

New CMS Guidance Protecting Patient Privacy in Nursing Home

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In light of concerns that patient photographs are showing up on social media networks and other multimedia messaging, CMS issued guidance to State Survey Agency Directors. S&C: 16-33-NH dated August 5, 2016, effective immediately, addresses the need for nursing homes to protect residents' privacy. CMS stresses the importance to recognize each resident's sense of self-worth and to create a respectful environment.

Key to protecting patient privacy is the need to limit the use of photographs or recordings of residents without written consent. Residents have the right to personal privacy and confidentiality of their personal and clinical records, which includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.

Nursing home requirements provide that "The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion," as well as placing an affirmative obligation that the facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property. The guidance prohibits abuse and requires a surveyor to investigate such abuse at F223 or F226 if a recording of a resident, or the manner it is used, demeans or humiliates a resident regardless if the resident provided consent and regardless of the resident's cognitive state.

Given this guidance, nursing home staff including employees, consultants, contractors, volunteers, and other caregivers who provide care and services to residents on behalf of the facility need to take note. Abuse related to resident privacy will not be tolerated, and is subject to survey oversight. Facilities must have policies and procedures prohibiting staff from taking, keeping and/or distributing photographs and recordings that demean or humiliate a resident(s). Operators can expect that standard surveys will request and review the facility policies and procedures to ensure compliance.