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Back to the Future

September 22, 2021


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Survey Enforcement on the Rise

- Centers for Medicare & Medicaid Services (CMS) and state survey agencies (SSAs) under increasing public pressure to hold nursing homes accountable
- New legislation passed in many states, more pending in states and Congress
 - Minimum staffing
 - Mandatory visitation
 - Heightened penalties
 - Increased transparency




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Return to the Basics

- Nursing 101
- Physician/practitioner visits and documentation
- Care plans and care plan meetings
- Grievances/resident council
- Pharmacy/med errors



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Infection Prevention & Control (F880)

- Mandatory penalties for violations of F880 including:
 - Civil money penalties (CMPs) even for scope and severity of D
 - Increasing penalties for repeat citations
 - Directed plans of correction that must be sent directly to field office
 - Separate from the plan of correction for the 2567
 - Discretionary denial of payment for new admissions with effective date provided only in the letter from DOH
 - Not related to the 90-day DPNA

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Strategize Now For Today and Tomorrow

- Lingering effects of COVID-19
 - Weakness → increased fall risks
 - Decreased appetite → expected weight loss
 - Fatigue → choice to stay in bed
 - "Pressure ulcers" or "skin failure"
 - IV fluids for "dehydration" or "to maintain hydration"
 - Activities of daily living (ADLs): dressing, showers
 - Documentation and care planning is crucial

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Review Your Policies and Procedures

- Have they been updated?
 - Generic or facility-specific?
 - Iterations consistent with changing guidance
 - Signatures
- Copies available for surveyors upon entrance
- Accessibility to staff
- Don't forget Facility Assessment and COVID-19 Plan

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Strategic Survey Responses

- Include disclaimer language
- Think of your audience
 - SSA
 - Public
 - Attorneys
- Think of your risks
 - Less is best

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Minimize Risk of Per Day CMPs

- Document immediate plans of correction following incidents
 - Assess resident(s) involved in the incident
 - Remove alleged perpetrator pending investigation
 - Report to all applicable agencies & law enforcement
 - Assess and protect other residents
 - Educate staff and volunteers (if applicable), ensuring they will not work with residents until they have been educated
 - Abuse/neglect discussions and documentation
 - Need to follow care plans
 - Implement corrective measures
 - Monitor and audit

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Plans of Correction: Required Elements

- Corrective action(s) for residents affected by the deficient practice
- Identification of other residents having the potential to be affected by the same deficient practice and corrective actions
- Measures put in place or system changes to ensure that the deficient practice does not recur
- Monitoring of corrective action to ensure the deficient practice will not recur
- Corrective action dates

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Informal Dispute Resolution (IDR) Considerations

- Is the statement of deficiencies (2567) accurate?
- Is the SSA wrong?
- Is there a risk of future litigation?
 - Civil/malpractice
 - State or federal investigations
 - Civil
 - Criminal

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False Claims Act (FCA) Litigation

- Attorney General Merrick Garland reinstates ability of Department of Justice (DOJ) to “rely on relevant guidance documents in any appropriate and lawful circumstances”
 - <https://www.justice.gov/opa/page/file/1408606/download>
- What does this mean for you?

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Staffing Challenges

- Balancing staffing and census
- Counting staff and proper documentation
- Mandating vaccines

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COVID-19 Considerations

- March 12, 2021: Occupational Safety and Health Administration's (OSHA) issues National Emphasis Program (NEP) - COVID-19
 - Focused specifically on reducing or eliminating workers' exposure to COVID-19 and ensuring that employees are protected from retaliation
 - <https://www.osha.gov/enforcement/directives/dir-2021-01cpl-03>
- OSHA issues "Occupational Exposure to COVID-19 Emergency Temporary Standard" (ETS) on June 21, 2021 (86 Fed. Reg 32376) finding GRAVE DANGER

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Ever-changing Guidances

- Can you limit visitation?
- Can you require visitors to be vaccinated?
- Balancing the risks and competing guidance

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Moving Forward

- Engage your staff
- Use your compliance committee
- There is no such thing as a stupid question

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Enhanced Enforcement F880				
Scope & Severity	No Infection Control Deficiencies in Past Year	Infection Control Deficiencies Cited Once In Past Year	Infection Control Deficiencies Cited Twice or More In Past Two Years	Cited for Current Non-Compliance with Infection Control Deficiencies Regardless of Past History
D/E Not wide-spread potential for harm	<ul style="list-style-type: none"> Directed Plan of Correction 	<ul style="list-style-type: none"> Directed Plan of Correction DDPNA* with 45-days to demonstrate compliance Per Instance CMP up to \$5000 (at State/CHS discretion) 	<ul style="list-style-type: none"> Directed Plan of Correction DDPNA, 30-days to demonstrate compliance with Infection Control deficiencies \$15,000 Per Instance CMP (or per day CMP, as long as the total amount exceeds \$15,000) 	
F Widespread	<ul style="list-style-type: none"> Directed Plan of Correction DDPNA with 45-days to demonstrate compliance 	<ul style="list-style-type: none"> Directed Plan of Correction DDPNA with 45-days to demonstrate compliance \$10,000 Per Instance CMP 	<ul style="list-style-type: none"> Directed Plan of Correction DDPNA, 30-days to demonstrate compliance \$20,000 Per Instance CMP (or per day CMP, as long as the total amount exceeds \$20,000) 	

*DDPNA: Discretionary Denial of Payment for New Admission; QSO-30-31-46; (June 1, 2020)

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CHM Harm				<ul style="list-style-type: none"> Directed Plan of Correction DDPNA with 30 days to demonstrate compliance CMP imposed at highest amount option in the CMP analytic tool
JK/L				<ul style="list-style-type: none"> Mandatory remedies of Temporary Manager or Termination Directed Plan of Correction DDPNA, 15-days to demonstrate compliance CMP imposed at highest amount option in the CMP analytic tool

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My Contact Information

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