

LEGAL ISSUES

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Top Regulatory Citations for Nursing Facilities

Recently a significant number of new regulatory requirements were issued by the Centers for Medicare & Medicaid Services impacting the daily operation of Medicare- and Medicaid-certified nursing facilities. With the rapidly changing requirements, clinicians should be proactive in understanding and implementing changes in practices, policies, and procedures, while being mindful of the current top citations being issued by state agencies during the standard survey process. By staying on top of the new requirements, nursing facilities can be prepared to meet survey challenges now and in the future.

Current Citation Trends

Survey data are collected and shared by CMS regarding frequently cited deficiencies. The standard survey process occurs in all nursing facilities as frequently as every 9 months or as seldom as 15 months. These data are useful in understanding what specific requirements are being found deficient in numerous facilities across the country.

These are the top 10 deficiencies from federal fiscal year 2015:

1. F-tag 441: Infection Control Program. Topping the citation list for a number of years has been infection control. This citation encompasses the development and implementation of the infection control program and the day-to-day activities undertaken by the facility staff. With many aspects of care included in this requirement, citations are frequent for situations that range from improper handling of linens to failure to follow handwashing and other infection-control standards while handling medications. Infection control must be an ongoing focus for each facility staff member because infection transmission can be devastating to already compromised residents. With the increase in multidrug-resistant organisms and the prevalence of organisms such as *Clostridium difficile* in health care facilities, an effective infection control program is important for safe and effective care in each facility.

2. F-tag 371: Dietary Services. Ranking second among the most frequently cited is the very broad regulatory requirement of dietary services. This requirement comprises the food service process, from procurement to serving food in safe and sanitary conditions. There are many opportunities for citation within this broad citation category. The 25 pages of interpretive guidelines accompanying this regulation in the *State Operations Manual Appendix PP* speak to the complexity and numerous actions needed to comply on a daily basis. The survey process casts a large net

in this area, and often finds numerous, wide-ranging deficiencies, from the food delivery dock to the serving of food to residents.

3. F-tag 323: Quality of Care, Free From Accident Hazards. The regulatory requirement for accident hazards is arguably the most difficult to meet on a daily basis for all residents. Nursing

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facility residents often have multiple comorbidities, including dementia, postural hypotension, and impaired balance. Every employee must actively participate in monitoring the safety and security of residents to prevent accidents and provide freedom from accident hazards. There are multiple opportunities for failure in this process, from assessment of individual accident risks to consistent implementation of specific individualized resident care plan interventions. Some of the most devastating negative outcomes, such as elopements or falls with fractures or traumatic head injuries, are cited in this regulatory tag. Facilities must implement programs with ongoing individual interventions to address those unique individual risks for each resident, and also must ensure that the global facility risks are reduced or eliminated on a daily basis. Monitoring of the operation and integrity of systems such as door alarms is imperative to prevent the significant injuries or deaths often cited at this tag.

4. F-tag 309: Quality of Care. This regulation states, "Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care." With that incredibly broad scope, a wide variety of issues related to clinical care — such as improper care or lack of care of non-pressure-related wounds — are grouped under this tag. Concerns related to palliative care or dementia care are cited at this tag as well. With the expansive regulatory language, there are many opportunities for citations related to the complex care now being provided for nursing facility residents. Additionally, this is an area open to broad subjective

interpretation because the regulations require the facility to provide services to address all areas of the resident's well-being. This area often is cited based on resident or family comments or surveyor observations, making it a difficult tag to dispute.

5. F-tag 431: Pharmacy Services. Poor maintenance of drug records and improper labeling of medications contribute to the citations under this tag. Due to multiple medications ordered for each resident and the required interface between the pharmacies and the facility, this regulation is often cited for documentation failures as well as failure to meet the state pharmacy board drug-labeling requirements. A QAPI (Quality Assessment Performance Improvement) focus in this area can be effective for avoiding medication errors that can result in significant harm to residents.

6. F-tag 329: Unnecessary Drugs. Each resident has the right to be free from unnecessary medications. The definition of unnecessary drugs includes excessive doses, excessive duration of treatment, inadequate monitoring, inadequate diagnoses to support usage, or adverse consequences from usage. Physicians and nursing facilities have actively focused on reducing the number of medications for residents, while ensuring that the medication usage is supported by correct diagnoses. CMS and state agencies have specifically targeted the reduction and elimination of antipsychotic medications in recent years, and many nursing facilities have successfully reduced antipsychotic medication usage. However, facilities need constant vigilance and monitoring to comply with these requirements.

7. F-tag 279: Comprehensive Care Planning. Another significant area involves the development of individualized comprehensive care plans. Assessment occurs before the development of a comprehensive care plan; if these two processes are not completed in a timely and accurate manner, negative outcomes can occur. For example, if a resident's increased fall risk is not assessed and their care planned accurately, the resident may fall due to a failure of risk identification and missing interventions to prevent that potential fall. When an outcome tag such as Accident Hazards is cited, the survey process often examines the process tags that may have been deficient; as a result, care planning and assessment are often cross-cited in surveys.

8. F-tag 514: Clinical Records. The development and ongoing maintenance of accurate and complete clinical records pose many citation opportunities and

significant challenges for nursing facilities. The clinical record process, whether paper or electronic, requires daily diligence in the timely and accurate recording of clinical activities. However, given the daily hectic nature of nursing facilities, clinical notes often are not entered in a timely manner (or entered at all) for changes in condition, follow-up evaluations for previously identified concerns, or medication or treatment administration. Clinical record accuracy is carefully reviewed during the standard survey process, and it is frequently cited based upon inaccurate, incomplete, or missing documentation in any of the clinical areas. Clinical records can be a cross citation when a negative outcome is identified and the documentation related to the resident's outcome turns out to be missing or inaccurate.

9. F-tag 241: Dignity. Provision of care with dignity strikes to the heart of resident rights. Nursing facilities strive every day to provide individualized resident care in a manner that protects and promotes the resident's dignity. However, even in the best and most diligent facilities, the staff may deliver care that doesn't meet the facility's expectations or policies and procedures. These types of situations can result in dignity violations. Something as simple as failing to pull the privacy curtain completely around a resident's bed before rendering care can result in a citation. Also, residents and families may relay concerns to the surveyors about undignified treatment. The observational and subjective nature of this tag makes it another citation type that can be very difficult to dispute. With the standard survey, the process includes interviews with residents and families. The nursing facility can be proactive and explore the survey questions with residents and families on a routine basis as part of their QAPI process.

10. F-tag 282: Qualified Individuals. This tag is another frequently cross-cited requirement. The Interpretative Guidelines instruct the surveyors to cite if there are concerns about quality of care, quality of life, or resident rights, and if those concerns are attributable to a lack of staff qualifications or incorrect implementation of the care plan. CMS has specifically included new requirements for education and documentation of staff competencies in the newly issued Requirements of Participation (ROP). A competent staff providing quality care provides for positive resident outcomes, so this citation area should encourage facilities to monitor the types, numbers, skills, and expertise of their staff.

Missing: F-tag 314, Pressure Ulcers


Notably missing from the top 10 list of citations is F-tag 314 Pressure Ulcers. Over the past decade, nursing facilities have worked diligently on the proactive prevention and timely treatment of pressure ulcers, resulting in a decrease in the number of citations.

New Regulations

The new ROP became effective late last year. Although some of the regulations

will be phased in over the next 3 years, the majority of the regulations are now effective. A focus on competency-based training and evaluation for clinical staff and an improvement in behavioral health skills are a few of the areas that have been addressed. The new ROP are the most sweeping changes to regulations since 1991, and nursing facilities must focus not only on the required changes to policies and procedures, but also the daily implementation of quality care and services that produces positive outcomes for the residents.

By understanding the current citation trends, nursing facilities, medical directors, and advisors can proactively monitor their facility's performance. Facility-driven quality initiatives and programs such as QAPI assist facilities in self-identifying concerns and implementing action plans to improve ongoing care delivery. Changing resident needs and regulatory requirements, and increasing resident acuity are some of the challenges for nursing facilities and their leaders. The focus must remain on the daily delivery of quality

care for each nursing home resident across the county. With that goal in mind, the citations will also be reduced. 

This column is not to be substituted for legal advice. Ms. Feldkamp practices in various aspects of health care, including LTC survey and certification, physician and nurse practice, managed care and nursing related issues, and fraud and abuse. She is affiliated with Benesch Friedlander Coplan & Aronoff LLP of Columbus, OH.

Diabetes, Stroke Linked to *C. difficile*

Jim Kling

LAS VEGAS — Diabetes and stroke are risk factors for recurrent *Clostridium difficile* infection (CDI), with stroke patients at about 10 times the risk of recurrence.

The underlying cause for the association is a mystery, but one-sided paralysis is one possibility. "A lot of stroke patients may be hemiplegic, and they may be bedridden, so that may be a risk factor by itself. It's something that may need to be studied in the future," Alan Putrus, MD, a gastroenterology fellow at St. John Providence Hospital, Detroit, said in an interview.

Dr. Putrus presented the study at a poster session at the annual meeting of the American College of Gastroenterology.


Researchers conducted a study of 108 initial CDIs and 113 recurrences at two urban and one suburban hospital. Patients who experienced recurrence were matched 1:1 to age- and gender-matched controls with no recurrent CDI.

CDI recurrence rates were 16.5% and 15.9% in the two urban hospitals, and 14.9% in the suburban hospital.

Logistic regression revealed risk factors associated with CDI recurrence, including diabetes, stroke, exposure to proton pump inhibitors in the past 3 months, and admission to an intensive care unit in the past 3 months.

The results suggest that diabetes and especially stroke may be important risk factors for CDI recurrence, and their presence should prompt physicians to alter patient care accordingly.

He stressed the importance of antibiotic stewardship. "Once you find a certain bug or pathogen, try to deescalate the antibiotics as soon as you can. If a patient is diabetic, controlling their blood sugar may also help," Dr. Putrus said.

Finally, physicians should consider whether PPIs are really necessary. "A lot of patients just have some discomfort in their abdomen, and they never stop taking it. They keep refilling it. So that's a problem," said Dr. Putrus. 

Jim Kling is with Frontline Medical News.

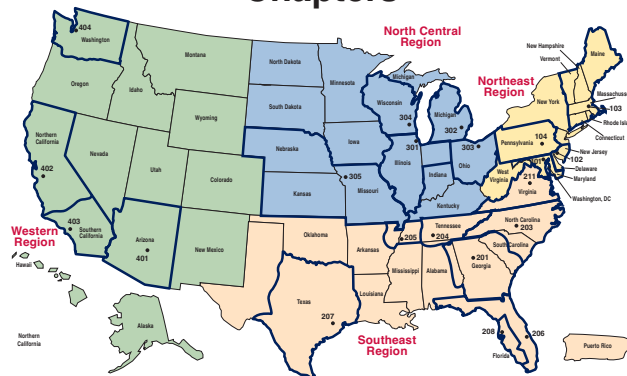
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