LTC REGULATORY & INTERPRETIVE GUIDANCE UPDATES

2022 LONG-TERM CARE PROVIDER MEETING

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MISSOURI DEPARTMENT OF HEALTH & SENIOR SERVICES

OVERVIEW

- Clarifications and technical corrections of Phase 2 guidance issued in 2017.
- New guidance for Phase 3 requirements which went into effect November 28, 2019.
- Arbitration requirements and guidance which went into effect September 16, 2019.

RESIDENT RIGHTS

F557 - Respect, Dignity/Right to Have Private Property

- Added guidance related to the need for residents/representative for consent for staff to search a resident's body or personal possessions.
- Added language related to facility staff having knowledge of signs, symptoms, and triggers of possible substance use by residents (may occur after a leave of absence).

RESIDENT RIGHTS

F563 - Right to Receive/Deny Visitors

- Added guidance related to denying access or providing supervised visits to those with a history of bringing illegal substances into the facility (Is resident at risk?).
- Visitation during communicable disease outbreaks was added, however facilities may need to modify their visitation practices when there are infectious outbreaks or pandemics to align with current CMS and CDC guidelines that enables maximum visitation.
- If illegal substances are brought into the facility by a visitor, the facility should themselves not act as law enforcement, but rather contact law enforcement.

ABUSE, NEGLECT, & EXPLOITATION

F600 - Free from Abuse & Neglect

- Removed sentence, "Residents without the capacity to consent to sexual activity may not engage in sexual activity". However language was added that the facility must take steps to protect the residents from abuse, which includes evaluating whether the resident has the capacity to consent to sexual activity.
- Capacity on its most basic level means that a resident has the ability to understand potential consequences and choose a course of action for a given situation.
- Determinations of capacity to consent depend on the context of the issue and one determination does not necessarily apply to all decisions made by the resident.

ABUSE, NEGLECT, & EXPLOITATION

F600 - Free from Abuse & Neglect

- When abuse has been identified and the facility has immediately taken steps to protect the resident(s) from additional abuse, the facility may be cited at past noncompliance. These steps included, but are not limited to:
  - ✓ Taking steps to prevent further potential abuse;
  - ✓ Reporting the alleged violation and investigation within required timeframes;
  - ✓ Conducting a thorough investigation of the alleged violation;
  - ✓ Taking appropriate corrective action;
  - ✓ Revising the residents care plan if needed.

  Failure to take these steps could result in findings of current noncompliance and increased enforcement action.

ABUSE, NEGLECT, & EXPLOITATION

F607 - Develop/Implement Abuse/Neglect Policies

- Providers are required to include QAPI coordination in their policies and procedures for prohibiting abuse and neglect.
- The policies and procedures should direct staff in how information is shared with the QAA Committee.

ABUSE, NEGLECT, & EXPLOITATION

F608 (Reporting of Reasonable Suspicion of a Crime) has been **deleted** relocated to F607 and F609.

When to cite F607 vs. F609

- **F607 (A/N P & P)** - Citations related to the failure to develop and implement written policies and procedures related to posting a conspicuous notice of employee rights, and prohibiting and preventing retaliation.
- **F609 (Reporting of Suspected Crimes & of Alleged Violations)** - Citations related to the facility's failure to ensure the reporting of suspected crimes and notifying covered individuals of their reporting responsibilities.

ABUSE, NEGLECT, & EXPLOITATION

F609 (Reporting of Suspected Crimes & of Alleged Violations)

- If the covered individual refuses to report, or the surveyor cannot verify a report, the State Agency must report the potential criminal incident to law enforcement immediately.
- Clarified guidance for alleged violations which must be reported for staff to resident abuse, resident to resident altercations, misappropriation, and provides examples of each.
- Additional language and examples for what information is expected in the initial report and for the investigation report.

ABUSE, NEGLECT, & EXPLOITATION

Initial Report Form

- Facility Information
- Allegation Type
- When Facility Became Aware of Incident
- Alleged Victim (s)
- Alleged Perpetrators (s)
- Allegation Details
- Includes Steps for Ensuring the Resident (s) are Protected

ABUSE, NEGLECT, & EXPLOITATION

Follow-Up Investigation Report Form

- Additional/Updated Information Related to the Reported Incident
- Steps Taken to Investigate the Allegation (Summary of interviews, summary of information, etc…)
- Conclusion
- Corrective Action (s) Taken
- Facility Investigator
- Submitted By (Name, Date/Time, Contact Info)

F609 REPORTABLE TYPES OF ABUSE

Physical Altercations

Willful Action*	That Results In

Willful actions include, but are not limited to, the following:
• Hitting
• Slapping
• Punching
• Choking
• Pinching
• Biting
• Kicking
• Throwing objects
• Grabbing
• Shoving
*This action itself was deliberate or non-accidental not that the individual intended to inflict injury or harm
	Physical Injury
	• Death
	• Injury requiring medical attention beyond first aid
	• Fractures, subdural hematoma, concussion
	• Bruises
	• Facial injury(ies)
	
	Mental Anguish
	• Fear of a person or place or of being left alone or of being in the dark, disturbed sleep, nightmares
	• Changes in behavior, including aggressive or disruptive behavior toward a specific person
	• Running away, withdrawal, isolating self, feelings of guilt and shame, depression, crying talk of suicide or attempts
	
	Pain
	• Complaints of pain related to the altercation
	• Onset of pain evidenced by nonverbal indicators, such as:
	  ○ Groaning, crying, screaming
	  ○ Grimacing, clenching of the jaw
	  ○ Resistance of being touched
	  ○ Rubbing/guarding body part

*** Having a mental disorder or cognitive impairment does not automatically preclude a resident from engaging in deliberate or non-accidental actions**

F609 REPORTABLE TYPES OF ABUSE

Sexual Contact

Reportable	Non-Reportable
• Unwanted touching of the breast or perineal area • A resident who fondles or touches a person's sexual organs and the resident being touched indicates the touching is unwanted through verbal or non-verbal cues • Sexual activities where one resident indicates that the activity is unwanted • Sexual assault or batter • Instances where the alleged victim is transferred to a hospital for examination and/or treatment of injuries resulting from possible sexual abuse • Forced observation of masturbation, or pornography • Forced, coerced or extorted sexual activity • Other unwanted actions for the purpose of sexual arousal or sexual gratification	• Consensual sexual contact between residents who have the capacity to consent to sexual activity • Affectionate contact such as hand holding or hugging or kissing a resident who indicates that he/she consents to the action through verbal or non-verbal cues • Sexual activity between residents in a relationship, married couples or partners, unless one of the residents indicates that the activity is unwanted through cues

Mental/Verbal Conflict

Required to Report	Not Required to Report
• Intimidation • Bullying • Communication that is motivated by an actual or perceived characteristic • Threats of violence • Inappropriate sexual comments that are used in an deliberately* threatening manner • Inappropriate sexual comments that offend, humiliate, or demean a resident**; • Taking and/or distributing demeaning or humiliating photographs or recordings of residents through social media or multimedia messaging	• Non-targeted outburst • Residents with certain conditions (e.g., Huntington's/Tourette's) who exhibit verbalizations • Arguments or disagreements, which do not include any behavior or communication identified in the "Required to Report" column

ABUSE, NEGLECT, & EXPLOITATION

F609 (Reporting of Suspected Crimes & of Alleged Violations)

- **Injuries of Unknown Source -** An injury should be classified as an injury of unknown source when ALL of the following criteria are met:
  - ✓ The source of the injury was not observed by any person; and
  - ✓ 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, or
    - The number of injuries observed at one particular point in time, or
    - The incidence of injuries over time.

F609 REPORTABLE TYPES OF ABUSE

Injuries of Unknown Source	
Required to Report	**Not Required to Report**
• Unobserved/Unexplained fractures, sprains, or dislocations • Unobserved/Unexplained injuries that could have resulted from a burn • Unobserved/Unexplained bite marks • Unobserved/Unexplained scratches and bruised found in suspicious locations • Unobserved/Unexplained swelling that is not linked to a medical conditions • Unobserved/Unexplained lacerations with or without bleeding • Unobserved/Unexplained skin tears in sites found in suspicious locations • Unobserved/unexplained pattered bruises • Unobserved/Unexplained bilateral bruising to arms, bilateral bruising on the inner thighs, "wrap around" bruises that encircle the legs, arms, or torso, and multicolored bruises which would indicate that several injuries were acquired over time • Unobserved/Unexplained facial injuries	• Bruising in an area where the resident has had recent medical tests/lab draws and there is no indication of abuse or neglect • Injuries where the resident was able to explain or describe how he/she received the injury as long as there is no there indication of abuse or neglect • Injuries that were witnessed by staff, where there is no indication of abuse or neglect
***Even if the injury is not one that requires a report, the facility should adequately assess and monitor the resident notify the physician/resident representative as appropriate, and document the injury and investigation as a part of the resident's medical record.**	

QUALITY OF LIFE & QUALITY OF CARE

F689 (Accidents & Supervision)

- **New guidance of electronic cigarettes**
  - Identifies risk such as health effects, nicotine overdose, and explosion/fire caused by device battery.
  - Facilities must oversee the use of e-cigarettes and include them in the smoking policy.
  - Residents need to be assessed to ensure they can safely use and handle device.
- **New guidance added to address safety for residents with substance use disorder**
  - Care plan should address risk for resident leaving facility to use substance.
  - Facility should identify and assess resident risk for leaving and develop interventions.
  - Facilities should be prepared for emergencies related to substance use and overdose.

TRAUMA-INFORMED CARE

Trauma-Informed Care Defined: "The facility must ensure that residents who are trauma survivors receive culturally competent, trauma-informed care in accordance with professional standards of practice and accounting for residents' experiences and preferences in order to eliminate or mitigate triggers that may cause re-traumatization of the resident".

- Trauma survivors include military veterans, survivors of abuse and disasters, history of homelessness or imprisonment, and traumatic loss of a loved one.
- Facilities must identify triggers which may re-traumatize residents with a history of trauma, and must identify aspects of the residents culture and pursue cultural competencies.

TRAUMA-INFORMED CARE

Trauma-Informed Care Principles (SAMHSA's Concept of Trauma & Guidance for a Trauma-Informed Approach)

- Safety
- Trust worthiness and transparency
- Peer support and mutual self help
- Collaboration
- Empowerment, voice, and choice

TRAUMA-INFORMED CARE

F656 (Develop-Implement Comprehensive Care Plan)

483.21(b)(3)(iii) The services provided or arranged by the facility, as outlined by the comprehensive care plan must be culturally-competent and trauma-informed.

Examples of Culturally-Competent Care Plan

- Food preparation & choices;
- Clothing preferences such as covering hair or exposed skin;
- Certain medications, procedures, or treatments may be prohibited.

BEHAVIORAL HEALTH SERVICES

F740 (Behavioral Health Services)

Behavioral Contract

- Facility efforts to help residents with MD and/or SUD, such as counseling services, or access to a medication assisted treatment program;
- Steps facility may take if substance use is suspected, such as increased monitoring/supervision.
- Restricted or supervised visitation, if visitor is deemed to be a danger to resident, voluntary drug testing if suspected substance use, and voluntary inspections if reasonable suspicion of illegal drugs or unauthorized items.

PHARMACY SERVICES

F758 (Unnecessary Psychotropic/PRN Use)

- Regardless of indications for psychotropic use (such as nausea, insomnia, itching, etc…) the requirements pertaining to these medications continue to comply without exception.
- Categories of medications which could affect brain activity, when their documented use appears to be a substitution for another psychotropic medication, the requirements pertaining to psychotropic medications would still apply (e.g., Valporic Acid is used to treat agitation without a diagnosis of seizures).
- Tracking psychotropic medications for identifying trends and to reduce adverse events should be in the QAPI program.

ADMINISTRATION: BINDING ARBITRATION AGREEMENTS

F847 (Binding Arbitration Agreement) & **F848 (Arbitrator/Venue Selection & Retention of Agreements)** was added on September 16, 2019.

Arbitration: A private process where disputing parties agree that one or several individuals can make a decision about the dispute after receiving evidence and hearing arguments.

Binding Arbitration Agreement: A binding agreement by the parties to submit to arbitration all or certain disputes which have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not. The decision is final, can be enforced by a court, and can only be appealed on very narrow grounds.

ADMINISTRATION: BINDING ARBITRATION AGREEMENTS

5 key components under F847 (Binding Arbitration Agreement):

- Facility must not require a resident/representative to sign an agreement for binding arbitration as a condition of admission or as a requirement to continue care;
- Agreement is explained in a form of understanding and acknowledges so;
- Grant the right to rescind the agreement within 30 days of signing;
- Resident/Representative is not required to sign an agreement as a condition of admission or continued care; and
- May not contain language that prohibits or discourages the resident from communicating with federal, state, or local officials.

ADMINISTRATION: BINDING ARBITRATION AGREEMENTS

2 key components under F848 (Arbitrator/Venue Selection & Retention)

- Facility must ensure that the agreement provides for the selection of a neutral arbitrator agreed upon by both parties and agreed venue.

- When facility and resident resolve a dispute through arbitration, a copy of the signed agreement for binding arbitration and the arbitrator's final decision must be retained by the facility for 5 years after the resolution of that dispute and be available for inspection upon request by CMS or its designee.

QUALITY ASSURANCE & PERFORMANCE IMPROVEMENT

F865 (QAPI Program, Plan, Disclosure, Good Faith Attempt)

- Develop, implement, and maintain an effective, comprehensive, data-driven QAPI program that focuses on indicators of the outcomes of care and quality of life.
- The governing body and/or executive leadership must ensure the QAPI program…
  - Is defined, implemented, ongoing, and addresses identified priorities;
  - Is sustained through transitions in leadership/staffing and has adequate resources;
  - Uses performance indicator data, resident/staff input, and other information; and
  - Implements corrective actions to address gaps in systems and establishes expectations around safety, quality, rights, choice, and respect.

QUALITY ASSURANCE & PERFORMANCE IMPROVEMENT

F865 (QAPI Program, Plan, Disclosure, Good Faith Attempt)

- Maintain documentation and provide evidence of its ongoing QAPI.
- Present its QAPI plan to a State Survey Agency or Federal surveyor at each annual recertification survey and upon request during any other survey and to CMS upon request.

QUALITY ASSURANCE & PERFORMANCE IMPROVEMENT

F866 relocated to F867

F867 (Data Collection, Monitoring, Analysis & Improvement) Phase 3

- Establish and implement written policies and procedures that enable the facility to systematically identify, report, track, investigate, monitor, analyze and use data related to adverse events in the facility and ways to prevent adverse events.
- The developed and implemented systems should identify, collect, analyze, and monitor data in which reflects the functions of each department and outcomes to the residents.

QUALITY ASSURANCE & PERFORMANCE IMPROVEMENT

F867 (Data Collection, Monitoring, Analysis & Improvement) Phase 3

- Feedback
  - Provides valuable information the facility must incorporate into an effective QAPI program;
  - Mechanisms defined on how to receive and provide feedback to residents, representatives, and staff.
- Data Collection Systems and Monitoring
  - Collect and monitor data reflecting its performance, including adverse events;
  - Polices and procedures must address how data will be identified, and the frequency and methodology for collecting and using data from all departments.

QUALITY ASSURANCE & PERFORMANCE IMPROVEMENT

F867 (Data Collection, Monitoring, Analysis & Improvement) Phase 3

- Performance Indicators
  - Helps to establish performance thresholds and goals, identify deviations in performance and evaluate progress;
  - Must describe how and with what frequency the facility develops, monitors and evaluates its performance indicators.
- Systematic Analysis and Action
  - Policies and procedures must include how the facility will use systematic approaches, develop corrective actions, monitor effectiveness of performance improvement.

QUALITY ASSURANCE & PERFORMANCE IMPROVEMENT

F867 (Data Collection, Monitoring, Analysis & Improvement) Phase 3

- Establishing Priorities
  - Establish priorities for performance improvement activities
  - Should consider the incidents, prevalence, and severity of problems or potential problems identified.
- Medical Errors and Adverse Events
  - When medical errors or adverse resident events are identified, the facility must:
    - Analyze the cause;
    - Implement corrective actions to prevent future events; and
    - Conduct monitoring to ensure desired outcomes are achieved and sustained.

QUALITY ASSURANCE & PERFORMANCE IMPROVEMENT

F867 (Data Collection, Monitoring, Analysis & Improvement) Phase 3

- Performance Improvement Projects (PIPs)
  - Must conduct distinct performance improvement projects.
  - Improvement projects must include at least annually a project that focuses on high-risk or problem-prone areas identified through data collection and analysis.
- Quality Assessment and Assurance
  - Develops and implements appropriate plan of action to correct identified deficiencies;
  - Regularly review and analyze data;
  - Acting on available data to make improvements

QUALITY ASSURANCE & PERFORMANCE IMPROVEMENT

F868 (QAA Committee) Phase 3

- Infection Preventionist has been added to required member of the QAA committee.
  - Should attend each QAA meeting or have a designee to attend.

INFECTION CONTROL

F880 (Infection Control - Water Management)

- Must be able to demonstrate its measures to minimize the risk of Legionella and other opportunistic pathogens in building water systems such as by having a documented water management program.

F881 (Antibiotic Stewardship Program)

- Revised the requirement to provide feedback to prescribing practitioner regarding antibiotic resistance data, usage, and compliance with antibiotic use protocols.
- While providing feedback is still recommended, it is no longer required under F881.

INFECTION CONTROL

F882 (Infection Preventionist Qualifications and Roles)

- The IP must be professionally trained in nursing, medical technology, microbiology, epidemiology, or other related field;
- Professionally-trained nurse must have a certificate/diploma or degree in nursing;
- Medical technologist must have an associate's degree (or higher) in medical technology or clinical laboratory science;
- Microbiologist or Epidemiologist must have a bachelor's degree (or higher) in microbiology or epidemiology;
- The IP must work at least part-time at the facility; and
- The IP must have completed specialized training in infection prevention and control.

COMPLIANCE & ETHICS PROGRAM

F895 (Compliance & Ethics Program) Phase 3

- The intent is to ensure the facility has an effective system to deter any criminal, civil and administrative violations.

Compliance & Ethics Program Requirements

- Must have written standards, policies, and procedures for its compliance and ethics program, which includes the designation of an appropriate contact to whom an individual can report suspected violations; an alternate method of reporting suspected violations anonymously; and disciplinary standards that describe the consequences for committing violations for the entire staff.

COMPLIANCE & ETHICS PROGRAM

Compliance & Ethics Program Requirements

- Must assign specific individuals within the high-level personnel of the facility.
- Due care not to delegate substantial discretionary authority to those who the facility knew, or should have known, had a propensity to engage in criminal, civil, and administrative violations under the Social Security Act.
- Must take steps to communicate the facility's compliance and ethics program to the entire facility staff, contracted staff, and volunteers.
- Important for the facility to consider their facility assessment.

COMPLIANCE & ETHICS PROGRAM

Compliance & Ethics Program Requirements

- Steps to achieve compliance, which may include monitoring systems to detect violations, publicize a reporting system whereby staff can report violations anonymously, and having process ensuring integrity of reported data.
- Establish disciplinary mechanisms and communicate those mechanisms so staff are clearly aware of the consequences of program violation.
- After detection of a violation, the facility must ensure all reasonable steps are taken to respond to the violation and to prevent further similar violations.
- Must be reviewed on an annual basis.

COMPLIANCE & ETHICS PROGRAM

Compliance & Ethics Program requirements for operating organizations with FIVE or more facilities

- Must have a mandatory annual training program in compliance with F946.
- Must designate a compliance officer for whom the program is a major responsibility.
- The operating organizations must designate compliance liaisons located at each of the operating organizations facilities.

F946 (Compliance & Ethics Training)

PHYSICAL ENVIRONMENT

F919 (Resident Call System)

- Phase 3 requirements added that the communication system relays the call directly to a staff member or to a centralized staff work area from each resident's bedside; and from the toilet and bathing facilities.
- The system must be accessible to residents while in their beds or other sleeping accommodations within the resident's room.
- The system must be accessible at each toilet, bath, and shower.
- If loss of power, will the resident call system be operational or is an alternate means of communicating with the staff put into place?

TRAINING REQUIREMENTS

F941 (Communication Training) Phase 3

- Must include effective communications as mandatory training for direct care staff.
- Effective communication is a process of dialogue between individuals. The skills include speaking to others in a way they can understand and active listening and observation of verbal and non-verbal cues.

F942 (Resident's Rights Training) Phase 3

- Facilities must develop and implement an ongoing education program on all resident rights and facility responsibilities for caring of residents.
- The education program should support current scope and standards of practice and incorporate learning objectives, performance standards, and evaluation criteria.

TRAINING REQUIREMENTS

F944 (QAPI Training) Phase 3

- QAPI training is mandatory for all staff on the facility's QAPI program.
- Should include staff's role in the QAPI program and how to communicate concerns.
- If updates are made to the program or goals, facility training should be updated.

TRAINING REQUIREMENTS

F945 (Infection Control Training) Phase 3

- Facilities must develop, implement, and maintain an effective training program for all staff, which includes training on the standards, policies, and procedures for the infection prevention and control program.
- Guidance addressing training on written standards, policies and procedures of the infection prevention and control program.
- At a minimum, must include facility surveillance system, when and to whom possible incidents should be reported, how and when to use standard precautions, and how and when to use TBP, occupational health policies, proper infection prevention and control practices.

TRAINING REQUIREMENTS

F946 (Compliance and Ethics Training) Phase 3

- Training program to communicate the compliance and ethics program to staff.
- Establish a way to communicate the program through a training program or in another practical manner which explains the requirements under the program.

F947 (Nurse Aid Training)

- Must provide an in-service training program for nurse aides.
- The in-service training must address areas of weakness as determined by nurse aides performance reviews and facility assessment and special needs of residents.
- Guidance was expanded to reflect the minimum 12 hour nurse aide training, and including competencies, dementia management and abuse prevention training, and areas of weakness.

TRAINING REQUIREMENTS

F949 (Behavioral Health Training) Phase 3

- Must provide an effective training program which includes training on behavioral health care services as determined by staff needs and facility assessment.

Behavioral Health Training should include competencies/skills to provide:

- Person-centered care reflective of resident's goals of care;
- Interpersonal communication that promotes mental/psychosocial well-being;
- Meaningful activities which promote engagement/positive relationships;
- An environment that is conducive to mental/psychosocial well-being;
- Individualized, non-pharmacological approaches to care;
- Care specific to individual needs of residents diagnosed with a mental/psychosocial, or substance use disorder, history of trauma, PTSD, and residents diagnosed with dementia.

THANK YOU

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