

PUBLICATION

Fundamentals of CMS Updates to Appendix PP of the State Operations Manual: Residents' Rights

Authors: Sandra L. Adams, Diane Festino Schmitt

October 24, 2022

F557: Respect, Dignity/Right to Have Personal Property

Noncompliance at deficiency tag F557 will be cited if the surveyors find that a facility does not treat each resident's possessions with respect, regardless of the possessions' apparent value to others. Under the original guidance, facilities should encourage the resident to exercise their right to retain and use their personal possessions to promote a homelike environment and to support the resident in maintaining their independence.

SOM Revisions to F557 Provide Guidance Regarding Residents and Illegal Drugs

The new SOM guidance directs surveyors to evaluate how facilities respond if the resident has access to or brings illegal drugs into the facility. In this case, surveyors are advised that the facility cannot act as an arm of law enforcement if the facility suspects, through observation, that the resident may have accessed illegal drugs. The facility can confiscate items or substances that pose a risk and are in plain view. However, the facility *cannot* conduct a search of the resident or the resident's belongings unless the resident agrees to a voluntary search and understands the reason for the search. A facility can provide additional monitoring and supervision to protect resident health and safety, but should refer determinations that the resident has used illegal drugs or brought them into the facility to law enforcement in accordance with state laws.

Key Takeaways

The SOM guidance continues to emphasize the importance of encouraging facility residents to bring personal possessions to their space in the facility so that the residents feel comfortable in the facility and maintain their independence. The new guidance requires that the personal space of a resident who is suspected of using or bringing illegal drugs into the facility also be respected unless contraband items are in plain view. In short, resolving issues regarding residents and illegal drugs is a responsibility of law enforcement, not facility staff.

F561: Self-Determination

Noncompliance at F561 will be cited if the surveyors find that the facility does not allow individual residents the opportunity to exercise their autonomy regarding those things that are important in their lives. Under the original guidance, residents have the right to choose their schedules and have a choice about which activities they participate in. The facility is responsible for supporting and accommodating, to the extent possible, a resident's needs and choices for how they spend their time, both inside and outside of the facility.

SOM Revisions to F561 Require the Facility to Strike a Balance Between Rights of Smokers and Nonsmokers

The new SOM guidance directs surveyors to balance the rights of smokers – including smokers of e-cigarettes – and nonsmoker residents. Facilities cannot prohibit current smoker residents from smoking at all after a smoking policy change and must inform all new residents of the smoking policy upon admission. Even after a policy change, the facility must allow current residents to continue smoking in an area that maintains the quality

of life for smoker residents while taking nonsmoker residents into account. Smoking areas may be outdoors, but the facility must ensure that the smoking resident "remains safe."

Key Takeaways

The SOM guidance continues to emphasize the facility's role in serving as a safe and supportive place for residents to make their own choices and pursue their own interests, consistent with the individual resident's assessments and care plans. The new revisions also mandate that facilities balance the rights of smokers and nonsmokers but does not provide guidance regarding how facilities should walk this delicate line. Facilities are advised that they may set up a smoking area outside of the facility, but residents using the smoking area must "remain safe." The limited new guidance available will require facilities to plan creatively in allocating their resources.

F563: Right to Receive/Deny Visitors

The regulations describing CMS requirements for tag F563 mandate that facilities have written policies and procedures describing residents' visitation rights that set forth information regarding any possible clinically necessary or reasonable restrictions or limitations. Residents have a right to receive visitors of their own choosing, at the time of their choosing, if the manner chosen does not impose upon the rights of another resident. Facilities must provide immediate family members "immediate access" to the resident; others visiting with the consent of the resident must also be provided immediate access, subject to reasonable clinical and safety restrictions. The facility must also provide "reasonable access" to any entity or individual that provides health, social, legal, or other services to the resident if the resident chooses to visit with the representative. Residents also have the right to deny visitation by any visitor.

SOM Revisions to F563 Provide Guidance Regarding Visitation During an Outbreak and Addresses Visitors Who Are Suspected of Bringing Illegal Drugs into the Facility

The SOM revisions provide additional guidance regarding visitation in two specific situations: during a communicable disease outbreak or if a visitor is suspected of bringing illegal drugs in to the facility. Under the new guidance, facilities cannot deny visitation to residents who are on transmission-based precautions, even during an outbreak. Instead, facilities are encouraged to modify visitation practices during outbreaks and pandemics in a way that maximizes visitation while aligning with current guidance from the Centers for Medicare and Medicaid Services and current guidelines from the Centers for Disease Control and Prevention. In no instance may facilities establish visiting hour limitations that are not imposed by the resident except to set "reasonable clinical and safety restrictions" in line with federal and local health guidance.

The revisions also address visitation and illegal substance abuse. The guidance explicitly states that facility should not act as an arm of law enforcement if the facility suspects, through observation, that a visitor may have brought illegal drugs into the facility. The facility cannot conduct a search of the resident or the resident's belonging unless the resident agrees to a voluntary search and understands the reason for the search. A facility can provide additional monitoring and supervision to protect resident health and safety but should refer determinations that the visitor has brought, or the resident has used or brought illegal drugs into the facility to law enforcement in accordance with state laws.

Key Takeaways

The new SOM guidance makes clear that any restrictions that a facility places on resident visitation must be carefully crafted and limited to practices that protect the health and security of all residents and staff. Even during a pandemic or outbreak, residents on transmission-based precautions cannot be denied visitation. Instead, residents and visitors are left with the choice of whether to visit after the visitors are informed of the

potential risk of visiting the resident and the infection control precautions necessary to visit the resident. Similarly, visitors that are suspected of bringing illegal drugs into the facility are to be further monitored and supervised until they can be referred to law enforcement; the facility should not attempt to perform law enforcement's duties. A resident's right to visitation, even in less-than-ideal circumstances, remains the priority.

F565 and F699: Comprehensive Person-Centered Care Plans

The SOM provides guidance about the process for creating appropriate care plans for residents. In addition to the existing requirements, the updates to tags F565 and F699 require an enhanced focus on person-centered care plans that are both "culturally-competent" and "trauma-informed."

Culturally Competent Care Plans

The revised guidance provides that a resident's care plan must reflect the resident's cultural needs and preferences, and align with the resident's cultural identity, to provide culturally competent care. Facility staff should be respectful of and responsive to the beliefs and practices of diverse population groups, including racial, religious, social, and ethnic groups. Cultural preferences may include food choices and preparation, clothing, physical contact, and etiquette.

Trauma-Informed Care Plans

Recognition of residents' traumatic experiences should be included in the care planning process. If a resident has a history of trauma, individualized interventions should be developed with the collaboration of the resident and their family and friends to understand the triggers and mitigate symptoms of trauma including substance abuse, depression, anxiety, aggression, and withdrawal or isolation from others. Facilities should use screening and resident assessment tools to identify a resident's history of trauma.

Key Takeaways

Facilities should make certain that their resident assessment and care planning process adequately identifies and responds to the cultural and trauma needs of residents and includes appropriate interventions to communicate and deliver care to residents. Facilities should provide activities that are culturally relevant to residents, provide a culturally diverse environment that respects and treats each resident with dignity, and monitor the effects of these interventions. Facilities must identify triggers that may re-traumatize residents and develop interventions that minimize or eliminate the effect of the trigger on the resident.

For specific guidance or more information about this alert, please contact any member of [Baker Donelson's Long Term Care Team](#).