

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-07-07

**DATE:** December 21, 2006

**TO:** State Survey Agency Directors

**FROM:** Director  
Survey and Certification Group

**SUBJECT:** Nursing Home Culture Change Regulatory Compliance Questions and Answers

**Memorandum Summary**

This memorandum provides the State Survey Agencies and CMS regional offices with:

1. Responses we have made to inquiries concerning compliance with the long-term care health and life safety code requirements in nursing homes that are changing their cultures and adopting new practices;
2. Summarizes questions and answers from a June, 2006 CMS Pic-Tel conference with leaders of the Green House Project (*Attachment A*); and
3. Provides information about an upcoming series of 4 CMS culture change satellite webcasts (*Attachment B*).

*Following are regulatory questions that have been sent from culture change organizations from 2004 to date, along with our answers:*

**Question 1: Tag F368 (Frequency of Meals):** You request a clarification that the regulation language at this Tag that “each resident receives and the facility provides at least three meals daily” does not require the resident to actually eat the food for the facility to be in compliance. You also ask for clarification about the regulatory language specifying that there must be no more than 14 hours between supper and breakfast (or 16 hours if a resident group agrees and a nourishing snack is provided). You state that some believe this language means all of the residents must actually eat promptly by the 14<sup>th</sup> hour, which makes it difficult for the facility to honor a specific resident’s request to refuse a night snack and then sleep late.

**Response 1:** The regulation language is in place to prevent facilities from offering less than 3 meals per day and to prevent facilities from serving supper so early in the afternoon that a significant period of time elapses until residents receive their next meal. The language was not intended to diminish the right of any resident to refuse any particular meal or snack, nor to diminish the right of a resident over their sleeping and waking time. These rights are described at Tag F242, Self-determination and Participation. You are correct in assuming that the regulation language at F368 means that the facility must be offering meals and snacks as specified, but that each resident maintains the right to refuse the food offered. If surveyors encounter a situation in which a resident or residents are refusing snacks routinely, they would ask the resident(s) the reason for their customary refusal and would continue to investigate this issue only if the resident(s) complains about the food items provided. If a resident is

sleeping late and misses breakfast, surveyors would want to know if the facility has anything for the resident to eat when they awaken (such as continental breakfast items) if they desire any food before lunch time begins.

**Question 2: F370 (Approved Food Sources):** You ask if the regulatory language at this Tag that the facility must procure food from approved sources prohibits residents from any of the following: 1) growing their own garden produce and eating it; 2) eating fish they have caught on a fishing trip; or 3) eating food brought to them by their own family or friends.

**Response 2:** The regulatory language at this Tag is in place to prohibit a facility from procuring their food supply from questionable sources, in order to keep residents safe. It would be problematic if the facility is serving food to all residents from the sources you list, since the facility would not be able to verify that the food they are providing is safe. The regulation is not intended to diminish the rights of specific residents to eat food in any of the circumstances you mention. In those cases, the facility is not procuring food. The residents are making their own choices to eat what they desire to eat. This would also be the case if a resident ordered a pizza, attended a ball game and bought a hot dog, or any similar circumstance. The right to make these choices is also part of the regulatory language at F242, that the resident has the right to, “make choices about aspects of his or her life in the facility that are important to the resident.” This is a key right that we believe is also an important contributing factor to a resident’s quality of life.

**Question 3: Tag F354 (Registered Nurse):** “Can the traditional DON role be shared with several registered nurses with each nurse responsible for one or more households or clusters?”

**Response 3:** The interpretive guidelines (i.e., Guidance to Surveyors) already contain this language: “The facility is required to designate an RN to serve as DON on a full time basis. This requirement can be met when RNs share the position. If RNs share the DON position, the total hours per week must equal 40. Facility staff must understand the shared responsibilities.” Thus, the position can be shared; however, a comprehensive set of duties and responsibilities of a DON is not specified in the regulations or interpretive guidelines. We interpret this role to encompass not only general supervision of nursing care for the facility, but oversight of nursing policies and procedures, overall responsibility for hiring/firing of nursing staff, ensuring sufficient nursing staff (F353), ensuring proficiency of nurse aides (F498), active participation in the quality assurance committee (see Tag F520), and responsibility to receive and act on communications from the pharmacy consultant about medication problems (Tags F429 and F430). A facility that desires to have various people share the DON position would need to consider how these DON duties will be fulfilled in a shared position. As long as these duties are fulfilled, we would consider the facility in compliance with F354, whether or not the position is being shared.

**Question 4: Tag F521 (Quality Assessment and Assurance):** You ask whether the regulatory responsibility for this committee to “meet” can be fulfilled if the physician member is not physically present, but is participating through alternate means, “such as conference calls or reading minutes/issues and giving input.”

**Response 4:** Yes, participation can be achieved through means of telephone conferencing, however, we do not accept the alternative of the physician merely reading documents before or after the meeting. We believe the purpose of these meetings is to provide a forum for discussion of issues and

plans, which cannot be adequately fulfilled if the physician is merely reading and commenting on documents, since this does not allow for the interchange of ideas.

**Question 5: (HIPAA and Principles of Documentation):** You express concern that the Statement of Deficiencies that surveyors write, which is a publicly posted document, may violate a resident’s right to privacy, since the details may identify a specific resident to the public.

**Response 5:** We have received other comments on this issue, and have provided guidance to our State Survey Agencies and CMS regional offices on our interpretation of this issue in our Survey and Certification (S&C) memorandum #04-18. All our S&C memoranda are stored on the CMS website for public access at <http://www.cms.hhs.gov/SurveyCertificationGenInfo/PMSR/list.asp>

**Question 6 (Handrails):** Could the interpretive guidelines explain that handrails are not necessary at the very ends of the hallways on the very small sides of the door? This would allow for filling these unused areas with live plants, for instance, without obstructing egress and handrails would still be available up to the end of each hallway.

**Answer 6:** The purpose of the handrail requirements at Tag F468 is to assist residents with ambulation and/or wheelchair navigation. They are a safety device as well as a mobility enhancer for those residents who need assistance. The survey team onsite would need to observe the responses of residents to the placement of objects that block the portion of the handrails that is at the end of a hallway. They would also interview residents to gain their opinion as to whether the objects in question are interfering with their independence in navigating to the places they wish to go.

**Question 7 (Resident Call system):** Could the resident call system (F463) regulation that requires calls to be able to be received at the nurses’ station be changed to also include nurses’ work areas and direct care workers, as well as the nurses’ stations? Many homes moving away from the institutional model are replacing nurses’ stations with normal kitchens, living room and dining room areas, and using systems whereby resident calls connect directly to caregivers’ radio/pagers. Because it is harder to change the text of regulation, could the phrase “at the nurses’ station” be removed from the following sentence in the Interpretive Guidelines: “The intent of this requirement is that residents, when in their rooms and toilet and bathing areas, have a means to directly contact staff at the nurses’ station.”

**Answer 7:** We agree that it is desirable for residents and/or their caregivers or visitors to be able to quickly contact nursing staff when they need help. To meet the intent of the requirement at F463, it is acceptable to use a modern pager/telephone system which routes resident calls to caregivers in a specified order in an organized communication system that fulfills the intent and communication functions of a nurse’s station. We will make a change in the Interpretive Guideline to reflect this position.

**Question 8 (Posting of Survey Results):** Would CMS consider adding to the posting requirements at Tag F156 [42 CFR 483.10(b)(10)], text similar to that stated in Tag F167 about posting of survey results, “...or a notice of their availability?” Although this may just be trading one posting for several, some homes really want to create a homey environment without so many postings and many homes are placing postings into a photo album or binder to minimize the institutional look of so many postings.

**Answer 8:** The purpose of the posting requirements at both F156 and F167 is for residents and any other interested parties to be able to know the information exists, and to easily locate and read the information without needing to ask for it. What you request above, namely one posting that advises the public of what information is available to meet requirements of both Tags, is acceptable, as long as the information itself is in public and easily accessible, such as in a lobby area in a marked (titled) notebook or album. This includes the following information:

- “A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit;” (F156)
- “Written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits;” (F156) and
- The facility, “must make the results available for examination in a place readily accessible to residents and must post a notice of their availability.” (F167)

**Question 9 (Hallway Width):** Does the 8 feet requirement (at LSC Tag K39) continue to be necessary since evacuations are no longer done via wheeling a person out of the building in a bed? Could 6 feet meet the requirement? If 6 feet sufficed, this would again refer back to our question regarding the requirement for handrails when something else such as a bench might take up the other 2 feet.

**Answer 9:** The 8 foot corridor width is a requirement of the Life Safety Code (LSC). Corridors remain a route to use in internal movement of residents in an emergency situation to areas of safety in different parts of the facility. This movement may be by beds, gurney or other methods which may require the full width of the corridor. We do not believe it would be in the best interests of the residents to reduce the level of safety in a facility.

**Question 10 (Tag K72 and Exits):** In regard to LSC Tag K72 (no furnishings, decorations, or other objects are placed to obstruct exits or visibility of exits), can secured unit doors be disguised or masked with murals, etc.? Staff typically will be the ones to use these doors in the case of emergency and will know where they are. By disguising exit doors, resident anxiety of wanting to go out them may decrease.

**Answer 10:** The life safety code allows some coverings on doors, but not concealment. The code also specifically forbids the use of mirrors on a door. It is a judgment call by the survey team as to what would be considered concealment of the door, but in general the door must still be recognizable by a non-impaired person (such as a visitor). The code does not allow the removal or concealment of exit signs, door handles, or door opening hardware.

**Question 11 (Dining Together):** Is it permissible for staff and residents to dine together?

**Answer 11:** There is no federal requirement that prohibits this. We applaud efforts of facilities to make the dining experience less institutional and more like home. Our concern would be for the facility to make sure that residents who need assistance receive it in a timely fashion (not making residents wait to be assisted until staff finish their meals).

**Question 14 (Candles):** Can candles be used in nursing homes under supervision, in sprinklered facilities.

**Answer 14:** Regarding the request to use candles in sprinklered facilities under staff supervision, National Fire Protection Association data shows candles to be the number one cause of fires in dwellings. Candles cannot be used in resident rooms, but may be used in other locations where they are placed in a substantial candle holder and supervised at all times while they are lighted. Lighted candles are not to be handled by residents due to the risk of fire and burns. If you would like to discuss this issue, you may contact James Merrill at 410-786-6998, or via email at [james.merrill@cms.hhs.gov](mailto:james.merrill@cms.hhs.gov).

**Question 15 (Tablecloths):** Are cloth tablecloths and napkins permissible in nursing homes?

**Answer 15:** There is no regulation that prohibits it and, in fact, the use of these items is greatly preferable to the use of bibs, as bibs can detract from the homelike attractiveness of the dining room setting.

Beginning November 3, 2006, (see attached) CMS is broadcasting a 4-part series on culture change through fiscal year 2007. Three of the broadcasts, produced by the Quality Improvement Organizations (QIOs), will highlight culture change principles and outcomes from the QIO scope of work. The other broadcast, produced by CMS, will explore changes being made to medical and nursing care practices and policies in terms of compliance and the survey process.

We are including information on the series for your convenience. We believe this broadcast series will be of interest to providers and other stakeholders, as well as State Survey Agencies. We encourage States, CMS regional offices, and QIOs to consider setting up joint viewing opportunities for survey personnel, stakeholders, and nursing home staff when possible. As with all CMS broadcasts, these broadcasts may be viewed either live via satellite or internet, or via internet for a year after each broadcast.

For questions concerning this memorandum, please contact Karen Schoeneman at (410) 786-6855 or via e-mail at [kschoeneman@cms.hhs.gov](mailto:kschoeneman@cms.hhs.gov).

**Effective Date:** Immediately. Please ensure that all appropriate staff are fully informed within 30 days of the date of this memorandum, and disseminate the information to affected providers.

**Training:** The information contained in this announcement should be shared with all nursing home surveyors and supervisors.

/s/

Thomas E. Hamilton

Attachment

cc: Survey and Certification Regional Office Management (G-5)

## ATTACHMENT A: Dialogue with Green House Representatives

*Following are some questions and answers from the June, 2006, interactive television conference between CMS central and regional offices and leaders of the Green House Project. The questions from CMS staff about certain features and ways of performing tasks in Green Houses were answered by Green House staff. These items are not CMS policy interpretations per se, but are included here to provide examples of the manner in which some nursing homes are providing more individualized care within the regulations.*

**Green House Q1:** How do Green Houses accommodate dependent diners in the dining model?

**Answer 1:** Staff sit with the elders and assist them directly.

**Green House Q2:** How many beds is the maximum planned for the design of a Green House?

**Answer 2:** The early Green Houses were built for 12 beds. The Green House leaders believe that no more than ten beds is ideal, and if they increase it to 12, they will be pushed to go higher. They intend to stay with a design accommodating ten beds.

**Green House Q3:** The (Green House) presentation referenced the facility having 10 bedrooms, but the building floor plan provided shows that four of the bedrooms had double beds and the remainder of the bedrooms had single beds. If the bedrooms with double beds had two residents, the facility could have 14 residents.

**Answer 3:** There would only be two residents in a bedroom with a double bed if the elders were a married couple.

**Green House Q4:** Who administers medications?

**Answer 4:** Nurses administer medications at Cedars in Mississippi. In Kansas, the Shahbazim can be Certified Med Techs. If allowed by State law, some meds are administered by medication aides.

**Green House Question 5:** Are all future Green Houses intended to be skilled nursing facilities or nursing facilities (SNFs or NFs)? Are all Green Houses that are operational SNFs or NFs?

**Answer 5:** For future construction, this is the intent. However, where SNF certification is not allowed, such as due to CON laws in a State, the Green House Project is allowing them to be built as assisted living facilities. As for currently operating Green Houses in Mississippi and Nebraska, they are certified as nursing homes.

**Green House Question 6:** Do you intend to request any waivers from the federal regulations for future Green Houses?

**Answer 6:** We intend to comply with all provisions of the federal requirements without requesting any waivers.

**Green House Question 7:** NFPA 101 - 2000 edition, section 18.5.2.2 exception No. 2 requires fireplaces be separated from patient sleeping areas by a 1-hour fire resistance rating. RO staff asked how their plan met that requirement.

**Answer 7:** The Green House staff stated that the fireplace shown in the plan was not a working fireplace and therefore, did not have to meet the referenced code section.