

MDS Alert

Surveys and Compliance: Understand What Surveyors Use to Determine Representative Status

Take a deeper dive into real citations to understand how a resident's representative status matters.

Linda Elizaitis, Rn, RAC-CT, BS, CIC, president of **CMS Compliance Group** in Melville, New York, offers the following examples of facilities that were cited for issues with resident representatives, which show some common-sense problems:

- A resident who was deemed incompetent by a court was admitted to a facility and the resident's court-appointed guardian, who was appointed five years earlier, had signed the MOLST form. The facility did not know whether the guardian had the authority to make decisions on advance directives.
- Surveyors reviewed a resident's medical record and did not find any health care proxy form or any documentation from a physician or anyone else that the resident wasn't able to make their own decisions; however, all of the paperwork in the file was signed by people other than the resident. The resident in question was cognitively impaired and did not speak English yet did not have a representative.
- During the survey interview, a surveyor heard from a resident that the resident hadn't seen her family in a long time and wanted to hear from them and see them. When the surveyor interviewed a staff member, the staff member stated that the resident's Power of Attorney (POA) had said that the resident was agitated after communicating with family and that the POA had decided that the resident shouldn't see family. Upon further investigation, the POA was not the resident's guardian, so the resident should have retained her rights - the resident's rights were not delegated by a court.
- Medical conditions can also be invoked for F551, including a situation where surveyors cited a facility at an Actual Harm Level. The facility did not ensure that a resident's representative was notified that the resident had a deteriorating pressure injury, and therefore the facility did not have consent for the wound to be debrided. The physician who was directing the wound care tried over four visits to make sure that consent was obtained from the resident representative for this care, but the representative wasn't notified until the resident was transferred to the hospital, more than two months later.

There are other Ftags that surveyors can cite if facilities fail to communicate with resident representatives, but the State Operations Manual Appendix PP has the most guidance on facilities' responsibilities in determining the veracity of a representative's status.