

Long-Term Care Survey Alert

REGULATORY UPDATE: CMS Survey And Cert Memo Takes A Strict Approach To Physical Restraints

You don't even have to read between the lines to get this message.

The regs don't prohibit physical restraints in nursing homes. But a June 22 survey and certification memorandum from the **Centers for Medicare & Medicaid Services** to state survey agencies takes a very narrow view of when facilities can use them.

The memo "certainly appears to signal a harsher approach to evaluating" restraints, says **John Lessner**, an attorney with **Ober/Kaler** in Baltimore.

The memo notes that facilities may use restraints, "if warranted," as a temporary symptomatic intervention while the facility determines and manages the actual cause of a medical symptom.

Facilities may use physical restraints as a "symptomatic intervention when they are immediately necessary to prevent a resident from injuring himself/herself or others and/or to prevent the resident from interfering with life-sustaining treatment" ...quot; and no other less restrictive or less risky interventions exist.

"Falls do not constitute self-injurious behavior or a medical symptom that warrants the use of a physical restraint."

"If the resident needs emergency care," the facility can use restraints for "brief periods to permit medical treatment"-- unless the resident/representative has previously "made a valid refusal of the treatment in question."

Also: Limit physical restraint use to prevent the resident from interfering with "life-sustaining procedures" only and not routine care.

CMS' conclusion: "Although the requirements describe the narrow instances when physical restraints may be used, growing evidence supports that physical restraints have a limited role in medical care."

What does it mean? CMS didn't say so in the first of a Webcast series on restraints (see p. 98). But based on its memorandum, "it appears the only time a facility can restrain a resident is as a 'temporary symptomatic intervention while evaluating and managing the actual cause' ...quot; or in an emergency," says **Barbara Miltenberger, RN, JD**, with the law firm of **Husch & Eppenberger** in Jefferson City, MO.

Implement These Survival Strategies

What if you use a restraint when a resident is physically aggressive and in danger of harming herself or others? Initiate a mental health evaluation/intervention and discontinue the physical restraint as soon as possible, advises Lessner.

Also educate families that demand the facility use safety devices, such as geri-chairs and lap buddies, to protect residents from getting up and falling. The memo "should prompt facilities to be pro-active with families in discussing restraint-use reduction and managing the families' expectations with respect to falls," counsels Lessner.

Also "consider all behavior and safety modification interventions before resorting to restraint use," Lessner advises. Some typical examples of such interventions include:

- Redirection and distraction
- Postponing treatment or care when the resident resists it
- Enhancing activities and exercise to reduce wandering behavior.



Editor's note: Read the survey and cert memo at www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter07-22.pdf.

Watch the CMS Webcast series on physical restraints at cms.internetstreaming.com.