

## MDS Alert

### Surveys and Compliance: Determine Resident Representative Status With These Measures

**Residents' representatives can hold a lot of control over residents' assets and health, so make sure your facility is doing its due diligence in verifying representative status.**

"Resident representative" is a phrase and role thrown around regularly in nursing facilities and long-term care situations. Even though you see it regularly, are you sure you know who truly qualifies as a resident representative? There are different definitions and qualifications for resident representative status, depending partially on a resident's cognitive status.

Check out these scenarios to test your knowledge of the intricacies of resident representative status, and then read on for expert analysis on what you and your facility can do to ensure compliance.

#### Rate These Statements True or False

**Scenario 1:** A resident can only have a representative if she's been determined incompetent by a state court.

**Answer:** False. "In the case of a resident who has not been adjudged incompetent by the state court, the resident has the right to designate a representative, in accordance with State law and any legal surrogate so designated may exercise the resident's rights to the extent provided by state law," says the State Operations Manual Appendix PP, in information on Ftag F551.

**Scenario 2:** A same-sex spouse of a resident should be treated like an opposite-sex spouse, in terms of representative status.

**Answer:** True. "The same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated," says the State Operations Manual.

**Scenario 3:** Facilities are responsible for reporting any behavior by resident representatives that does not seem to be in the resident's best interest.

**Answer:** True. Facilities are required to report such behavior within the standards and timeliness as directed by their state's laws.

#### 'Representative' May Include Various Situations

The State Operations Manual defines a resident representative as:

- "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; or
- "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; or
- "Legal representative, as used in section 712 of the Older Americans Act; or
- "The court-appointed guardian or conservator of a resident."

**Note:** The State Operations Manual specifies that none of the guidance offered adjusts the representative's authority beyond what the resident - or state or federal law or a court -specifies.

**Know these other roles:** If a court declares a resident incompetent, then the court-appointed representative may be referred to as a "guardian" or "conservator."

### **Know Your Responsibilities as a Facility**

Elderly people are frequently taken advantage of by bad actors, and the combination of changing living situations, money going to different medical bills or other costs, and the potential of people being a little less on top of their circumstances means they are especially vulnerable. Gaining access of power of attorney or medical power of attorney means wielding a lot of power over a person's current situation and future, as well as their assets. For nursing facility residents, having a representative means having someone involved in care plans, which obviously determine the specifics of care and lifestyle within the facility.

Look for documentation that the resident representative does indeed have the legitimate authority to make decisions with or on the behalf of the resident.

"Facility staff must obtain documentation that the resident's representative has been delegated the necessary authority to exercise the resident's rights and must verify that a court-appointed representative has the necessary authority for the decision-making at issue as determined by the court," the State Operations Manual says. "For example, a court-appointed representative might have the power to make financial decisions, but not health care decisions. Additionally, the facility must make reasonable efforts to ensure that it has access to documentation of any change related to the delegation of rights, including a resident's revocation of delegated rights, to ensure that the resident's preferences are being upheld."

Surveyors can cite F551 if they find a facility to be lacking in how it looks into residents' representatives.

F551 was not cited very frequently on 2019 surveys, says **Linda Elizaitis, Rn, RAC-CT, BS, CIC**, president of **CMS Compliance Group** in Melville, New York. She points to the extensive guidance surrounding resident representatives in Appendix PP of the State Operations Manual as grounds for surveyors to identify problematic situations.

Surveyors are looking to confirm that substantive procedures surrounding the delegation of residents' rights were performed, and also looking to see that facility staff are following the appropriate delegation of the resident's rights, she says.

Surveyors are supposed to review resident records to ensure that the appropriate documentation is in place, but there are some obvious problems in the system that show up in surveyors' citations.

"In reviewing what has been cited on survey, there are many instances where a resident who has been deemed incompetent has been the person who signed paperwork, or the paperwork that has been signed does not give authority to an individual who has been making decisions on behalf of the resident," Elizaitis says.

See sidebar on page 125 for some examples of real survey citations in 2019.