

CDPHE Update for Nursing Homes

September 20, 2022



Updates

New Legislation

- SB22-079 Dementia Training
- SB22-053 Visitation Rights

OIG Surveys

- HCPF Medicaid Audits
- Primary focus appears to be Life Safety, EP, IPCP

In-person Round Table meetings in January

Blanket RN State Waiver Still in Place

- Continue submitting RN Waivers if facility will need once Waiver has ended.
- Ensure conditions for utilizing the Waiver are followed.



Backlog Update

Colorado began FY22 with nearly 100 facilities in the backlog of recertification surveys.

- The national average for overdue recertification surveys has increased by 4% since May 2022.
- As of 9/30/22, there will be 57 facilities with overdue recertification dates.
- Projected to have approximately 30-35 facilities in the backlog by 12/31/22.
- Our goal is to have 0 overdue recertification surveys by 6/30/23.



Citation Trends: FFY22

Average Number of Deficiencies (all surveys)

- Colorado 6.63
- National 6.45



Citation Trends: FFY22

Colorado Frequently Cited Tags (in rank order)

- F884-Reporting NHSN
- F689-Accident Hazards/Supervision/Devices
- F880-Infection Control
- F686-Treatment/Svcs to Prevent/Heal Pressure Ulcer
- F677-ADL Care Provided for Dependent Residents
- F600-Free from Abuse and Neglect
- F684-Quality of Care
- F695-Respiratory/Tracheostomy Care and Suctioning
- F812-Food Procurement, Store/Prepare/Serve Sanitary



Citation Trends: FFY22

National Frequently Cited Tags (in rank order)

- F884-Reporting NHSN
- F880-Infection Control
- F689-Accident Hazards/Supervision/Devices
- F812-Food Procurement, Store/Prepare/Serve Sanitary
- F684-Quality of Care
- F677-ADL Care Provided for Dependent Residents
- F656-Develop/Implement Comprehensive Care Plan
- F761-Label/Store Drugs and Biologicals.
- F686-Treatment/Services to Prevent/Heal Pressure Ulcer



Citation Trends: FFY22

Immediate Jeopardy

- F600: 2 Resident to Resident physical abuse/sexual abuse
- F686: 3 Facility acquired avoidable stage IV or multiple stage III pressure ulcers
- F689: 3 Smoking, elopement, inappropriate response to environmental hazards
- F880: 3 Overall systemic failures and lack of oversight of the IPC program
- F886: 4 Testing environment, inconsistent testing leading to COVID transmission
- F888: 1 Failed to monitor vendor/contractor vaccination status in light of a significant and prolonged outbreak.



Citation Trends: FFY22

Examples of Harm Citations Found In:

- Resident Rights
- Abuse and Neglect
- Quality of Care
- Behavior Health

CMS Focus

Focused comparative surveys

- Behavior Health (F740-F743)
- Immunizations (F883, F887, F888)
- Language and Communication (F676)
- Treatment/Services to Prevent/Heal Pressure Ulcers
- TBD

Phase II Revisions and Phase III Guidance

- Effective 10/24/22. CMS is looking at additional revisions.
- Provides clarifications and technical corrections for Phase II guidance issued in 2017 and new guidance for phase III requirements which went into effect 11/28/19.
- Clarified and added examples across the different severity levels.
- Revised survey software and added training resources.

Abuse and Neglect

The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.



Neglect

Neglect occurs when the facility is aware of, or should have been aware of, goods or services that a resident(s) requires but the facility fails to provide them to the resident(s), resulting in, or may result in, physical harm, pain, mental anguish, or emotional distress.

Example: Facility failed to provide training on new equipment or procedures.



Determination and Findings

What if the facility could not foresee the abuse?

The facility completed abuse training, background checks, assess residents for behaviors etc.

Is the facility in compliance with F 600?



Determination and Findings

The regulation states the resident has the right to be free from abuse. So if evidence collected shows abuse has occurred. It is appropriate for the survey team to cite F 600 abuse.



Harm or Immediate Jeopardy

There are situations that are likely to cause psychosocial harm which may sometimes take months or years to manifest and have long-term effects on the resident and his/her relationship with others. Therefore, during a survey, “Immediate Jeopardy” or “Actual Harm,” may be supported when there is not an observed or documented negative psychosocial outcome, or a description of resident impact from the resident’s representative or others who know the resident.



Psychosocial Outcome Severity Guide

Psychosocial refers to the combined influence of psychological factors and the surrounding social environment on physical, emotional, and/or mental wellness.



Psychosocial Outcome Severity Guide

Key Responses:

- Anger
- Apathy
- Anxiety
- Dehumanization
- Depressed mood
- Fear
- Humiliation



Psychosocial Outcome Severity Guide

The “reasonable person concept” refers to a tool to assist the survey team’s assessment of the severity level of negative or potentially negative psychosocial outcome the deficiency may have had on a reasonable person in the resident’s position.

...including how to determine the severity of the outcome when the impact on the resident may not be apparent or documented.

Psychosocial Outcome Severity Guide

Compare the resident's behavior (their routine, activity, and responses to staff or to everyday situations) and mood before and after the noncompliance, and any identified history of similar incidents.

If no such changes are apparent or documented, consider the response a reasonable person in the resident's position would exhibit in light of the triggered event.



Resident Rights

F557-Personal Property

- Staff should not conduct searches of a resident or their belongings unless the resident or their representative agrees and understands the reason for the search.
- Staff may confiscate items or substances that pose a risk to residents' health and safety when in plain view.
- Suspected illegal substances may warrant a referral to local law enforcement.

Resident Rights

F564-The right to receive/deny visitors

- Written policies regarding visitation rights and any clinical or safety restrictions that may need to be implemented.

Reasonable clinical or safety restrictions may include:

- Restrictions to prevent community associated disease transmission.
- Restricting symptomatic visitors until no longer symptomatic (per LPHA and/or CDC).
- Denying or limiting/supervising visits during an investigation of abuse/exploitation, etc.
- Denying access to individuals who are inebriated or disruptive.
- Denying access or supervising visits with individuals who have a history of bringing illegal substances into the building.

Take action to prevent transmission of infectious diseases while maximizing visitation.

Mental Health/SUDs

- Determine capacity (services, resources and skilled staff) to serve residents with serious mental disorders including SUDs.
- Use available assessment tools including the PASARR to develop a care plan that promotes mental and psychosocial well-being.
- Ensure the care plan is person-centered; reflects the resident's goals for care while maximizing the resident's dignity, autonomy, privacy socialization, independence, choice and safety.
- Staff should have knowledge of the S/S of substance abuse and be prepared to address emergencies.
- Do not forget to provide non-pharmacological interventions and meaningful activities as a part of resident care.

Trauma Informed Care

The facility must provide culturally competent trauma informed care.

- Identify a resident's past history of trauma.
- Identify triggers which may cause re-traumatization.
- Identify cultural preferences.
- Use approaches that are culturally competent and/or are trauma informed.

Free from Unnecessary Psychotropic Meds

F758

The use of psychotropic medications, other than antipsychotics, **SHOULD NOT INCREASE** when efforts to decrease antipsychotic medications are being implemented.



Off Label Use of Medications

Other medications not classified as anti-psychotic, anti-depressant, anti-anxiety, or hypnotic medications can also affect brain activity and should not be used as a substitution for other psychotropic medications.

Categories of medications which affect brain activity include:

- Antihistamines
- Anti-cholinergics
- Central nervous system agents used to treat conditions such as seizures, mood disorders, and muscle spasms.

Off Label Use of Medications

The requirements pertaining to psychotropic medications apply to these types of medications when their documented use appears to be a substitution for another psychotropic medication rather than for the original or approved indication.

Potential Inaccurate Diagnosis and/or Assessment

- CMS is aware of situations where practitioners have potentially misdiagnosed residents with a condition for which antipsychotics are an approved use (e.g., new diagnosis of schizophrenia) which would then exclude the resident from the long-stay antipsychotic quality measure.
- Concerns with non-compliance are investigated at F641-Accuracy of Assessments, F658-Services Meet Professional Standards, F758-Free from Unnecessary Psychotropic Medications.
- This practice may require referrals to the State Medical Board or The Board of Nursing.



Potential Inaccurate Diagnosis and/or Assessment

Obtaining accurate diagnoses may be difficult at times.

- Poor historian
- No family or representative to interview
- Previously homeless with no community services
- General lack of documentation or medical records
- Admitted from an acute setting with new diagnoses



Potential Inaccurate Diagnosis and/or Assessment

Some questions a surveyor might ask:

- Is the diagnosis new and where did it come from?
- Were any concerns regarding the accuracy of the diagnosis addressed with the prescribing physician?
- Is there a dementia diagnosis?
- Was a PASARR Level II screen completed?
- Was an assessment of the resident's mental health condition completed as a part of the Level II screen?
- Did the facility consult with a psychiatrist if concerns still exist?

F 895-Compliance and Ethics Program

The operating organization must develop, implement and maintain an effective compliance and ethics program.

- Intent - To ensure that facilities have in operation an effective compliance and ethics program that uses internal controls to efficiently monitor adherence to applicable statutes, regulations and program requirements to deter criminal, civil and administrative violations under the Social Security Act and promote quality care for nursing home residents.
- The operating organization of each community must have a compliance and ethics program that has been reasonably designed, implemented, maintained and enforced, so that it is likely to be effective in preventing and detecting criminal, civil and administrative violations under the Act and in promoting quality of care.

F847 - Entering into Binding Arbitration Agreements

If the community chooses to ask a resident or their representative to enter into an agreement for binding arbitration, the community must comply with all of the requirements in F847.

- Intent - To ensure that long-term care communities inform residents or their representatives of the nature and implications of any proposed binding arbitration agreement, to inform their decision on whether or not to enter into such agreements.
- The requirement at F847 emphasizes the resident's/representative's right to make informed decisions and choices about important aspects of residents' health, safety and welfare.



F847 - Entering into Binding Arbitration Agreements

- Communities may present residents/representatives the opportunity to utilize a binding arbitration agreement to resolve disputes at any time during a resident's stay as long as the agreement complies with regulations at 483.70(n)(1)-(5).
- Use of a binding arbitration agreement must be voluntary and must be clearly communicated to the resident/representative as optional and not required as a condition of admission or to continue to receive care at the community.



Nurse Staffing F725 and F727

- Meeting State staffing standards does not necessarily satisfy Federal staffing standards. (F725-sufficient nursing staff)
- Requires a sufficient number of skilled licensed nurses, nurse aides, and other nursing personnel to provide care and respond to each resident's basic needs and individual needs as required by the resident's diagnoses, medical condition or plan of care. (F725)
- Must designate an RN to serve as director of nursing on a full time basis (F727-meeting the requirement with two or more RNs sharing the DON position is not mentioned in the most recent SOM).
- Full time means 40 hours per week (F727-previously 35 hours).

PBJ and the LTCSP

- Staffing data reported through the Payroll Based Journal system will be included in the Long Term Care Survey Process (LTCSP) to identify concerns with overall staffing levels.
- Surveyors will review PBJ staffing data available through the Certification and Survey Provider Enhanced Reports (CASPER) reporting system.
- LTCSP software will alert surveyors of specific dates requiring further investigation.
- Triggers include insufficient staffing, lack of a registered nurse for 8 hours each day or lack of licensed nursing for 24 hours a day.

Infection Prevention and Control

- SOM update includes revised language and practices that have been reinforced during the recent pandemic response.
- Water management to minimize the risk of Legionella and other opportunistic pathogens has been added to F880.
- Requirements for the infection preventionist have been detailed at length at F882.
- Requirements for F885, F886, F887 and F888 have been incorporated into the survey software.

QAPI

- Development, implementation and evaluation of corrective actions or performance improvement activities is demonstrated through documentation and must be presented only to determine the extent to which the facility is compliant with the provisions of QAPI/QAA.
- Incident and accident reports, wound logs, infection control logs, or other records used to track adverse events are not protected from disclosure.
- May follow the process to design a privileged and confidential patient safety work project. If doing so, must also have a second non-confidential system to demonstrate compliance with local, State or Federal requirements.
- The Infection Preventionist must be an active participant in QAA meetings.

Good Faith Attempts

- If the facility, has made a good faith attempt to correct an issue, the facility will not be cited for QAA (it may however, still be cited with deficiencies related to actual or potential issues at other tags).
- Did the facility become aware of the issue as soon as it should have?
- Where is the facility in the correction process?
- Has there been enough time to implement changes and to evaluate the effectiveness of those changes?
- A facility must do more than subjectively assert it good faith attempt; rather, the facilities actions, as a whole must evidence its good faith attempt.

Emergency Preparedness Program-Testing

- Two EP testing exercises annually.
- Required exercise: full-scale, functional and individual facility-based exercise.
- Exercise of choice: mock disaster drill, table-top exercise, workshops or another full-scale functional or individual facility based exercise.
- Exemption based on actual natural or man-made emergency. Facilities that activate their emergency plan are exempt from the next required full-scale community-based or individual, facility-based functional exercise IF activation is demonstrated through documentation.
- An exercise of choice must be competed annually, regardless.
- The exercise cycle is determined by the facility (e.g., calendar year, fiscal year or another 12-month timeframe).
- Facilities that have resumed normal operating status must meet all testing requirements.

EASY QUESTIONS

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