

Long-Term Care Survey Alert

Survey and Compliance News To Use

1. Arbitration agreements may be legal but how you obtain or enforce them can create survey woes. Under Medicare, a binding arbitration agreement (where the resident agrees to arbitrate rather than sue the facility) is an issue between the resident and nursing home, according to a recent memo from the **Centers for Medicare & Medicaid Services** to state survey agencies and regional offices. As for Medicaid residents, CMS will defer to state laws regarding these agreements. But facilities that discharge Medicare or Medicaid residents for refusing to sign or comply with the agreement could be cited for violating discharge and transfer rules or they could even end up with an abuse tag if surveyors determine the facility retaliated against a resident for refusing to sign or honor an arbitration agreement. Read the memo at <http://cms.hhs.gov/medicaid/lcscsp/sc0310.pdf>.

Compliance Tip: Review or develop your policies and procedures for obtaining and enforcing arbitration agreements to ensure you don't violate state law or residents' rights.

2. New guidelines focus on use of mechanical restraints to prevent work-related injuries. The **Occupational Safety & Health Administration** this month released voluntary guidelines to help prevent and/or reduce the number and severity of work-related musculoskeletal injuries in nursing home settings. The agency's top recommendation: reduce or eliminate manual lifting of residents.

OSHA also maintains that use of mechanical devices to lift and reposition residents doesn't diminish residents' rights.

"Of course, there may be some situations where the condition of a resident may not be compatible with using a mechanical lift," OSHA says. (For more information, go to www.osha.gov/ergonomics/guidelines/nursinghome/index.html.)

Safety and Compliance Tips: Assess residents at admission and when they have a decline in functional status to determine the amount of support they will require to transfer, e.g., a one- or two-person assist or use of a mechanical device, suggests **Beth Klitch**, principal of **Survey Solutions** in Columbus, OH. Implement safety training to teach staff how to use the lifts, as these devices can seriously injure residents in some cases. Implement policies requiring two CNAs or nurses to operate a Hoyer lift. Define situations where use of a lift may not be appropriate for a resident (for example, a resident with dementia who becomes combative or terrified when lifted).

3. **Take notes from a Wisconsin facility that recently got cited for hiring a fake RN.** A certified nursing assistant who fraudulently claimed to be a registered nurse dispensed medications and treated seriously ill residents for more than four months before her deception was discovered, the **Associated Press** reports. **Heartland of Milwaukee**, a facility owned by **HCR Manor Care** of Toledo, OH, has been cited with two federal violations and three state violations in connection with the allegations.

Hiring Tips: Make a copy of all nursing employees' licenses and request copies of their school transcripts. Most state health departments also allow you to validate professional nursing licenses online. Check the employee's government-issued picture identification card, as people have been known to use stolen nursing licenses to obtain jobs or access to controlled drugs.

