment C - Overview - Recommended Key Components of Systemic Approach to Prevent Abuse and Neglect

Examples--Key Components applied to the following provider types:

Key Components Applicable To All Providers

1. Prevent

The facility or system has the capacity to prevent the occurrence of abuse and neglect and reviews specific incidents for “lessons learned” which form a feedback loop for necessary policy changes.

Nursing Homes

**Regulation Authority:** 483.13(b), 483.13(c), 483.13(c)(3)

**Survey Guidance - Surveyors determine if:**

The facility must develop and implement written policies and procedures that include the seven key components: screening, training, prevention, identification, investigation, protection and reporting/response; the facility identifies, corrects and intervenes in situations in which abuse or neglect is more likely to occur, and the facility identifies characteristics of physical environment and deployment of staff and residents (e.g., those with aggressive behaviors) likely to precipitate abuse or neglect.

ICFs/MR

**Regulation Authority:** 483.420(a)(5), 483.420(d)(1), 483.420(d)(1)(I)

**Survey Guidance - Surveyors determine if:**

The facility has and implements abuse prevention policies and procedures; and the facility organizes itself in such a manner that individuals are free from threat to their health and safety.
2. Screen

The facility or system provides evidence and maintains efforts to determine if persons hired have records of abuse or neglect.

**Nursing Homes**

**Regulation Authority - 483.13(c)(1)(ii) (A)&(B)**

**Survey Guidance - Surveyors determine if:** The facility screens potential employees for a history of abuse, neglect, or mistreating residents as defined by the applicable requirements.

**ICFs/MR**

**Regulation Authority - 483.420(c)(1)(iii)**

**Survey Guidance - Surveyors determine if:** The facility screens potential employees to prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect, or mistreatment.

3. Identify

The facility or system creates and maintains a proactive approach to identify events and occurrences that may constitute or contribute to abuse and neglect.

**Nursing Homes**

**Regulation Authority - 483.13(c)(2)**

**Survey Guidance - Surveyors determine if:** The facility identifies events such as suspicious bruising of residents, occurrences, patterns and trends that may constitute abuse; and determine the direction of the investigation.

**ICFs/MR**

**Regulation Authority - 483.420(a)(5)**

**Survey Guidance - Surveyors determine if:** The facility identifies patterns or isolated incidents of unexplained functional regression, or other evidence of physical, verbal, sexual or psychological abuse or punishment posing a serious and immediate threat to individuals.
4. Train

The facility or system, during its orientation program, and through an ongoing training program, provides all employees with information regarding abuse and neglect and related reporting requirements, including prevention, intervention and detection.

**Nursing Homes**

**Regulation Authority - 483.74(e)**

**Survey Guidance - Surveyors determine if:** The facility has procedures to train employees, through orientation and on-going sessions, on issues related to abuse prohibition practices.

**ICFs/MR**

**Regulation Authority - 483.420(d)(1), 483.430(e)(1)**

**Survey Guidance - Surveyors determine if:** Facility ensures that staff can define what constitutes abuse and punishment and actively promotes respect for individuals; and facility assures that staff have received training, both upon hiring and on an ongoing basis, which results in the competencies needed to do their job.

5. Protect

The facility or system must protect individuals from abuse and neglect during investigation of any allegations of abuse or neglect.

**Nursing Homes**

**Regulation Authority - 483.13(c)(3)**

**Survey Guidance - Surveyors determine if:** The facility has procedures to protect residents from harm during an investigation.

**ICFs/MR**

**Regulation Authority - 483.430(d)(3)**

**Survey Guidance - Surveyors determine if:** The facility prevents further potential abuse while the investigation is in progress.
6. Investigate

The facility or system ensures, in a timely and thorough manner, objective investigation of all allegations of abuse, neglect, or mistreatment.

**Nursing Homes**

**Regulation Authority** - 483.13(c)(2)(3)&(4)

**Survey Guidance - Surveyors determine if:** The facility has procedures to investigate different types of abuse; and identify staff member responsible for the initial reporting of results to the proper authorities.

**ICFs/MR**

**Regulation Authority** - 483.420(d)(3)

**Survey Guidance - Surveyors determine if:** The facility investigates all injuries of unknown origin and allegations of mistreatment, neglect, or abuse.

7. Report/Respond

The facility or system must assure that any incidents of substantiated abuse and neglect are reported and analyzed, and the appropriate corrective, remedial or disciplinary action occurs, in accordance with applicable local, State or Federal law.

**Nursing Homes**

**Regulation Authority** - 483.13(c)(1)(iii), 483.13(c)(2), 483.13(c)(4)

**Survey Guidance - Surveyors determine if:** The facility has procedures to report all alleged violations and substantiated incidents to the State agency and to all other agencies, as required, and to take all necessary corrective actions, depending on the results of the investigation; report to State nurse aide registry or licensing authorities any knowledge it has of any action by a court of law which would indicate an employee is unfit for service, and analyze the occurrences to determine what changes are needed, if any, to policies and procedures to prevent further occurrences.

**ICFs/MR**

**Regulation Authority** - 483.420(1)(6), 483.420(d)(2), 483.420(d)(4)

**Survey Guidance - Surveyors determine if:** The results of all investigations are reported to the administrator or designated representative or to other
officials in accordance with State law within 5 working days of the incident and, if the alleged violation is verified, appropriate corrective action is taken.
Compliance® Continuing Education
<table>
<thead>
<tr>
<th>Abuse</th>
<th>Assessment</th>
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<tbody>
<tr>
<td><strong>COURSE DESCRIPTION</strong></td>
<td><strong>COURSE DESCRIPTION</strong></td>
</tr>
<tr>
<td>Recognizing Elder Abuse: Working Together To Keep Residents Safe</td>
<td><strong>A Comprehensive Geriatric Assessment</strong></td>
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<td>Fall Prevention in Long-Term Care: Risk Assessment</td>
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<td></td>
<td>Guidance for Long-Term Care Facilities: Urinary Incontinence and Tag F-315 Compliance</td>
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<td>Guidance for Long-Term Care Facilities: Pressure Ulcers and Tag F-314 Compliance</td>
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<td>Improving Observation and Reporting Skills</td>
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<td>Managing Behavior</td>
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<td>Normal and Abnormal Breath Sounds</td>
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<td>Nursing Care: Diabetes</td>
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<td>Nursing Care: Stroke</td>
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<td>Pain Management and Patient Care: The Pain Process and Patient Assessment</td>
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<td>Pressure Ulcers in Adults: Prediction and Prevention</td>
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<td></td>
<td>Prevention, Assessment and Treatment of Pressure Ulcers in Long-Term Care</td>
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<td>Resident Assessment/Care Planning</td>
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<td>Skin Management: Preventing Pressure Ulcers</td>
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<td>Social and Recreational Needs</td>
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<tr>
<td></td>
<td>The New Nursing Assistant: Measuring Vital Signs: Temperature, Pulse, Respiration and Blood Pressure</td>
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<tr>
<td></td>
<td>The New Nursing Assistant: Recognizing Abnormal Signs and Symptoms</td>
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*Bold denotes CEUs*
It’s been on your television and in your newspaper for months now – and soon it’ll be in your facility. It’s the new healthcare law, better known to some as H.R. 3962.

Frankly, it was hard to keep track of what was and wasn’t in the bill, and it definitely went through some drastic changes. So what’s in the final law, and what will it mean for long-term care? Here are some of the highlights.

The CLASS Act
The healthcare law enacts the Community Living Assistance Service and Supports (CLASS) Act, which creates a long-term care insurance program. Workers and adults can opt to pay into the program through voluntary payroll deductions. At this point, there is no specific start date for the collection of premiums.1

Filling the “donut hole”
Right now, Medicare Part D enrollees hit a gap in prescription drug coverage between $2,830 and $6,440 in total drug spending. The new law will close the donut hole completely by 2020, but beginning this year, seniors who hit the donut hole will be provided with a $250 rebate check to help offset their costs. Beginning in 2011, they’ll receive a 50 percent discount on brand-name drugs and gradually increasing discounts on generic drugs.2

The market basket update
The Medicare market basket update for 2010 and 2011 for skilled nursing facilities was preserved. Beginning in 2012, a productivity adjustment that will cut the update by an estimated 1 percent will be applied.1

The home health market basket was also frozen for 2010, and the law accelerates regulatory changes that would further reduce Medicare home health reimbursement. In addition, CMS was directed to rebase the home health prospective payment system in 2011.3
Nursing Home Transparency and Improvement Act

The new law requires more disclosure of nursing home ownership and organizational structure. It also requires that nursing homes report their staffing levels using a format based on payroll data, including the use of contract/agency staff. The goal of these measures is to provide better resources and tools for enforcing quality standards in nursing facilities and encourage homes to improve on their own.

The Elder Justice Act

The Elder Justice Act was signed into law as part of the healthcare reform legislation after a nearly decade-long fight for increased federal focus on elder abuse. The act provides for additional research, worker training for adult protective services (APS) and elder abuse forensic studies.

The act also creates an Elder Justice Coordinating Council composed of government officials from all departments that handle elder abuse, neglect and exploitation. The council members will make recommendations to the Secretary of Health and Human Services on coordinating the work of the different agencies.

In addition to the council described above, the act establishes an Advisory Board on Elder Abuse, Neglect and Exploitation that will be made up of 27 individuals who have expertise and experience in the areas of elder abuse, neglect and exploitation prevention, detection, treatment, intervention or prosecution. This board will develop plans for elder justice activities as well as best practices and consensus on improving quality and preventing abuse and neglect.

The Patient Safety and Abuse Prevention Act

This act will expand an already-successful pilot program that created a national criminal background check system for employees in nursing homes and long-term care facilities. The majority of background checks are currently only being performed at the state level, which allows offenders to cross state lines without fear of their criminal history being revealed.

Health homes

Under the new law, states will be given the option of coordinating home- and community-based services for Medicaid beneficiaries under what has been labeled a “health home.”

Medicare therapy caps

The therapy caps exceptions process has been extended through December 31, 2010.

Direct care staff spending

Medicare cost reports will now contain separate reporting on nursing facilities’ spending on direct care staff.

The Five-Star Quality Rating System

The new healthcare law mandates a Government Accountability Office (GAO) study on the often-criticized Five-Star Quality Rating System. In March of 2010, Secretary of the Department of Health and Human Services Secretary Kathleen Sebelius acknowledged the system’s shortcomings, saying “We need to have some standards; they need to be clear, need to be accurately measured and if everyone ends up being excellent or everyone winds up being failing, so be it. But somehow this sort of bell curve seems to have some inherent flaws.”

While a number of these reforms will be implemented right away, others aren’t slated to kick off until 2018. You can rest assured that Embrace will keep you posted!

References