

Regulatory Landmines And How To Avoid Them

Paula G. Sanders

Principal and Chair
Health Care Practice Group
Post & Schell, P.C.

PACAH Spring Conference 2023
April 17, 2023

Today's Objectives

- Critically evaluate risks and benefits of using arbitration agreements
- Explore new regulatory expectations surrounding residents' problematic behaviors
- Prepare for the staged implementation of PA regulations for facility assessments and transparency
- This is *not* a comprehensive review of the new federal and state regulations



First Major DOH Regulatory Update Since 1999: Staggered Implementation Schedule

Effective Date	Regulatory Provisions	Citation to New Regulations
February 1, 2023	Change of ownership (CHOW) or new facility (SNF)—Must provide NOTICE to residents, staff and LTC Ombudsman	201.12a(a) and (c)(1)-(3)
July 1, 2023	2.87 minimum nurse staffing hours per patient day (PPD)	211.12(i)(1)
July 1, 2023	All regulations except those relating to CHOWs/licensure of new SNFs; license renewal requirements for audited annual financial statements	
October 31, 2023	CHOW/new SNF requirements; licensure renewal process	201.12, 201.12b, 201.13c(b) and (c), 201.12a(c)(4) and (d)
July 1, 2024	3.2 minimum nurse staffing PPD	211.12(f.1)(3) and (i)(2)

ENTRANCE CONFERENCE WORKSHEET

INFORMATION NEEDED FROM THE FACILITY IMMEDIATELY UPON ENTRANCE

- 15. *Does the facility offer arbitration agreements? If so, please provide a sample copy.*
- 16. *Has the facility asked any residents or their representatives to enter into a binding arbitration agreement?*
- 17. *Name of the staff responsible for the binding arbitration agreements.*

- 48. *Provide a list of residents who entered into a binding arbitration agreement on or after 9/16/2019.*
- 49. *Provide a list of residents who resolved disputes through arbitration on or after 9/16/2019.*

Arbitration Agreement Guidance F847 & F848

- Explain agreement to resident and representative in a form, manner and language they understand
- Resident and representative must acknowledge they understand the agreement
 - Clarify when a signature is used to acknowledge understanding, when it indicates consent to enter into an agreement, or is used for both purposes.
 - Train staff to determine what a resident's health care decision making capacity is at the time the arbitration agreement is offered, explained and entered into and to document the same in the resident's medical record.
- Agreement must explicitly state neither resident nor representative is required to sign agreement as a condition of admission to, or as a requirement to continue to receive care at the facility
- Agreement may not contain any language that prohibits or discourages resident or anyone else from communicating with federal, state, or local officials, including but not limited to, federal and state surveyors, other federal or state health department employees, and representative of the Office of the State Long-Term Care Ombudsman
- Must explicitly grant resident or representative the right to rescind agreement within 30 calendar days of signing it

New Guidance on Abuse and Neglect

Freedom From Abuse, Neglect, and Exploitation §483.12

- F600
- F604
- F607
- F608 (deleted and moved)
- F609

Psychosocial Severity Outcome Guide

- <https://www.cms.gov/files/document/psychosocial-outcome-severity-guide.pdf>

F609 Reporting Timetable

	42 CFR 483.12(b)(5) and Section 1150B of the Act (“EJA”)	42 CFR 483.12(c)
WHAT IS TO BE REPORTED?	Any reasonable suspicion of a crime against a resident or an individual receiving care from the facility	<ol style="list-style-type: none"> 1) All alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property 2) The results of all investigations of alleged violations
WHO IS REQUIRED TO REPORT?	Any covered individual, which means the owner, report operator, employee, manager, agent or contractor of the facility	The facility
TO WHOM?	State Survey Agency (SA) and one or more law enforcement entities for the political subdivision in which the facility is located (i.e., the full range of potential responders to elder abuse, neglect, and exploitation including police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroner	The facility administrator and to other officials in accordance with State law, including to the SA and the adult protective services where state law provides for jurisdiction in long-term care facilities
WHEN?	<p>Serious bodily injury Immediately but not later than 2 hours* after forming the suspicion</p> <p>No serious bodily injury- not later than 24 hours*</p> <p>* - Reporting requirements under this regulation are based on real (clock) time, not business hours</p>	<p>All alleged violations:</p> <ol style="list-style-type: none"> 1) Immediately but not later than 2 hours*- if the alleged violation involves abuse or results in serious bodily injury 2) Not later than 24 hours*- if the alleged violation involves neglect, exploitation, mistreatment, or misappropriation of resident property; and does not result in serious bodily injury <p>Results of all investigations of alleged violations- within 5 working days of the incident</p>

F600: Past Noncompliance

- Surveyors instructed that prior to citing a deficiency as past-noncompliance, they should investigate each instance thoroughly to determine if the facility took all the appropriate actions to correct the noncompliance, and determine the date on which the facility had returned to substantial compliance

Criteria of Past Non-Compliance

1. The facility was not in compliance with the specific regulatory requirement(s) at the time the situation occurred



2. The noncompliance occurred after the exit date of the last standard (recertification) survey and before the survey (standard, complaint, or revisit) currently being conducted



3. There is *sufficient evidence* that the facility corrected the noncompliance and is in substantial compliance at the time of the current survey for the specific regulatory requirement(s)

F600: Expected Corrective Measures

- Protect residents from additional abuse immediately
 - Assess the victim and remove the alleged perpetrator
- Take steps to prevent further potential abuse [F600/F610]
- Report *alleged violation* and investigate within required timeframes [F609]
- Conduct a thorough investigation of the alleged violation [F610]
- Take appropriate corrective action [F610]
- Revise resident's care plan if the resident's needs change [F656]

New Focus on Neglect

- Cumulative effect of different individual failures in the provision of care and services by staff leads to an environment that promotes neglect
- Occurs when facility is aware of, *or should have been aware of*, goods or services that a resident requires but facility fails to provide them, resulting in, *or may result in*, physical harm, pain, mental anguish, or emotional distress
 - Failure to implement an effective communication system across all shifts for communicating necessary care and information between staff, practitioners, and resident representatives

Psychosocial Outcome Severity Guide

- “Reasonable person” concept
 - What degree of actual or potential harm would one expect a reasonable person in the resident’s similar situation to suffer as a result of the noncompliance?
- Considerations
 - Resident may consider facility to be their “home,” where there is an expectation that he/she is safe, has privacy, and will be treated with respect and dignity
 - Resident trusts and relies on facility staff to meet his/her needs
 - Resident may be frail and vulnerable

Psychosocial Harm May Not Be Readily Apparent

- Resident unable to express self due to medical condition and/or cognitive impairment
- Not able to recall what has occurred
- May not express outward signs of physical harm, pain, or mental anguish
- Psychosocial harm may be established when no negative outcomes are apparent or documented by considering the response as a reasonable person in the resident's position would exhibit in light of the triggering event

Immediate Jeopardy for Psychosocial Harm

- Sexual assault (e.g., rape)
- Unwanted sexual touching
- Sexual harassment
- Any staff to resident physical, sexual, or mental/verbal abuse
[NOTE: Sexual abuse does not include rare situation where an employee has a pre-existing and consensual sexual relationship with an individual (i.e., spouse or partner) who is then admitted to facility unless there are concerns about the relationship not being consensual]
- Staff posting or sharing demeaning or humiliating photographs or videos of resident(s)
- When staff, as punishment, threaten to take away resident's rights, privileges, or preferred activities, or withhold care from the resident
- Any resident-to-resident physical abuse that is likely to result in fear or anxiety

IJ For Psychosocial Harm/Sexual Abuse

- R1 in R2's bedroom holding R2, whose clothes had been partially removed and her breasts were exposed; R2 severely cognitively impaired
- R1 had a known history of sexually inappropriate behaviors, but no evidence that facility had assessed and revised his care plan to identify potential risks to other residents related to his behaviors
- No evidence that Resident 2 could consent to sexual activity with other residents
- R2's daughter interviewed and described her shock about the incident and how her mother would have been upset
- *"Because this type of inappropriate, unwanted sexual contact would reasonably cause anyone to have psychosocial harm, it can be determined that the reasonable person in the resident's position would have experienced severe psychosocial harm- dehumanization, and humiliation- as a result of the sexual abuse"*

IJ For Psychosocial Harm/Physical Abuse

- R1 required 1:1 supervision due to physical aggression, was observed to have escalating behaviors, resulting in striking out at staff and residents in the vicinity
- Staff failed to ensure that residents in the vicinity were safe, and R1 pushed R2 who was walking to her room while unsupervised by staff, as described by housekeeping staff who witnessed the incident
- R2 fell to the floor with a resulting fracture to her arm that required treatment at the hospital, placement of a cast, and was in moderate pain due to the fracture
- *"Even though there was no significant decline in mental or physical functioning, it can be determined that the reasonable person would have experienced severe psychosocial harm as a result of the physical abuse, since a reasonable person would not expect to be injured in this manner in his/her own home or a health care facility"*

IJ For Psychosocial Harm/Deprivation of Care

- Facility deprived residents of care related to failure of staff to respond timely to residents' requests and treat residents with dignity and respect which resulted in ongoing embarrassment, humiliation, and the failure to provide incontinence care as needed to meet the needs of several residents
- Family and resident group interviewed and complained that residents often waited a long time (up to an hour) before staff took them to the bathroom, resulting in residents urinating in their beds and lying in urine for long periods of time
- Residents indicated that this is a problem, especially on the night shift and said they were told by nurse aides to just urinate on their beds and staff would change the sheets in the morning
- Two night-shift staff members confirmed that they had seen other staff disconnect call lights in residents' rooms so that they were not functioning
- *"After investigation, it was determined that the nursing home failed to provide the necessary care. [NOTE: In this example, the surveyor had already identified noncompliance at dignity (F550) and urinary incontinence (F690)] It can be determined that the reasonable person in the residents' position would have experienced severe psychosocial harm (e.g., embarrassment, humiliation) as a result of the abuse."*

IJ for Psychosocial Harm/Moving Call Bell

- Facility deprived R1 of care by failing to provide access for communication and response to R1's requests for necessary care resulting in R1's ongoing fear and anxiety
- During survey, surveyor observed that R1's call light was pinned to a privacy curtain that was out of reach of R1
- R1 said that staff removes the call light at night because nursing staff said he used it too much and they did not have time to answer the light all the time
- R1 began crying and expressed fear that something would happen and he would have no way of getting assistance as staff would not come if he called out for help
- *"Based on the resident's behavior, it can be determined that the resident experienced severe psychosocial harm as a result of the deprivation of care."*

Psychosocial Harm: Actual Harm

- Facility failed to protect R2 from physical abuse when R1 slapped R2 in the face
- Based on resident and staff interviews, R1 had previously exhibited an aggressive tone towards other residents
- Based on interview with the nurse aide, R2 was talking loudly to R1 in the hallway. R1 shouted profanity to R2, followed by: "If you say one more word, you're going to be sorry."
- Nurse aide was only staff present in the area and was transferring another resident; could not intervene and did not call for assistance from other staff
- R2 continued to talk loudly and R1 then reached out, slapped R2 on the left side of his face, and backed his wheelchair away from R2 Based on the assessment of Resident 2, his left cheek exhibited some redness in the area that was slapped, but there were no other physical injuries
- Surveyor interviewed R1 who was able to recall the incident and said, "He [R2] just won't stop talking...I don't know what came over me."
- R2 was moderately cognitively impaired and could not recall the incident
- Surveyor interviewed R2's son, who said that his father would have been mad after an incident like this
- *Therefore, by using the reasonable person concept, the survey team would conclude that Resident 2 would have experienced psychosocial harm (e.g. anger directed at the action or at a person) as a result of the physical abuse since there is an expectation that the resident would not be slapped in the face in the facility.*

Risks of Behaviors and Substance Abuse Issues

- Admitting residents with behavioral conditions: protections
- Admitting residents with substance use disorder (“SUD”) and/or opioid use disorder (“OUD”)
 - US Attorney sends letter 9/26/2022 to all Massachusetts SNFs warning that failing to admit person with OUD may violate the Americans with Disabilities Act (“ADA”)
 - 10 settlements, CMPs can start at \$92,383 for first violation
 - “evaluate each applicant individually to determine suitability for admission, rather than enacting a blanket policy denying admissions to all persons treated with MOUD” [<https://www.justice.gov/usao-ma/pr/us-attorneys-office-warns-skilled-nursing-facilities-not-refuse-treatment-people-opioid>]

PA MOUD Investigations



February 21, 2023

Office of Attorney General
Civil Rights Enforcement Section
14th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Phone: 717-787-0822

- Refusing to accept resident prescribed Suboxone to treat opioid use disorder violates:
 - Americans with Disabilities Act (ADA)
 - Pennsylvania Human Relations Act (PHRA)
 - Pennsylvania Unfair Trade Practices and Consumer Protection Law



Time to Prepare for New PA DOH Regs

ENTRANCE CONFERENCE WORKSHEET

8. Conduct a brief Entrance Conference with the Administrator. *Ask the Administrator to make the Medical Director aware that the survey team is conducting a survey. Offer an opportunity to the Medical Director to provide feedback to the survey team during the survey period if needed.*
9. Information regarding full time DON coverage (verbal confirmation is acceptable).
22. List of key personnel, location, and phone numbers. Note contract staff (e.g., rehab services). Also include the staff responsible for notifying all residents, representatives, and families of confirmed or suspected COVID-19 cases in the facility. *Include staff responsible for water management. Include the Medical Director.*
26. *Name of the facility's infection preventionist (IP). Documentation of the IP's primary professional training and evidence of completion of specialized training in infection prevention and control.*
28. Admission packet.
40. QAA committee information (name of contact, names of members and frequency of meetings).
44. Facility assessment.

Surveyors Want To Know

- PROCEDURES §483.70(d): Request the names and contact information of the *members of the governing body* at the Entrance Conference
 - If there are concerns, conduct an interview with the Administrator (NHA) and if possible with one or more members of the governing body **or** designated person(s) functioning as the governing body

Additional PA NHA Requirements 201.18

- Must be licensed and registered in PA and work full-time
- NHA's anticipated biweekly work schedule must be posted and updated within 24 hours of a change
- Update job responsibilities to include:
 - Ensuring that a sanitary, orderly and comfortable environment is provided for residents through satisfactory housekeeping in the facility and maintenance of the building and grounds
 - Maintaining an ongoing relationship with the governing body, medical and nursing staff and other professional and supervisory staff through meetings and reports, *occurring as often as necessary, but at least on a monthly basis*

Surveyor Guidance For Governing Body

- Determine process and frequency the administrator (NHA) reports to the governing body [*New DOH regs require monthly communication*]
 - Method of communication between the NHA and governing body
 - How does the governing body respond back to the NHA
 - What specific types of problems and information (i.e., survey results, allegations of abuse or neglect, complaints, etc.) are reported or not reported directly to governing body
- How is NHA held accountable and what information is reported about facility's management and operation
 - Audits, budgets, staffing, supplies, etc.
- How are NHA and governing body involved with the facility wide assessment

Quarterly Facility Assessments 201.14(j)

- Must be completed quarterly and more frequently as necessary and must meet the requirements of 483.70(e) [F838]
- Purpose: determine what resources are necessary to care for residents competently during both day-to-day operations and emergencies
- Must be facility-based (not corporate) and community-based

Who Should Be Involved In Reviewing?

- NHA
- Representative from governing body
- Medical Director
- DON
- Environmental operations manager, and other department heads (for example, dietary manager, director of rehabilitation services, or other individuals including direct care staff should be involved as needed)
- Consider: Resident/Family Council; residents, resident representatives or families

F865 QAPI Program And Oversight

- Verify that governing body has oversight of the QAPI program
 - Individuals such as facility owner(s), Chief Executive Officer(s), or other individuals who are legally responsible to establish and implement policies regarding the facility's management and operations

F868 QAPI Committee

- Must include
 - Director of Nursing
 - Medical Director/designee
 - At least three other members of the facility's staff, at least one of who must be the administrator, owner, a board member or other individual in a leadership role
 - Infection Preventionist ("IP")
 - IP, or at least one of the individuals if there is more than one IP, must be a member of the quality assessment and assurance committee and report to the committee on the IPCP on a regular basis
 - "Regular basis": reporting should occur at the same frequency as the QAA committee meetings
- Must meet at least quarterly
- Must report to governing body

Interdisciplinary Team (IDT) 201.3/483.21

- Attending physician
- Registered nurse with responsibility for the resident
- Nurse aide with responsibility for the resident
- Member of food and nutrition services staff
- Resident and resident's representative(s)
 - Must document in medical record if participation of the resident and their resident representative is determined not practicable for the development of resident's care plan
- Other appropriate staff or professionals in disciplines as determined resident's needs or as requested by resident

QAPI/Facility Assessment/ Compliance & Ethics Program

- Each informs the other to some extent
- Consider reviewing facility assessment at quarterly QAPI meetings
 - Standing agenda items
 - Annual agenda items

Create Checklist For Personnel Records 201.19

(1) Employee's job description, educational background and employment history.

(2) Employee performance evaluations, including documentation of any monitoring, performance, or disciplinary action

(3) Documentation of credentials, including, at a minimum, current certification, registration or licensure, if applicable

(4) A determination by a health care practitioner that the employee, as of the employee's start date, is free from the communicable diseases or conditions

(5) Records relating to a medical exam, if required, or attestation that the employee is able to perform the employee's job duties

(6) Documentation of employee's orientation to the SNF facility and the employee's assigned position prior to or within 1 week of employee's start date

(7) Documentation of employee's completion of required trainings, including documentation of orientation and other trainings.

(8) A copy of the final report received from the Pennsylvania State Police and the Federal Bureau of Investigation, as applicable, in accordance with the Older Adults Protective Services Act, the Adult Protective Services Act and applicable regulations

(9) In the event of a conviction prior to or following employment, documentation that the facility determined the employee's suitability for initial or continued employment in the position to which the employee is assigned. "Suitability for employment" shall include a review of the offense; the length of time since the individual's conviction; the length of time since incarceration, if any; evidence of rehabilitation; work history; and the employee's job duties

(10) The employee's completed employment application

New Staff Training Requirements 201.20

- Ongoing coordinated educational program planned and conducted for the development and improvement of skills of SNF's personnel, including, at a minimum, annual in-service training on the topics outlined in 42 CFR 483.95 in addition to the following topics:
 - Accident prevention
 - Restorative nursing techniques
 - Emergency preparedness
 - Fire and safety
 - Resident Rights, including nondiscrimination and cultural competency
 - Training needs identified through a facility assessment
- Employee orientation must include
 - Orientation to SNF
 - Orientation to SNF's policies
 - Orientation to employee's position and duties.
- Orientation training must include training on:
 - Prevention, detection and reporting of resident abuse
 - Dementia management
 - Communication skills

Update Admissions Agreements 201.24

- Replace “responsible person” with “Resident Representative”
 - An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications
 - A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications
 - Legal representative, as used in section 712 of the Older Americans Act
 - Court-appointed guardian or conservator of a resident.
 - 483.5

Revise Admission Policies And Procedures 201.24

- *Governing body* must establish written policies for admissions process, and *through the NHA*, shall be responsible for the development of and adherence to procedures implementing the policies. Policies and procedures must include all the following, with social worker responsible to:
 - Introduce residents to at least one member of the professional nursing staff for unit where resident will be living and to direct care staff who have been assigned to care for the resident. Prior to introductions, the professional nursing and direct care staff shall review the orders of the physician or other health care practitioner for the resident's immediate care **within 2 hours**
 - Orient resident to the SNF and location of essential services and key personnel, including the dining room, nurses' workstations and offices for the social worker and grievance or complaint officer **within 2 hours**
 - Describe SNF routines (including nursing shifts, mealtimes, posting of menus) **within 24 hours**
 - Discuss and document resident's customary routines and preferences to be included in the comprehensive care plan **within 24 hours**
 - Assist resident in creating a homelike environment and settling and securing personal possessions in the room to which the resident has been assigned **within 72 hours**

Resident Rights Expanded 201.29

- Must include residents or a resident representative in the development, implementation and review of policies and procedures regarding the rights and responsibilities of residents
- Must obtain and file resident's written acknowledgement they received personal notification of resident's rights in medical record
- Experimental research redefined to include development, testing and use of a clinical treatment, such as an investigational drug or therapy that has not yet been approved by US Food and Drug Administration or medical community as effective and conforming to medical practice

Must submit to DOH Institutional Review Board (IRB)

Revise Resident Rights' Notices

- A resident has the right to care without discrimination based upon race, color, familial status, religious creed, ancestry, age, sex, gender, sexual orientation, gender identity or expression, national origin, ability to pay, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the resident or because the resident is a handler or trainer of support or guide animals

How Much Notice of Changes Is Required?

483.10(g)(18)(ii)

- (ii) Where changes are made to charges for other items and services that the facility offers, the facility must inform the resident in writing **at least 60 days prior** to implementation of the change

201.29 (c.3)(1)

- In addition to the resident rights set forth in 42 CFR 483.10, residents have a right to the following:
 - (1) If changes in charges occur during the resident's stay, the resident, or resident representative, shall be advised verbally and in writing reasonably in advance of the change. "Reasonably in advance" shall be interpreted to be **30 days prior** to the change unless circumstances dictate otherwise

Update Medical Director Contract: New Duties 211.2

Must complete 4 hours annually of continuing medical education (CME) pertinent to the field of medical direction or post-acute and long-term care medicine

NEW RESPONSIBILITIES

- Ensuring the appropriateness and quality of medical care and medically related care
- Assisting in the development of educational programs for facility staff and other professionals
- Working with the facility's clinical team to provide surveillance and develop policies to prevent the potential infection of residents in accordance with the infection control requirement under 42 CFR 483.80 (relating to infection control)
- Cooperating with facility staff to establish policies for assuring that the rights of individuals are respected
- Supporting and promoting person-directed care such as the formation of advance directives, end-of-life care, and provisions that enhance resident decision making, including choice regarding medical care options
- Identifying performance expectations and facilitating feedback to physicians and other health care practitioners regarding their performance and practices
- Discussing and intervening, as appropriate, with a health care practitioner regarding medical care that is inconsistent with current standards of care
- Assisting in developing systems to monitor the performance of health care practitioners, including mechanisms for communicating and resolving issues related to medical care and ensuring that other licensed practitioners who may perform physician-delegated tasks act within their scope of practice

Verbal And Telephone Orders 211.3

- Verbal and telephone orders for care and treatment must be dated and countersigned with the original signature of the physician, or physician's delegee within 72 hours of receipt of the order
- Verbal and telephone orders for medications must be dated and countersigned by the prescribing physician, or physician's delegee within 48 hours
- An initial written order as well as a countersignature may be sent by a fax or secure electronic transmission which includes the practitioner's signature
- Must have a policy on fax or secure electronic transmissions



Restraints 211.8

- Must have an order and use least restrictive method for least amount of time to safely and adequately respond to individual resident needs in accordance with resident's comprehensive assessment and comprehensive care plan
 - When a recurring restraint is ordered, document the need for the restraint and the *personnel responsible* for performing the intervention *on each shift*
 - Document type of restraint and *each time* a restraint is used or removed
 - In determining the least restrictive method for the least amount of time, the following minimums apply
 - ▶ Physical restraints shall be removed at least 10 minutes out of every 2 hours during normal waking hours to allow resident an opportunity to move and exercise
 - ▶ During normal waking hours, resident's position shall be changed at least every 2 hours

Pharmacy Services 211.9

- Must have orders from attending physician or physician's delegee for prescription and non-prescription medications
- Written policies & procedures for disposition of meds must address:
 - Timely and safe identification and removal of meds for disposition
 - Identification of storage methods for medications awaiting final disposition
 - Control and accountability of medications awaiting final disposition consistent with standards of practice
 - Documentation of actual disposition of medications to include the name of the individual disposing of the medication, the name of the resident, the name of the medication, the strength of the medication, the prescription number if applicable, the quantity of medication and the date of disposition
 - A method of disposition to prevent diversion or accidental exposure consistent with applicable Federal and State requirements, local ordinances and standards of practice

Emergency Medical Kits 211.9(I)

- Must have written policies and procedures for the use, content, storage, *security*, refill of and *inventory tracking* for the kits
- Quantity and categories of medications and equipment in the kits must be based on the immediate needs of the facility
- Criteria for the contents of the emergency medication kit shall be reviewed not less than annually
- Kits shall be under the control of a practitioner authorized to dispense or prescribe medications
- No longer required to have a breakaway lock

Resident Care Policies 211.10

- Policies must reflect awareness of and provision for meeting resident's total medical, *nursing*, *mental* and psychosocial needs
- Review annually and update
- Refer to federal requirements

211.12 Nursing Services

- Full-time RN as DON (referencing 483.35(b)(2))
 - Cannot be DON anywhere else
- Must have charge nurse who is responsible for overseeing total nursing activities on each tour of duty each day of the week
- Must have nursing service personnel on each resident floor

LPN Charge Nurses?

- New limitation – An LPN can only be designated as a charge nurse on the night tour of duty in a SNF with a census of 59 or less in accordance with 211.12 (which requires an RN who is on call and within 30 minutes driving distance)
 - *Note DOH more restrictive than ROP/SOM which defines "Charge Nurse" as a "licensed nurse" with specific responsibilities designated by the facility that may include staff supervision, emergency coordinator, physician liaison, as well as direct resident care*
- REVIEW current positions: Cannot use LPNs as charge nurses unless you meet shift, census and distance requirements

What Is Full-Time?

- F727: “Full-time” is working 40 or more hours a week
- 201.3: Full-time – A minimum of a 35-hour work week
- NHA, DON, qualified social worker

Nurse Staffing And PPDs

Eff. Date	Day Shift	Evening Shift	Overnight	All Shifts
7/1/2023	1 aide/12 residents 1 LPN/25 residents Charge Nurse	1 aide/12 residents 1 LPN/30 residents Charge Nurse	1 aide/20 residents 1 LPN/40 residents Charge Nurse Note: may substitute an LPN for an RN only if census is <59 and RN is on-call and within 30-minute drive	1 RN/250 residents Note: may substitute an LPN or RN for an aide, or an RN for an LPN
7/1/2023	2.87 PPD direct resident care over 24-hour period			
7/1/2024	1 aide/10 residents	1 aide/11 residents	1 aide/15 residents	
7/1/2024	3.2 PPD direct resident care over 24-hour period			

Social Services 211.16

- Must employ a full-time qualified social worker except
 - SNFs with 26-59 beds may employ a part-time qualified social worker if facility assessment indicates that a full-time qualified social worker is not needed
 - SNF with 25 beds or less may either employ a part-time qualified social worker or share the services of a qualified social worker with another facility

Next Steps

- Update policies and procedures
- Review required postings
- Review and modify facility assessment
- Review and update contracts
- Review job descriptions
- Review training programs
- QAPI

Questions?

Paula G. Sanders

Principal & Chair
Health Care Practice Group
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601

717-612-6027

psanders@postschell.com