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BOB TAFT
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J. NICK BAIRD, M.D.
Director of Health

DATE: January 12, 2005

TO: Nursing Home Administrators

FROM: Rebecca S. Maust,  Chief, Division of Quality Assurance,
Ohio Department of Health

SUBJECT: **CMS Memorandum Regarding Nursing Home Reporting Requirements for Mistreatment, Neglect, Abuse, Injuries of Unknown Source, and Misappropriation (Ref: S & C-05-09)**

The Centers for Medicare and Medicaid Services ("CMS") recently issued a memorandum clarifying the requirements that nursing homes must follow to report incidents of mistreatment, neglect, abuse, injuries of unknown source, and misappropriation of resident property. The CMS memorandum (a copy of which is attached) supersedes the memorandum issued by the Ohio Department of Health ("ODH") on January 16, 2004. Ohio nursing homes must comply with the clarified reporting requirements as of **January 15, 2005**. Thus, the purpose of this letter is to summarize the reporting requirements set forth in CMS's memorandum.

First, CMS states that the following types of alleged violations are covered by the reporting requirements: mistreatment; neglect; abuse; "injuries of unknown source;" and misappropriation of resident property. With the exception of "mistreatment," CMS defines all of the aforementioned terms in its memorandum. However, CMS's definition of "injury of unknown source" is particularly noteworthy. CMS states that an "injury of unknown source" exists when *both* of the following conditions exist:

- a) the source of the injury was not observed by any person or could not be explained by the resident; **and**
- b) the injury is suspicious because of the extent of the injury, the location of the injury, the number of injuries observed at one particular point in time, or the incidence of injuries over time.

(CMS Memorandum, p. 2)

Second, CMS states that, once a nursing home becomes aware of any of these alleged violations, the home must *immediately* report them to its administrator, ODH, and any other officials as mandated by Ohio law. CMS indicates that **the term “immediately” means as soon as possible, but no more than *twenty-four (24) hours after the alleged incident is discovered.*** It is irrelevant whether the nursing home investigated the incident and determined that the allegations were unfounded; *all* alleged violations must be reported immediately.

In order to enable nursing homes to comply with the “immediate reporting” requirement, ODH’s Provider and Consumer Services Unit will accept reports twenty-four hours a day, seven days a week. A nursing home can file an immediate report by completing Sections I, II, and III of ODH’s “Facility Incident Report” form and sending the form via facsimile to the following telecopier number: 614-728-9169.

Finally, after a nursing home submits an immediate report of an alleged violation, the home must conduct a thorough investigation; prevent any other incidents from occurring during the course of the investigation; and report the *results of the investigation to its administrator, ODH, and other state officials as mandated by state law within five (5) working days of the incident.* A nursing home may report the results of an investigation by completing the remainder of the Facility Incident Report form and resubmitting the entire form to ODH.

Please read the CMS memorandum carefully. I hope that this letter answers any questions that you may have regarding the reporting requirements in the memorandum. However, if you have any other questions or require additional information, please do not hesitate to contact the Provider and Consumer Services Unit at 614-644-0256.

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-05-09

DATE: December 16, 2004

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Clarification of Nursing Home Reporting Requirements for Alleged Violations of Mistreatment, Neglect, and Abuse, Including Injuries of Unknown Source, and Misappropriation of Resident Property

Letter Summary

- Reiterates the reporting of alleged violations and the results of the investigation by nursing homes to the state survey and certification agency as mandated by 42 C.F.R. §§483.13(c)(2) and (4).
- Defines the terms “neglect,” “abuse,” “injury of unknown source,” “misappropriation of resident property,” “immediately,” and “in accordance with State law.”

Issue:

The state survey agencies have asked the Centers for Medicare & Medicaid Services (CMS) to clarify the regulations at 42 C.F.R. §§483.13(c)(2) and (4). In particular, these sections address the facility’s obligations to report allegations and the results of the investigation of these alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property.

Background/Facts:

Below are the requirements related to 42 C.F.R. §483.13 Resident behavior and facility practices:

§483.13(c)(2): The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately (emphasis added) to the administrator of the facility and to other officials in accordance with State law (emphasis added) through established procedures (including to the State survey and certification agency).

§483.13(c)(3): The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

§483.13(c)(4): The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

Discussion:

Nursing homes must comply with requirements for participation, including reporting requirements set out in 42 C.F.R. §§ 483.13(c)(2) and (4). No state law can override the obligation of a nursing home to fulfill the requirements under 42 C.F.R. §483.13(c), so long as Medicare/Medicaid certification is in place.

As specified in 42 C.F.R. §§ 483.13(c)(2) and (4), the following alleged violations and the results of all investigations must be reported to the administrator of the facility, other officials in accordance with state law, and the state survey and certification agency. These alleged violations are defined as follows:

- *Mistreatment* - (A definition is not provided at this time.)
- *Neglect* - Failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness (42 C.F.R. §488.301).
- *Abuse* - The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish (42 C.F.R. §488.301).
- *Injuries of unknown source* - An injury should be classified as an “injury of unknown source” when both of the following conditions are met:
 - The source of the injury was not observed by any person **or** 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 (e.g., the injury is located in an area not generally vulnerable to trauma) **or** the number of injuries observed at one particular point in time **or** the incidence of injuries over time.
- *Misappropriation of resident property* - The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent (42 C.F.R. §488.301).

The facility must follow the timeframes established in the regulations; that is, the facility must ensure that all alleged violations are reported immediately to the administrator of the facility and to other officials in accordance with state law through established procedures (including to the state survey and certification agency in accordance with 42 C.F.R. §483.13(c)(2), and the results of all investigations must be reported to the administrator or his/her designated representative and to other officials in accordance with state law (including to the state survey and certification agency) within 5 working days of the incident in accordance with 42 C.F.R. §483.13(c)(4).

CMS believes “immediately” means as soon as possible, but ought not exceed 24 hours after discovery of the incident, in the absence of a shorter state timeframe requirement. Conformance with this definition requires that each state has a means to collect reports, even on off-duty hours (e.g., answering machine, voice mail, fax).

The phrase “in accordance with State law” modifies the word “officials” only. As such, state law may stipulate that alleged violations and the results of the investigations be reported to additional state officials beyond those specified in Federal regulations. This phrase does not modify what types of alleged violations must be reported or the timeframes in which the reports are to be made. As such, states may not eliminate the obligation for any of the alleged violations (i.e., mistreatment, neglect, abuse, injuries of unknown source, and misappropriation of resident property) to be reported, nor can the state establish longer time frames for reporting than mandated in the regulations at 42 C.F.R. §§ 483.13(c)(2) and (4).

State Survey Agency Action: State survey and certification agencies must ensure Medicare/Medicaid participating facilities are following these reporting requirements. Self-reported incidents should be managed and entered into the ASPEN Complaints/Incidents Tracking System (ACTS), in accordance with the instructions found in S&C-04-09*.

Effective Date: The information contained in this memorandum clarifies current policy and must be implemented no later than 30 days after issuance of this memorandum.

Training: This clarification should be shared with all survey and certification staff, surveyors, their managers, and the state/RO training coordinator.

/s/
Thomas A. Hamilton

cc: Survey and Certification Regional Office Management

* Currently, States enter into ACTS all complaints that allege noncompliance with Federal requirements. For incidents self-reported from nursing homes, however, only those self-reported incidents that result in an onsite survey of Federal requirements are entered. In the future, CMS will be conducting a feasibility analysis to discern the value of requiring the entry of data into ACTS of all Federal-mandated self-reported incidents received by the SA and any other incident that leads to an onsite survey of Federal requirements or conditions.