

# OHCA Nursing Core of Knowledge

Tammy Cassidy RN, BSN, LNHA, RAC-MT  
Regulatory Director, OHCA

## Overview



- ▶ Advance Directives
- ▶ Ohio DNR Requirements
- ▶ HIPAA
- ▶ Abuse & Neglect
- ▶ Other Regulatory Issues

# Medicare Compare: New Opportunities

▶ Medicare.gov/care-compare/



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# HIPAA Issues

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## What is HIPAA?

- ▶ HIPAA
  - ▶ Health Insurance Portability and Accountability Act of 1996 (Amended and revised)
  - ▶ HITECH Amendments added fines, penalties and new requirements
  - ▶ Newest amendments January 17, 2013
    - ▶ Final rule effective March 23, 2013
    - ▶ Compliance required: September 23, 2013
    - ▶ Enforcement by Office of Civil Rights (OCR)
  - ▶ None of the HIPAA requirements are new



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## Who is covered?



- ▶ HIPAA Privacy Rule covers health plans and health care providers that transmit any information in electronic form
- ▶ That covers the vast majority of health care providers and insurers in the country
- ▶ Includes “business associates”
- ▶ Each provider is responsible for its employees, agents, etc.

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## The HIPAA Privacy Rule

- ▶ The Rule requires appropriate safeguards to protect the privacy of personal health information, and sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization.
- ▶ Each adult has the right to designate how that protected health information is utilized **with some exceptions**.



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## The HIPAA Security Rule

- ▶ Establishes national standards to protect individuals' electronic personal health information that is created, received, used, or maintained by a covered entity.
- ▶ Security addresses electronic access and protection.
  - ▶ Who is making sure that your servers are secure??



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## The HIPAA Security Rule



- ▶ The Security Rule requires appropriate administrative, physical and technical safeguards to ensure the confidentiality, integrity, and security of electronic protected health information.
  - ▶ IT and server requirements
  - ▶ Encrypted emails
  - ▶ Texting???
  - ▶ Are you using an encrypted texting program such as Tiger Text?
  - ▶ Texting to physicians is not secure even if both parties are on iPhones!
    - ▶ That is a myth
  - ▶ Texting should be handled in a secure program that has both
    - Parties with the same program on each phone
    - If not, it most likely is not encrypted and can be hacked

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## Office of Civil Rights Guidance

- ▶ Released guidance July 2016
- ▶ Ransomware and HIPAA
  - ▶ Breach is presumed
  - ▶ Reporting is required if a breach
- ▶ Prevent: Conduct risk analysis and address any increased risk areas

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# PHI

## ▶ Protected Health Information:

- ▶ Individually identifiable health information
- ▶ Such as name, social security number, diagnoses, telephone number, the fact that the person is a resident
- ▶ Anything that can identify the resident and/or health conditions
- ▶ Very broad inclusion

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## HIPAA: The Individual Rights

- ▶ Right to notice of privacy practice concerning PHI
- ▶ Right to access PHI
- ▶ Right to amend PHI (within policies of provider)
- ▶ Right to an accounting of disclosures of PHI
- ▶ Right to request restrictions on use or disclosure
- ▶ Right to receive confidential communications
- ▶ Right to not have intimidating or retaliatory acts about PHI and requests.

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## Privacy and Confidentiality

- ▶ Resident information must be kept confidential
- ▶ That concept is not new because of HIPAA
- ▶ Always required to keep information confidential
- ▶ HIPAA forced additional policies
- ▶ PHI: protected health information



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## Business Associates

- ▶ Facilities: business associate agreement with all vendors that handle PHI
  - ▶ Examples:
    - ▶ Medical supply company
    - ▶ Oxygen company
    - ▶ Lab company
    - ▶ Many others
  - ▶ Most recent amendments require new BA agreements and require BAs to be held to same standards
  - ▶ Need new Business Associate Agreements: have the BAs been recently updated?



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## Who Enforces HIPAA?

- ▶ State Attorney Generals enforce state laws
- ▶ Office for Civil Rights at US Department of Health and Human Services enforces on the national level
- ▶ [www.hhs.gov/ocr](http://www.hhs.gov/ocr)
- ▶ Detailed information about health privacy



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## Loss of Information

- ▶ Information can be lost
  - ▶ Paper
  - ▶ Electronic such as stolen laptop (without encryption)
- ▶ Notify your administrator immediately
- ▶ Facilities must have policies and procedures regarding “breach” notification and investigation

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## Minimum Necessary Standard

“must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose” of the disclosure.



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## Social Media

- ▶ Facilities should have a policy about social media
- ▶ Violation of HIPAA rights
  - ▶ Pictures
  - ▶ Discussions about work and resident information
    - ▶ Even tangential
  - ▶ Board of Nursing ramifications
    - ▶ Fall 2018
    - ▶ OAC 4723-4-06(Q): This is an OBN rule which provides that, for purposes of OBN rules OAC 4723-4-06(I), (J), (K), (L), and (M), a nurse shall not use social media, texting, emailing, or other forms of communication with, or about a patient, for non-health care purposes or for purposes other than fulfilling the nurse's assigned job responsibilities.



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## Problematic Situations

- ▶ Picture posted on Facebook that includes any residents
- ▶ Texting, tweeting, blogging about any resident or information related to the resident
- ▶ Unauthorized release of psychiatric information

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## Other Guidance

- ▶ S&C 16-33-NH: August 5, 2016
  - ▶ Protecting Resident Privacy
    - ▶ <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-16-33.pdf>
    - ▶ Abuse related to posting on social media
    - ▶ Taking a very strong stand regarding this type of abuse/neglect
- ▶ Policies and procedures must be enforced related to social media and phones/photos



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- ▶ CMS agrees that abuse enabled through the use of technology would include the use of social media, as well as the use of cameras or the Internet.



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## Confidentiality

- ▶ Facility policies are in place to meet requirements and to protect residents' privacy
- ▶ Follow the policies
  - ▶ Only access information when it is necessary
  - ▶ Only release information when it is approved for release

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## Confidentiality

- ▶ Confidentiality is a constant and ongoing challenge
- ▶ People tend to “chat” in inappropriate places
- ▶ Social media issues
- ▶ All information must be kept on a “need to know” basis: example chart reading
- ▶ Have you ever overheard information at the grocery store or viewed something on Facebook?

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## Avoiding HIPAA Problems

### HIPAA Compliance Program

- ▶ Privacy officer
- ▶ Policies and procedures
- ▶ Training
- ▶ Good monitoring
- ▶ Breach investigations and reporting

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## Avoiding HIPAA Problems

- ▶ Investigation Response Plan
  - ▶ Immediately involve Executive Director
  - ▶ Be friendly and responsive
  - ▶ Appropriate access to records and personnel
  - ▶ Express interest in correction

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## Inappropriate Access to Information

- ▶ PHI should be secured
  - ▶ Records should be covered on the med cart
  - ▶ Items not left lying around at the nurses' station or in the resident's rooms
  - ▶ Not used as scrap paper and write other information on the same paper as PHI
  - ▶ Computer access restricted
  - ▶ Minimum necessary use



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## Example

- ▶ St. Louis hospital system: physician lost laptop with nursing home resident information (2,600 residents)



## Handling HIPAA Breaches

- ▶ Detailed analysis of facts to determine breach
- ▶ Required OCR notification in certain instances
- ▶ Investigation: thorough
- ▶ Notification of individual and others
- ▶ Reach out for assistance: not simple and not an everyday occurrence

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## Breach Fine

- ▶ OCR reached a settlement regarding claims against a business associate
- ▶ Manager for nursing homes
- ▶ Smart phone issued, PHI of 400 individuals, lost and was not encrypted or password protected
- ▶ \$650,000 settlement



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## Civil Penalties

Currently, the CMPs that may be imposed by CMS during a survey fit into three categories:

Category 1	→ No CMPs
Category 2	→ <b>Per Day CMPs.</b> \$50 to \$3,000 a day, adjusted annually for inflation. Currently \$129 to \$7,752
	→ <b>Per Instance CMPs.</b> \$1,000 to \$10,000 a day, adjusted annually for inflation. Currently \$2,586 to \$25,847
Category 3	→ <b>Per Day CMPs.</b> \$3,050 to \$10,000 a day, adjusted annually for inflation. Currently \$7,844 to \$25,847
	→ <b>Per Instance CMPs.</b> \$1,000 to \$10,000 a day, adjusted annually for inflation. Currently \$2,3,989 to \$25,847 <sup>[ii]</sup>

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## Criminal Penalties

- ▶ Criminal to knowingly obtain or disclose “individually identifiable health information” in violation of HIPAA’s privacy provisions.
  - ▶ Violator may be fined up to \$50,000, imprisoned for up to one year, or both.
  - ▶ If violation is committed under false pretenses, the person may be fined up to \$100,000, imprisoned for up to 5 years, or both.



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## Advance Directives



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## Advance Directives

- ▶ Living Will
- ▶ Durable Power of Attorney for Health Care (DPOA-HC)
- ▶ Do Not Resuscitate (DNR) Comfort Care
- ▶ State specific requirements
- ▶ Ohio may go to POLST in the future
- ▶ <http://my.clevelandclinic.org/patients-visitors/legal-ethical-decisions/personal-medical-decisions/advance-directives>

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## Life Sustaining Treatment

- ▶ Ohio statute and rules
  - ▶ Ohio Revised Code 2133
  - ▶ DNR OAC 3701-62
- ▶ Any medical procedure, treatment, intervention or other measure that serves principally to prolong the process of dying



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## Terminal Condition

- ▶ An **irreversible, incurable and untreatable** condition caused by disease, illness or injury from which, to a reasonable degree of medical certainty, death is likely to occur within a relatively short time if life-sustaining treatment is not administered

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## Permanently Unconscious State

- ▶ A state of permanent unconsciousness which is characterized by:
  - ▶ the patient being irreversibly unaware of himself or his environment; **and**
  - ▶ total loss of cerebral cortical functioning, resulting in the patient having no capacity to experience pain or suffering.

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## Comfort Care

- ▶ Nutrition administered to diminish pain or discomfort, but not to postpone death
- ▶ Hydration administered to diminish pain or discomfort, but not to postpone death
- ▶ Any other medical or nursing procedure, treatment, intervention, etc. taken to diminish the pain or discomfort, but not to postpone death
- ▶ Comfort care must always be delivered

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## Living Will and DPOA-HC

- ▶ Forms available to complete
- ▶ Both may authorize the withholding or withdrawing of nutrition and hydration from a terminal person or in a permanently unconscious state if specifically authorized
- ▶ Comfort care must always be provided
- ▶ Must be notarized or witnessed by two adults



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## DPOA-HC

- ▶ Springing Power of Attorney
- ▶ Provides the authority to make health care decisions to an attorney-in-fact when the declarant no longer can make informed health care decisions
- ▶ Does not become operative until the attending physician documents that the person can no longer make informed health care decisions (Springing Power of Attorney)

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## Withholding or Withdrawing Life Sustaining Treatment

- ▶ Physician must document in the medical record the decision and the basis for the decision
- ▶ Physician must make a good faith effort to notify one of the next-of-kin priority: guardian, spouse, adult children or majority of adult children, parents or adult siblings

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## Objection Period

- ▶ If a notified person objects to the planned treatment, they must notify the attending physician within 48 hours; and
- ▶ File a complaint in the probate court within 2 additional business days
- ▶ The court will hold a hearing



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- ▶ Priority authority for health care decisions:
  - ▶ Guardian, spouse, adult child or majority of adult children, parents, adult sibling or majority of adult siblings, or nearest adult related to the patient by blood or adoption who is available in a reasonable period of time
- ▶ Responsible party or Resident Representative in the long term care setting

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## Regulations

- ▶ DNR Regulations: Found at
  - ▶ Ohio Administrative Code 3701-62-01 to 3701-62-14
- ▶ Regulations provide the protocols regarding implementation of DNR orders



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## CPR-Definition

Cardiopulmonary resuscitation or component of cardiopulmonary resuscitation

Chest compressions

Artificial airway

Defibrillation/cardioversion

Provision of intravenous line

Initiation of cardiac monitoring

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## Cardiac Arrest- Definition

- ▶ The absence of a palpable pulse

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## DNR Order

- ▶ A directive issued by a practitioner that identifies a person and specifies that CPR should not be administered
- ▶ The rules do not specify what is required to be included in a DNR order or if it must be written or can be verbal
- ▶ DNR order requirements are to be defined by facility policies



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## DNR Order

- ▶ A directive issued by a:
  - ▶ Physician
  - ▶ Certified nurse practitioner
  - ▶ Clinical nurse specialist
- ▶ Withholds CPR



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## Immunity for Health Care Providers

- ▶ Immunity from criminal, civil and professional liability by following the DNR protocol
- ▶ Patient can revoke the DNR Comfort Care status at any time

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## Immunity Provisions

- ▶ Immunity applies to health care facilities and administrators, employees, contractors and volunteers
- ▶ Immunity also applies if CPR is provided to a person with DNR identification if the person makes an oral or written request for CPR

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## Verification of DNR Identification

- ▶ EMS and ER workers are not required to search a patient to see if they have a DNR identification when the patient is in cardiopulmonary arrest
- ▶ Calling EMS with a DNR order: discussion

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## Transfer with a DNR Order

- ▶ Person can be transferred to another facility with a DNR order: **Must use the correct form**
- ▶ EMS personnel will honor the DNR Comfort Care protocol with official documentation

**DNR ORDER FORM**

**DNR COMFORT CARE**

A printed copy of this order form is valid out of state. EMS documentation must accompany the patient during transport and transfer between facilities.

Patient Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

Signature of Physician: \_\_\_\_\_ Date: \_\_\_\_\_

Physician License #: \_\_\_\_\_

Signature of EMS: \_\_\_\_\_

Signature of EMS: \_\_\_\_\_

Signature of EMS: \_\_\_\_\_

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## DNR Protocol

- ▶ DNR Comfort Care
- ▶ DNR Comfort Care-Arrest
- ▶ Difference is when the protocol is activated



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## DNR Comfort Care-Arrest Protocol

- ▶ DNR protocol is activated in the event of:
  - ▶ cardiac arrest; or
  - ▶ respiratory arrest.



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## Performed Even with a DNR Order

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>▶ First aid for illness or injury not related to cardiopulmonary arrest</li> <li>▶ Suction airway</li> <li>▶ Administer oxygen, <u>CPAP, BIPAP</u></li> <li>▶ Position for comfort</li> <li>▶ Splint or immobilize</li> <li>▶ Control bleeding</li> <li>▶ <u>IV for hydration or pain meds</u></li> </ul> | <ul style="list-style-type: none"> <li>▶ Provide pain meds</li> <li>▶ Provide emotional support</li> <li>▶ Contact other appropriate health care providers, such as hospice, home health or attending physician</li> </ul> |
|--|--|

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## Not Performed if a DNR

- ▶ Administer chest compressions
- ▶ Insert artificial airway
- ▶ Defibrillate or cardiovert
- ▶ Administer resuscitative drugs
- ▶ Provider respiratory assistance
- ▶ Initiate resuscitative intravenous line
- ▶ Initiate cardiac monitoring



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## Documentation

- ▶ EMS or health care personnel who implement the DNR protocol should document:
  - ▶ In accordance with the facility's policies
  - ▶ Item that identified the person as DNR Comfort Care
  - ▶ The method of identifying the person's identity
  - ▶ Whether the person was a DNR Comfort Care or DNR Comfort Care-Arrest
  - ▶ The actions taken to implement the DNR protocol

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## Current DNR Order

- ▶ DNR order current for a person in a health care facility as determined by the facility policy
- ▶ The policy should be specific regarding the currency of the DNR order

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## DNR Comfort Care Identification Form



Use of form in records



Includes the signature and name of the physician



Identifies the person and can include an optional signature



Includes information regarding what will be provided and what will be withheld

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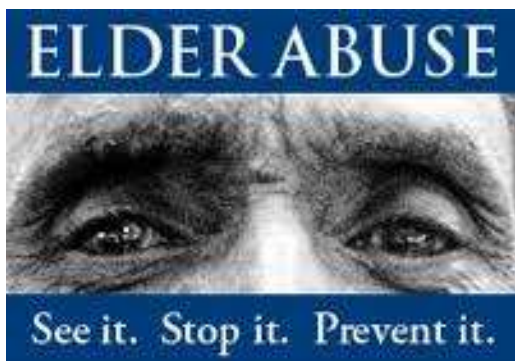
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## Relationship of DNR Orders

- ▶ Relationship of DNR orders to other advance directives
- ▶ DNR based on living will and DPOA-HC, DNR identification supersedes DPOA-HC if any conflict
- ▶ DPOA-HC supersedes DNR based on order that is inconsistent with DPOA-HC

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## Abuse & Neglect

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## Duty to Report

- ▶ No licensed health professional who knows or suspects that a resident has been abused or neglected or that a resident's property has been misappropriated by an individual used by a facility shall fail to report that suspicion or knowledge to ODH (paraphrased)
- ▶ ORC 3721.22

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## Abuse: F540 definitions

- ▶ Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

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## Neglect: F540 definitions

- ▶ Neglect is the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

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## Misappropriation: F540 definitions

- ▶ Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.

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## F600 Freedom from Abuse, Neglect & Exploitation

- ▶ The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.
- ▶ **INTENT:** Each resident has the right to be free from abuse, neglect and corporal punishment of any type by anyone.

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## F606, F609 and F610

- ▶ 42 CFR 483.12(a)(3)-(4), F606 - Not Employ/Engage Staff with Adverse Actions
- ▶ 42 CFR 483.12(c)(1), (4), F609 - Reporting of Alleged Violations
- ▶ 42 CFR 483.12(c)(2) -(4), F610 - Alleged Violations- Investigate/Prevent/Correct
- ▶ Do not employ staff that don't meet criminal background check requirements
- ▶ Prompt and thorough investigation
- ▶ Timely reporting

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## F607 Policy development

- ▶ 42 CFR 483.12(b)(1)-(4), F607 - Develop/Implement Abuse/Neglect, etc. Policies
- ▶ Must develop and operationalize policies and procedures for screening and training employees, protection of residents and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and misappropriation of property.

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## Injuries of unknown source



- ▶ Now at F540 definitions
- ▶ Both must apply:
- ▶ Source not observed or explained by resident; and
- ▶ Suspicious because of the extent of or the number of injuries observed at one particular point in time or the incidence of injuries over time.

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## Notification of ODH

- ▶ Review F608: Reporting Reasonable Suspicion of a Crime
- ▶ *Ensure the reporting of suspected crimes, within mandated timeframes (i.e., immediately but not later than two hours if the suspected crime resulted in serious bodily injury, within 24 hours for all other cases) Abuse allegations within 2 hours*
- ▶ Abuse, neglect, misappropriation, exploitation
- ▶ Final report within 5 days
- ▶ Use of on-line reporting
- ▶ Requirement to thoroughly investigate

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## Elder Justice Provisions

- ▶ Substantial penalties
  - ▶ Fines
    - ▶ \$200,000 if not reported in required timeframes
    - ▶ \$300,000 if failure to report exacerbates the harm to the victim or result in further harm
    - ▶ HHS to take into consideration financial burden on providers in underserved areas
  - ▶ Exclusion
    - ▶ Exclusion from Medicare/Medicaid participation for individuals for 2 years

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## Notification of law enforcement

- ▶ Elder Justice Act requirement
  - ▶ Within 2 hours with serious injury or death
  - ▶ Within 24 hours-others
- ▶ Allegation triggers requirement
- ▶ “Reasonable suspicion”

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## F604: Physical & Chemical Restraints

- ▶ The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident’s medical symptoms.
- ▶ 42 CFR 483.12

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## Physical Restraint Definition

Physical restraint is defined as any manual method, physical or mechanical device, equipment, or material that meets all of the following criteria:

Is attached or adjacent to the resident's body;

Cannot be removed easily by the resident; and

Restricts the resident's freedom of movement or normal access to his/her body.

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## Chemical Restraint Definition



- ▶ F605
- ▶ “Chemical Restraints” as any drug that is used for discipline or convenience and not required to treat medical symptoms.

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## Restraints in Emergency Situations

- ▶ May be used for brief periods if unanticipated violent or aggressive behavior place him/her or others in imminent danger

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- ▶ Using side rails that keep a resident from voluntarily getting out of bed;
- ▶ Tucking in or using velcro to hold a sheet, fabric, or clothing tightly so that a resident's movement is restricted;
- ▶ Using devices in conjunction with a chair, such as trays, tables, bars or belts, that the resident can not remove easily, that prevent the resident from rising

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## Examples of Restraints

Placing a resident in a chair that prevents a resident from rising; and

Placing a chair or bed so close to a wall that the wall prevents the resident from rising out of the chair or voluntarily getting out of bed.

Side rails sometimes restrain residents. Must treat a medical symptom

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## F603 Involuntary Seclusion/Secured Units

- ▶ Considerations if a secured unit restricts resident freedom of movement throughout the home:
  - ▶ (i) The home has made the determination to place each resident in such unit
  - ▶ (ii) Care and services are provided in accordance with each resident's individual needs and preferences;
  - ▶ (iii) The need for the resident to remain in the locked unit is reviewed during each periodic assessment required by paragraph (F) of rule 3701-17-10
  - ▶ (iv) The locked unit meets the requirements of the state building and fire codes;

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## Spotting Elder Abuse: National Institute on Aging

- ▶ <https://www.nia.nih.gov/health/elder-abuse/elder-abuse#:~:text=An%20older%20person%20might%20be,%2C%20burns%2C%20cuts%2C%20or%20scars>



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## Immediate Jeopardy Trends Related to Abuse & Neglect

- ▶ Abuse and neglect
- ▶ Falls, accident hazards, accident supervision
- ▶ Elopements
- ▶ Side rail entrapment and restraint issues
- ▶ Choking/aspiration
- ▶ Failure to perform CPR

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# Frequent IJ Topics



- ▶ Abuse
- ▶ Accident Hazards: Falls, Oxygen (fire), failure to prevent a fall due to lack of staff and failure to timely evaluate
- ▶ Emergency treatment after fall
- ▶ Notification of Changes
- ▶ Dialysis: AV fistula
- ▶ Drug Regimen Review:
  - ▶ Coumadin
  - ▶ Emergency Preparedness
  - ▶ Elopement
  - ▶ CPR
  - ▶ Safe Temperatures
  - ▶ Miscellaneous



# Other Regulatory Issues

## Recent Calls

- ▶ COVID
- ▶ Safety when taking residents out of the buildings
  - ▶ Impaired family members
  - ▶ Family behaviors including alcohol, smoking and/or drugs
- ▶ Smoking concerns
- ▶ Difficult families - visitation, covert cameras
- ▶ Swallowing, choking and non-compliance with diets
- ▶ Media posts

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## Cedar Lake Nursing Home

- ▶ Departmental Appeals Board (DAB) Decision No CR1967;
- ▶ Previous elopement attempts; Upheld IJ under Accident Hazards and monetary fine
- ▶ Resident found by visitor walking on shoulder of road by the highway
- ▶ Door alarms did not sound because new alarms were being installed and the alarms were turned off
- ▶ Failed to take reasonable steps to prevent elopement
- ▶ Installation of new alarm was foreseeable concern
- ▶ DAB stated that no alarm system is fail proof or a substitute for adequate supervision
- ▶ No one monitored her location per her care plan; Care plan with “constant observation”

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## Mission Oaks Manor

- ▶ DAB CR2102 April 2010
- ▶ Restrained residents in gerichairs with pelvic restraints
  - ▶ Resident turned over chairs and sustained multiple injuries
  - ▶ One death
- ▶ IJ with fines

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## Pines Nursing Home

- ▶ DAB: Departmental Appeals Board
- ▶ IJ and fines for 20 days IJ and lower fines for 20 days = \$\$\$\$\$
- ▶ Resident with rapidly deteriorating leg
  - ▶ Facility failed to appropriately consult
  - ▶ Failed to follow ER physician's recommendations
  - ▶ Inaccurate information provided to physician

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## Office of Inspector General

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## OIG Enforcement Action

- ▶ OIG and state enforcement actions with press releases almost daily
  - ▶ <http://oig.hhs.gov/fraud/enforcement/criminal/>
- ▶ Increasing criminal actions
- ▶ Increasing civil actions
- ▶ Fraud elimination: a focused goal

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## OIG Most Wanted Health Care Fugitives

- ▶ Pictures for 59 fugitives; Multiple fugitives captured
- ▶ More than 170 fugitives wanted on charges
- ▶ [www.oig.hhs.gov/fraud/fugitives](http://www.oig.hhs.gov/fraud/fugitives)
- ▶ Medicare Fraud Strike Force

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## OIG Enforcement Action



- ▶ Georgia nursing home operator sentenced to 20 years in prison for Tax Fraud and “Worthless Services” billing under Medicare and Medicaid
- ▶ Diverting funding for personal use and not using funds for care of residents

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## OIG Work Plans

- ▶ <https://oig.hhs.gov/reports-and-publications/workplan/active-item-table.asp>

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## OIG Work Plans of Note

- ▶ Audit of selected states' nursing home minimum spending requirements related resident care
- ▶ Skilled nursing facilities' financial responsibility for Medicare Part D enrollees' drugs in Part A stays
- ▶ Assessment of the Special Focus Facility program for nursing homes
- ▶ Medicare Advantage Organizations' use of prior authorization for post-acute care
- ▶ Assessing the accuracy of nursing home falls reporting in MDS assessments
- ▶ Audit of nursing homes' nurse staffing hours reported in CMS's Payroll-Based Journal
- ▶ Audit of nursing homes' emergency power systems

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## License Renewal: Ohio

Type of License or Certificate	Renewal Cycle
RN	Odd numbered years - July 1-October 31
APRN	Odd numbered years - July 1-October 31
LPN	Even numbered years - July 1-October 31
CHWs	Odd numbered years - January 1-March 31
DTs	Odd numbered years - January 1-March 31
Medication Aides	Even numbered years - February 1-April 30



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## OBN Website

- <http://www.nursing.ohio.gov>
- Rules & statutes
- Licensure verification
- Publications & newsletters
- Advanced practice information
- Continuing education
- Nurse compact state – January 1, 2023



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**NURSING FACILITY SCOPE AND SEVERITY GRID**  
 Department of Health Services / Division of Quality Assurance / Bureau of Nursing Home Resident Care  
 P-20265 (07/2023)

**SHADED AREAS = SUBSTANDARD QUALITY OF CARE** for select regulations pertaining to federally-certified nursing facilities (NFs) and skilled nursing facilities (SNFs). Resident Rights (F600, F606, F609, F611, F616, F634), Pharmacy Services (F757, F759), Behavioral Health Services (F742-F745), Infection Control (F802), Administration (F850), and all regulations under Freedom from Abuse, Neglect, and Exploitation (F800-F810), Quality of Life (F817-F830), and Quality of Care (F834-F837) which constitute either immediate jeopardy to resident health or safety, a pattern of or widespread actual harm that is not immediate jeopardy, or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm. (Note: "CMP" = Civil Money Penalty.)

SEVERITY	SCOPE		
	ISOLATED: One or a very limited number of residents affected, and/or one or a very limited number of staff involved, and/or the situation occurred only occasionally or in a very limited number of locations	PATTERN: More than a limited number of residents affected, and/or more than a limited number of staff involved, and/or the situation occurred in several locations	WIDESPREAD: Situation was pervasive throughout the facility or represented a systemic failure that affected or had the potential to affect a large portion or all of the facility's residents
<b>(4) Immediate jeopardy to resident health, safety, or welfare</b> Deficient practice caused or created a reasonable expectation of causing serious harm, serious injury, serious impairment, or death; immediate corrective action is needed to prevent serious harm from occurring or reoccurring.	<b>J</b> <b>REQUIRED</b> Temporary manager 23-day termination CMP \$7,317 - \$23,989 per day or \$2,400 - \$23,989 per instance <b>OPTIONAL</b> Denial of payment for new admits Directed plan of correction Directed in-service State monitor	<b>K</b> <b>REQUIRED</b> Temporary manager 23-day termination CMP \$7,317 - \$23,989 per day or \$2,400 - \$23,989 per instance <b>OPTIONAL</b> Denial of payment for new admits Directed plan of correction Directed in-service State monitor	<b>L</b> <b>REQUIRED</b> Temporary manager 23-day Termination CMP \$7,317 - \$23,989 per day or \$2,400 - \$23,989 per instance <b>OPTIONAL</b> Denial of payment for new admits Directed plan of correction Directed in-service State monitor
<b>(3) Actual harm that is not immediate jeopardy</b> Deficient practice led to a negative outcome that has compromised the resident's ability to maintain and/or reach higher level practicable physical, mental, and/or psychosocial well-being.	<b>G</b> <b>REQUIRED</b> CMP \$7,317 - \$23,989 per day or \$2,400 - \$23,989 per instance Denial of payment for new admits Temporary manager Termination <b>OPTIONAL</b> Directed plan of correction Directed in-service State monitor	<b>H</b> <b>REQUIRED</b> CMP \$7,317 - \$23,989 per day or \$2,400 - \$23,989 per instance Denial of payment for new admits Temporary manager Termination <b>OPTIONAL</b> Directed plan of correction Directed in-service State monitor	<b>I</b> <b>REQUIRED</b> CMP \$7,317 - \$23,989 per day or \$2,400 - \$23,989 per instance Denial of payment for new admits Temporary manager Termination <b>OPTIONAL</b> Directed plan of correction Directed in-service State monitor
<b>(2) No actual harm with potential for more than minimal harm that is not immediate jeopardy</b> Deficient practice has led to minimal physical, mental, and/or psychosocial discomfort to resident and/or a yet unresolved potential for compromising resident's ability to maintain and/or reach higher level practicable level of physical, mental, and/or psychosocial well-being.	<b>D</b> <b>REQUIRED</b> Directed plan of correction Directed in-service State monitor <b>OPTIONAL</b> CMP \$120 - \$7,195 per day or \$2,400 - \$23,989 per instance Denial of payment for new admits Temporary manager Termination	<b>E</b> <b>REQUIRED</b> Directed plan of correction Directed in-service State monitor <b>OPTIONAL</b> CMP \$120 - \$7,195 per day or \$2,400 - \$23,989 per instance Denial of payment for new admits Temporary manager Termination	<b>F</b> <b>REQUIRED</b> CMP \$120 - \$7,195 per day or \$2,400 - \$23,989 per instance (mandatory if SACS, otherwise optional) Denial of payment for new admits Temporary manager Termination <b>OPTIONAL</b> Directed plan of correction Directed in-service State monitor
<b>(1) No actual harm with potential for no more than minimal harm</b> Deficient practice has the potential for causing no more than minor negative impact on residents.	<b>A</b> <b>SUBSTANTIAL COMPLIANCE</b>	<b>B</b> <b>SUBSTANTIAL COMPLIANCE</b> Plan of correction	<b>C</b> <b>SUBSTANTIAL COMPLIANCE</b> Plan of correction

**Federal Regulatory Groups for Long Term Care**

\* **Substandard Quality of Care = one or more deficiencies with s/s levels of F, H, I, J, K, or L in Red**  
**\*\* Tag to be cited by Federal Surveyors Only**

405.10	Definitions	485.12	Freedom from Abuse, Neglect, and Exploitation	485.24	Quality of Life
F600	Resident Rights	F600	Free from Abuse and Neglect	F676	*Quality of Life
F602	*Resident Right/Exercise of Rights	F602	*Free from Misrepresentation/Exploitation	F676	*Activities of Daily Living (ADLs)/ Maintain Abilities
F603	Rights Exercised by Representative	F603	*Free from Involuntary Seclusion	F677	*ADI Care Provided for Dependent Residents
F604	Right to be Informed/Make Treatment Decisions	F604	*Right to be Free from Physical Restraints	F678	*Lung/Pulmonary Rehabilitation (LPH)
F605	Right to Participate in Planning Care	F605	*Right to be Free from Chemical Restraints	F679	*Activities Most Interest/Needs of Each Resident
F606	Resident Self-Admin. Meds-Clinically Appropriate	F606	*Risk Employ/Engage Staff with Adverse Actions	F680	*Qualifications of Activity Professional
F607	Right to Choose/Be Informed of Attending Physician	F607	*Complicity/Incentive Abuse/Neglect, etc. Policies	485.25	Quality of Care
F608	Respect, Dignity/Right to Have Personal Property	F608	*Resolution of Alleged Violations	F684	Quality of Care
F609	*Reasonable Accommodations of Needs/Preferences	F609	*Investigate/Prevent/Correct Alleged Violations	F685	*Treatment/Decisions to Maintain Hearing/Vision
F610	*Choose/Be Notified of Room/Roommate Change	F610		F686	*Treatment/Steps to Prevent/Heal Pressure Ulcers
F611	Right to Refuse Certain Transfers	485.15	Admission, Transfer, and Discharge	F687	*Foot Care
F612	*Self Determination	F620	Admissions Policy	F688	*Increase/Prevent Decrease in ROM/Mobility
F613	Immediate Access to Resident	F621	Equal Practices Regardless of Payment Source	F689	*Free of Accident Hazards/Superstition/Deceit
F614	Right to Receive Guest Visitors	F622	Inappropriate Discharges	F690	*Bowel/Bladder Incontinence, Catheter, UTI
F615	Inform of Violation Rights/Equal Violation Privileges	F623	Discharge Process	F691	*Cosmetics, Unions, or Dressing Care
F616	*Resident/Family Group and Response	F624		F692	*Nutrition/Hydration Status Maintenance
F617	Right to Perform Facility Services or Refuse	F625		F693	*Tube Feeding Management/Restore Eating Skills
F618	Protection/Management of Personal Funds	F626		F694	*Parenteral/IV Fluids
F619	Accounting and Records of Personal Funds	485.20	Resident Assessments	F695	*Respiratory/Tracheostomy Care and Suctioning
F620	Notice and Conveyance of Personal Funds	F635	Admission Physician Orders for Immediate Care	F696	*Seizures
F621	Safety Bond - Security of Personal Funds	F636	Comprehensive Assessments & Tuning	F697	*Fall Management
F622	Limitations on Charges to Personal Funds	F637	Comprehensive Assess After Significant Change	F698	*Diagnosis
F623	Notice of Rights and Rules	F638	Quarterly Assessment At Least Every 3 Months	F699	*Trauma Informed Care
F624	Right to Access/Purchase Copies of Records	F639	Maintain 15 Months of Resident Assessments	F700	*Bedrails
F625	Required Notices and Contact Information	F640	Encoding/Transmitting Resident Assessment	403.30	Physician Services
F626	Required Postings	F641	Accuracy of Assessments	F710	Resident's Care Supervised by a Physician
F627	Right to Form of Communication with Privacy	F642	Combination of PALSAR and Assessments	F711	Physician Visits- Review Care/Notes/Order
F628	Right to Survey Results/Advocate Agency Info	F643	Physician Processes for MD & LP	F712	Physician Visits Frequency/Time/Location/Alternate Settings
F629	Respect/Refuse/Discontinue Treatment/Formulate Adv Dis	F644	MD/NO Significant Change Notification	F713	Physician for Emergency Care, Available 24 Hours
F630	Posting/Notice of Medicare/Medicaid on Admission	485.21	Comprehensive Resident-Centered Care Plan	F714	Physician Delegation of Tasks to NPP
F631	Notify of Changes (Injury/Decline/Room, Etc.)	F655	Baseline Care Plan	F715	Physician Delegation to Dietitian/Therapist
F632	Medicaid/Medicare Coverage/Liability Notice	F656	Develop/Implement Comprehensive Care Plan	403.33	Nursing Services
F633	Personal Privacy/Confidentiality of Records	F657	Care Plan Tuning and Revision	F725	Sufficient Nursing Staff
F634	*Safe/Clean/Comfortable/Nonhazardous Environment	F658	Care Plan Tuning and Revision	F726	Competent Nursing Staff
F635	Respite	F659	Ensure Personnel Meet Professional Standards	F727	RN & RNT/24hr/USC, Full Time DON
F636	Resident Contact with External Entities	F659	Qualified Persons	F728	Facility Hiring and Use of Nurse
				F729	Nurse Aide Registry Verification, Retraining
				F730	Nurse Aide Perform Review - 12hr/Year In-service
				F731	Waiver-Licensed Nurses 24hr/Day and RN Coverage
				F732	Posted Nurse Staffing Information

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<b>463.40 Behavioral Health</b>	F740 Behavioral Health Services	F811 Feeding Assit -Training/Supervision/Resident	<b>463.50 Physical Environment</b>
F741 Sufficient/Competent Staff-Behav Health Needs	F812 Personal Food Policy	F906 Emergency Electrical Power System	F907 Space and Equipment
F742 <b>*Treatment/Plan for Mental/Psychosocial Concerns</b>	F814 Dispose Garbage & Refuse Properly	F908 Essential Equipment, Safe Operating Conditions	F909 Resident Bed
F743 <b>*No Pattern of Behavioral Difficulties Unless Unavoidable</b>	<b>463.55 Specialized Rehabilitative Services</b>	F910 Resident Room	F911 Bed/Bunk Number of Residents
F744 <b>*Treatment/Services for Dementia</b>	F925 Provide/Obtain Specialized Rehab Services	F912 Bed/Bunk Measure at Least 30 Square Ft./Resident	F913 Bedrooms Have Direct Access to Exit Corridor
F745 <b>*Provision of Medically Related Social Services</b>	F926 Rehab Services, Physician Order/Qualified Person	F914 Bedrooms Assure Full Visual Privacy	F915 Resident Room Window
<b>463.43 Pharmacy Services</b>	<b>463.70 Administration</b>	F916 Resident Room Floor Access Drain	F917 Resident Room Bed/Furniture/Closet
F753 Pharmacy Servs/Procedures/Pharmacist/ Records	F933 Administration	F918 Bedrooms Equipped/Hear Lavatory/Toilet	F919 Resident Call System
F756 Drug Regimen Review, Report Irregular, Act On	F936 License/Comply w/Fed/State/Local Law/Prof Std	F920 Requirements for Dining and Activity Rooms	F921 Safe/Functional/Assistive/ Comfortable Environment
F757 <b>*Drug Regimen is Free From Unnecessary Drugs</b>	F937 Licensing Body	F922 Procedures to Ensure Water Availability	F923 Ventilation
F759 <b>*Free of Medication Error Rate not 0% to More</b>	F938 Staff Qualifications	F924 Corridors Have firmly Secured Handrails	F925 Scavengers Effective Pest Control Program
F760 <b>*Residents Are Free of Significant Med Errors</b>	F940 Use of Outside Resources	F926 Smoking Policies	<b>463.95 Training Requirements</b>
F761 Label/Store Drugs & Biologicals	F941 Responsibilities of Medical Director	<b>463.95 Training Requirements</b>	F930 Training Requirements - General
<b>463.50 Laboratory, Radiology, and Other Diagnostic Services</b>	F942 Resident Records - Identifiable Information	F931 Communication Training	F932 Resident's Rights Training
F770 Laboratory Services	F943 Transfer Agreement	F933 Abuse, Neglect, and Exploitation Training	F934 CAPT Training
F771 Blood Bank and Transfusion Services	F944 Disclosure of Ownership Requirements	F935 Infection Control Training	F936 Compliance and Ethics Training
F772 Lab Services Not Provided On-Site	F945 Facility closure-Administrator	F937 Required In-Service Training for Nurse Aides	F938 Training for Feeding Assistants
F773 Lab Serv Physician Order/Notify of Results	F946 Facility closure	F939 Behavioral Health Training	
F774 Assist with Transport Arrangements to Lab Svcs	F947 Enter into Binding Arbitration Agreements		
F775 Lab Reports in Record-Lab Name/Address	F948 Select Arbitrator/Arbitration Agreements		
F776 Radiology/Other Diagnostic Services	F949 Hospice Services		
F777 Radiology/Diag. Svcs Orders/Notify Results	F950 <b>*Qualifications of Social Worker -L20 Beds</b>		
F778 Assist with Transport Arrangements to Radiology	F951 Payroll Based Journal		
F779 X-Ray/Diagnostic Report in Record Sign/Dated	<b>463.71 Facility Assessment</b>		
<b>463.55 Dental Services</b>	F954 Facility Assessment		
F780 Routine/Emergency Dental services on S/M/Fs	<b>463.75 Quality Assurance and Performance Improvement</b>		
F781 Routine/Emergency Dental services in Pops	F959 QAPI Program/Plan, Disclosure/Good Faith Attempt		
<b>463.60 Food and Nutrition Services</b>	F967 QAPI/QAA Improvement Activities		
F800 Provided Diet Meets Needs of Each Resident	<b>463.80 Infection Control</b>		
F801 Sufficient Dietary Staff	F968 Infection Prevention & Control		
F802 Sufficient Dietary Support Personnel	F981 Antibiotic Stewardship Program		
F803 Menus Meet Res. Needs/Prep in Advance/Followed	F982 Infection Preventionist Qualifications/Role		
F804 Nutritive Value/Appeal, Palatable/Prefer Temp	F983 <b>*Influenza and Pneumococcal Immunizations</b>		
F805 Food in Form to Meet Individual Needs	F987 COVID-19 Immunization		
F806 Resident Allergies, Preferences and Substitutes			
F807 Drinks Avail to Meet Needs/P referencess/ Hydration			
F808 Therapeutic Diet Prescribed by Physician			
F809 Frequency of Meals/Snacks at Bedtime	<b>463.85 Compliance and Ethics Program</b>		
F810 Assistive Devices - Eating Equipment/Utensils	F985 Compliance and Ethics Program		

# Caring for Our Seniors



# Questions



Tammy Cassidy  
tcassidy@ohca.org  
(513) 646-1668