

PUBLICATION

Fundamentals of CMS Updates to Appendix PP of the State Operations Manual: Freedom from Abuse, Neglect, and Exploitation

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F600: Free from Abuse and Neglect

The updates to F600 provides guidance in relation to resident-to-resident abuse as well as consent to engage in sexual activity. Moreover, the updates to F600 provide guidance that the surveyors should review before citing past noncompliance and/or defining neglect.

SOM Revisions to F600 Provide Guidance Regarding Resident-to Resident Abuse, Consent to Engage in Sexual Activity, Citing Past Noncompliance and Definition of Neglect

The new SOM guidance with regard to resident-to-resident abuse of any type directs surveyors that they should not assume that every resident-to-resident altercation will result in abuse. Rather, the surveyor must determine whether the incident meets the definition of abuse. As for consent to engage in sexual activity, the new SOM guidance requires facilities to take steps to ensure that the resident is protected from abuse. These steps include evaluating whether the resident has capacity to consent to sexual activity. In relation to citing past noncompliance, the new SOM guidance directs the surveyor to determine if the facility took all appropriate actions to correct the noncompliance and to determine the date on which the facility returned to substantial compliance. Finally, the new SOM guidance defines neglect as "the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress." This includes cases where the facility's indifference or disregard for the resident's care, comfort, or safety, resulted in or could have resulted in, physical harm, pain, mental anguish or emotional distress.

In addition to the foregoing, the new SOM guidance provides that the survey team should first determine what impact any alleged violation may have had on a reasonable person in the resident's position, and then decide the severity of the psychosocial outcome or potential outcome. When applying the reasonable-person concept, the survey team should consider the following:

- The resident may consider the facility to be their "home" where there is expectation of safety, privacy and being treated with respect and dignity.
- The resident trusts and relies on the facility staff to meet their needs.
- The resident may be frail and vulnerable.

There are situations likely to cause psychosocial harm that may take months or years to manifest. Therefore, immediate jeopardy or actual harm allegedly identified during the survey may be supported when there is not an observed or documented negative psychosocial outcome.

Key Takeaways

The SOM guidance continues to emphasize the importance of protecting residents from abuse, neglect and exploitation. The new guidance also provides that not all altercations between residents constitute abuse and that residents can consent to engage in sexual activity if they have the capacity to consent. The revisions to

the SOM clarify both the definition of neglect and the guidance on citing past noncompliance. Finally, the new guidance provides additional insight regarding the application of the reasonable person concept.

F607: Develop/Implement Abuse/Neglect, etc. Policies

Noncompliance at deficiency tag F607 will be cited if the surveyors find that a facility does not develop and implement written policies and procedures related to posting conspicuous signage of employee rights related to retaliation against the employee for reporting a suspected crime and prohibiting and preventing retaliation.

SOM Revision to F607 Provide Guidance Regarding Reporting Reasonable Suspicions of a Crime

The new SOM guidance encourages the reporting of reasonable suspicions of a crime by requiring facilities to develop and implement policies and procedures that promote a culture of safety and open communications in the work environment. This may be accomplished through prohibiting retaliation against an employee who reports a suspicion of a crime. The facility should have written procedures that must include, among other items, posting a conspicuous notice of employee rights, including right to file a complaint and directions regarding how to file a complaint with the state survey agency, if the employee believes the facility has retaliated against an employee or an individual who reported a suspected crime.

Key Takeaways

The SOM guidance emphasizes that employees must have the freedom to report, without fear of retaliation, if they have a reasonable suspicion that a crime has been committed. The new guidance further requires that a facility have written policies and procedures in place regarding employees' right to report and that they post signage advising employees of their right to report without retaliation.

F609: Reporting of Alleged Violations

Noncompliance at deficiency tag F609 will be cited if the surveyors find that a facility does not develop and implement written policies and procedures that ensure the reporting of alleged crimes.

SOM Revisions to F609 Provide Guidance Regarding Reporting of Alleged Crimes

The new SOM guidance requires facilities to develop and implement written policies and procedures that ensure the reporting of alleged crimes that may have occurred in a federally funded long term care facility. The policies and procedures must include an annual notification to covered individuals of that individual's obligation to comply with requirements to report a reasonable suspicion of a crime against any resident, and to immediately report any suspicion of any event resulting in serious bodily injury.

Moreover, the new SOM guidance requires facilities to submit reports that are accurate to the best of its knowledge at the time of submission, including an initial report and a follow-up investigation report. The new SOM guidance outlines the facility's responsibilities for reporting allegations/occurrences of the following: staff-to-resident abuse; resident-to-resident altercations including mental/verbal conflict and sexual contact; injuries of unknown source; misappropriations of resident property/exploitation; and mistreatment.

Key Takeaways

The SOM guidance emphasizes the importance of ensuring the reporting of crimes. The new guidance not only emphasizes the importance of reporting crimes but also submitting accurate reports of crimes. Finally, the new guidance provides an outline for the types of allegations/occurrences the facility is responsible for reporting.

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