



Oregon

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Information Memorandum

Nursing Facility Providers

IM-17-03-NF

Date: February 17, 2017
From: Nursing Facility Licensing Unit
Subject: Prisoners in Nursing Facilities

Summary: Restraint use for law enforcement purposes without medical justification is a violation of the Requirements of Medicare and Medicaid participation for nursing facilities, regardless of payment source.

The Centers for Medicare and Medicaid Services (CMS) issued *Guidance to Surveyors on Federal Requirements for Providing Services to Justice Involved Individuals*, Survey and Certification (S&C) Memo16-21, May 3, 2016. S&C Memo 16-21 describes the role that healthcare settings are providing to meet the needs of individuals in the corrections continuum. To be eligible to receive Medicare and Medicaid payment, facilities must demonstrate continuous compliance with federal requirements. Medicare and Medicaid Conditions of Participation are different for different types of providers. Nursing facility requirements for justice involved individuals are significantly different than hospitals. The following excerpts from S&C 16-21 are relevant:

The Requirements for Long Term Care Facilities (Requirements for Participation) accommodate both short and long-range needs, with a primary focus on the fact that the nursing home often serves as the individual's residence. Resident rights, choices, and dignity are therefore important features of the statutory and regulatory requirements. The requirements for nursing homes are the same for Medicare and Medicaid.

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For Medicare or Medicaid to pay for care in a SNF or NF, the residents must meet Medicare or Medicaid eligibility requirements related to the level of care required in that setting (which establish the medical necessity of the services). Regardless of payor source, the nursing home must assess all individuals' needs, and must be able to maintain compliance with the Requirements for Participation for all residents (which means offering the same rights, protections, and individualized care and services). The SNF or NF should not accept any individual where the nursing home determines that it cannot appropriately meet that individual's needs and simultaneously protect the health, safety, and rights of other individuals (e.g., other residents, staff, and visitors).

It is possible that some Departments of Correction (DOCs) or law enforcement's terms of supervision may conflict with CMS requirements, if those terms affect the care and services being provided in the nursing home or if the nursing home is violating an individual's rights by enforcing the terms directly. Under federal requirements, a nursing home cannot incorporate into care plans restrictions that violate resident rights, and cannot serve as an agent of the pertinent law enforcement or criminal justice supervisory authority by enforcing supervisory conditions or reporting violations of those conditions to officials. Additionally, there can be no integration of the criminal justice supervisory function into the essential operations or physical environment of the nursing home, such as parole officers attending inpatient care planning meetings or the DOC maintaining an office within the nursing home.

Resident Rights

SNFs and NFs, as residential environments, must permit residents to have autonomy and choice, to the maximum extent practicable regarding how they wish to live their everyday lives and receive care. Federal statutes and regulations establish an array of individual rights and safeguards. Nursing homes cannot impose conditions or restrictions that undermine resident rights and protections required by federal law. Facilities cannot require prospective residents to give up their rights as a requirement for admission.

Resident rights in the nursing home include, but are not limited to the right to:

- Be free from physical or chemical restraints imposed for discipline or convenience, and not for treatment of a resident's medical condition;
- Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care [and] interact with members of the community both inside and outside the facility;
- Personal privacy and confidentiality of his or her personal and clinical records;
- Immediate access to any resident by the following: subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident;
- Be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

Also, nursing home residents must not only be able to exercise their rights as residents of the facility and as citizens of the United States, but also have the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising those rights.

Facility Policies and Practices

Some DOC or law enforcement terms of release or placement may conflict with the CMS requirements if the terms affect the care and services provided by the facility or violate the resident's rights. In such a case, if a facility agreed to enforce restrictive law enforcement terms applied to a resident (for example, restricting visitors), the nursing home would not be in compliance with federal requirements and would risk enforcement action and termination from participation if it did so.

The facility may not establish policies or impose conditions on the resident that result in restrictions which violate federal law and regulation outlined in 42 CFR Part 483, Subpart B. The facility must promote care for its residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

Examples of prohibited facility restrictions include, but are not limited to:

- The facility makes a determination as to which visitors a resident may or may not see. The resident has the right to choose his or her own visitors;
- The facility requires or implements a DOC or law enforcement restriction that the individual must reside in a locked unit in the SNF or NF for reasons that are not derived directly and exclusively from the resident's assessment(s) as conducted by the facility's medical professionals;16
- The facility does not allow a resident to possess a personal telephone and/or denies a resident the right to conduct telephone conversations in private; or,
- The facility has a requirement that a resident must wear an item (e.g., a color-coded bracelet) that indicates to staff that they are justice involved.

CMS S&C 16-21-ALL may be accessed at:

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-16-21.pdf>

Please contact DHS Nursing Facility Licensing with questions:

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