



PHCA  
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## Proving Corrected Past Noncompliance To Reduce Risk

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### What is Past Noncompliance?

- Past noncompliance generally means having sufficient evidence to show that you self-reported and corrected a deficient practice before the survey
- Past noncompliance is best supported by an effective and well documented internal plan of correction (POC)

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What you say  
can and will  
be held  
against you!



What you don't  
say can and will  
be held against  
you!



## Why is Past Noncompliance Important?

- Best practice is to correct alleged deficient practices as soon as they are discovered.
- Per day civil money penalties (CMPs) may run from the date of an incident until the date of correction, but . . .
  - Past non-compliance deficiencies are typically assessed a *per instance* CMP; there is no need to do another POC; and scope and severity point values are scored at much lower values with a potentially more positive impact on 5-Star ratings.

"Revision of Civil Money Penalty ("CMP") Policies and CMP Analytic Tool (Rev: S&C 17 37 NH)(July 2017)  
<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-37.pdf>



## Federal Scope and Severity Grid

	Isolated	Pattern	Widespread
<b>Immediate Jeopardy To Resident Health Or Safety</b>	PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2 <b>J</b>	PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2 <b>K</b>	PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2 <b>L</b>
<b>Actual Harm That Is Not Immediate Jeopardy</b>	PoC Required: Cat. 2 Optional: Cat. 1 <b>G</b>	PoC Required: Cat. 2 Optional: Cat. 1 <b>H</b>	PoC Required: Cat. 2 Optional: Cat. 1 Optional: Temporary Mgmt <b>I</b>
<b>No Actual Harm With Potential For More Than Minimal Harm That Is Not Immediate Jeopardy</b>	PoC Required: Cat. 1 Optional: Cat. 2 <b>D</b>	PoC Required: Cat. 1 Optional: Cat. 2 <b>E</b>	PoC Required: Cat. 2 Optional: Cat. 1 <b>F</b>
<b>No Actual Harm With Potential For Minimal Harm</b>	No PoC No remedies Commitment to Correct Not on CMS-2567 <b>A</b>	PoC No remedies <b>B</b>	PoC No remedies <b>C</b>

  

	<b>Standard Quality of Care</b>
	<b>Out of Compliance</b>
	<b>Substantial Compliance</b>

## Federal CMPs Have Increased Substantially

Scope/ Severity	Pre-August 2016	August 1, 2016	February 3,2017	October 1, 2018
Cat.2 Per Day	\$50 - \$3,000	\$103 - \$6,188	\$ 105 - \$ 6,289	<b>\$107 - \$6,417</b>
Cat. 2 Per Instance	\$1,000 - \$10,000	\$2,063 - \$20,628	\$2,097 - \$20,965	<b>\$2,140 - \$21,393</b>
Cat. 3 Per Day	\$3,050 - \$10,000	\$6,291 - \$20,628	\$6,394 - \$20,965	<b>\$6,525 - \$21,393</b>
Cat. 3 Per Instance	\$1,000 - \$10,000	\$2,063 - \$20,628	\$2,097 - \$20,965	<b>\$2,140 - \$21,393</b>

## How Does CMS Define Past Noncompliance?

- Deficiency identified during a current survey with a S/S at "G" or above, or Substandard Quality of Care (SQC) findings at a S/S at "F" that meets all of the following three criteria:
  - Not in compliance with the specific regulatory requirement(s) at the time the situation occurred.
  - Noncompliance occurred after the exit date of the last standard (recertification) survey and before the survey (standard, complaint, or revisit) currently being conducted.
  - There is *sufficient evidence* to support that the facility corrected the noncompliance and is in substantial compliance at the time of the current survey for the specific regulatory requirement(s).

## Respond Quickly To Serious Events

- Key to meeting past noncompliance is to treat all serious incidents as one would respond to an immediate jeopardy situation
  - Assessing resident(s) involved in the incident
  - Removing perpetrator pending investigation
  - Reporting to all applicable agencies and law enforcement (if applicable)
  - Assessing and protecting other residents
  - Implementing corrective measures

## Respond Quickly To Serious Events

- Educating staff and volunteers (if applicable)
  - Ensuring they not work with residents until they have been educated
- Monitoring and auditing
- Reviewing incident at Quality Assurance and Process Improvement (QAPI) committee to assess root causes and needed system improvements
- Documenting all of the above to show “sufficient evidence” to support citation as past noncompliance

## “Serious Events” That May Trigger Need for Quick POCs

- Repeat falls
- Serious fall with injury
- Elopement
- Van accident/injury
- Serious medication error
- Two person assist done by one
- Choking, wrong diet
- Entrapment
- Hot water temps
- Lift malfunction
- Sexual assault
- Abuse
- Neglect
- CPR/DNR
- Glucometers

## What is Sufficient Evidence to Prove Past Noncompliance?

- Resident?
- Other residents?
- Prevention?
- Monitoring?



## Hypothetical Adverse Event

- Resident 1 is care-planned for a two person assist for all transfers
- Employee 1 transfers Resident 1 alone
- Resident falls
- Resident is assessed and is transferred to hospital
- Charge nurse writes incident report
- Fall is noted in medical record
- Hospital confirms hip fracture
- Facility files event report with state survey agency



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## Hypothetical

- Investigation steps?
- Reportable to police?
- Abuse?
- Corrective measures?
- Preventable Serious Adverse Event (PSAE)?

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## Hypothetical

- Resident who is confused/wanderer is led out of facility by a family member unnoticed and without advising facility.
- Analysis: Just stating family member led resident out is not enough.



## Hypothetical

- Root cause analysis:
  - What process(es) failed or weren't implemented? Ask 5 "Why's?"...
  - Assess systems and equipment:
    - ▶ Did resident have wander guard or other device?
      - Why or why not?
    - ▶ If yes, did it fail?
      - Why or why not?
    - ▶ If it worked, did facility response to alarm fail?
    - ▶ Is there a sign-out procedure?
      - Did it work?
    - ▶ Is there normally supervision at exit point?
      - If yes, what happened?



## How We Fixed Problem for Resident Affected

- Notified family/power of attorney (POA)/representative.
- Checked his assessment to ensure it identified wandering and care plan for interventions.
- Identified if they needed updating (assessment & care plan) and updated accordingly (devices, meds, placement).

## How We Fixed Problem for Resident Affected

- If interventions were in place, did they fail and, if so, how and how will we correct that.
  - Example: wander guard did not work; why; how to fix that
- Do we need additional or different interventions for this resident.
  - Secured unit; different approaches to supervision; talk with family member and care team as well as other staff members who care for resident to identify and try new approaches.

## How To Identify Other Residents Who May Be Affected By Same Practice

- Audit either all other residents, or all other residents with same condition or risk (in this example, wandering).
  - Whether auditing all residents or only those with specific behaviors or conditions depends on the specifics of what we're fixing.
- Identify any other elopement episodes as well as potential episodes or "near misses."
  - Or residents identified as "at risk" for wandering, elopement.
- This step is limited to identifying others at risk and does not include corrective measures.

## Measures Put In Place to Ensure no Repeat of Deficient Practice

- Think broadly and outside the box; consider approached beyond in-service training.
- If lack of training determined to be a root cause, retrain staff on existing or new elopement prevention measures (remember all staff/volunteers for elopements; and all must sign attendance sheet that has detailed summary of the training).
- In this example, rechecked all wanderguards and similar devices
  - Batteries, walkie-talkies, alarms linked to wanderguards, doors that lock/unlock automatically.
  - Repair/replace if needed.

## Measures Put In Place to Ensure no Repeat of Deficient Practice

- Instituted new front door checkout & check in procedure (improved the system).
  - Notified all families of same and documented how we notified them.
  - Developed procedure to ensure sign out position is always staffed.
  - Trained all staff on new procedure.
- Reviewed/modified existing prevention measures in place for other at risk residents (assessment, care plans, interventions).

## Plans to Monitor Corrective Steps

- Explain what we will be monitoring:
  - How often will we monitor?
  - And for how long?
    - ▶ Start more frequently and taper down if we don't see issues
- Who will do the monitoring (by job title)?
- Who, if appropriate, will oversee the monitor?
- What will we do with the results of our monitoring?
- Always include sharing with QA Committee for review, modification, further action as warranted.

## Important Documentation

- In-service training
  - Include titles/position of employees, contractors (e.g., therapy).
  - Keep copies of training.
  - Don't forget about off-duty staff and volunteers.
- Thorough witness statements or summaries depending on state law.
  - Staff and residents.
- Auditing and monitoring
  - QAPI

## Practice Tips

- Show survey team all supporting documentation for the POC steps implemented before survey
- Consider new ways to document auditing and monitoring
- Improve documentation of on-going training on abuse and neglect
- File IDRs if necessary



Federal Regulatory Groups for Long Term Care Facilities

\* Substandard quality of care = one or more deficiencies with s/s levels of F, H, I, J, K, or L in Red

Table with 3 columns: Code, Description, and Code. Rows include 483.10 Resident Rights, 483.12 Freedom from Abuse, Neglect, and Exploitation, and 483.24 Quality of Life.

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Federal Regulatory Groups for Long Term Care Facilities

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Table with 3 columns: Code, Description, and Code. Rows include 483.40 Behavioral Health Services, 483.45 Pharmacy Services, 483.50 Laboratory, Radiology, and Other Diagnostic Services, 483.55 Dental Services, 483.60 Food and Nutrition Services, 483.75 Quality Assurance and Performance Improvement, 483.80 Infection Control, 483.85 (PHASE-3) Compliance and Ethics Program, and 483.90 Physical Environment.

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## Thank You

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