

MEMORANDUM

Department of Aging and Disability Services Regulatory Services Policy * Survey and Certification Clarification

TO: Regulatory Services
Regional Directors, State Office Managers

FROM: Mary T. Henderson
Assistant Commissioner, Regulatory Services

SUBJECT: **S&CC 14-06** – Locked Units in Nursing Facilities without an Alzheimer’s Certification

APPLIES TO: Nursing Facilities (NFs)

DATE: **October 22, 2014**

The purpose of this letter is to provide guidance to health team surveyors pertaining to surveying non-Alzheimer’s Certified NFs with locked units.

Background

All residents in a NF have protected rights. The Code of Federal Regulations (CFR) at 42 CFR §483.10(a) [F151] and corresponding Texas Administrative Code (TAC) at 40 TAC §[19.402](#), state that residents have the right to exercise their rights as residents of the facility and as citizens of the United States. Residents have the right to be free of interference, coercion, discrimination and reprisal from the facility in exercising these rights. Additionally, 42 CFR§483.13(b) [F223] and 40 TAC §[19.601](#)(b) indicates that residents have the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

To ensure NFs protect these rights, surveyors must identify NFs that have a locked unit within the facility and include at least one resident residing in the locked unit in the survey sample.

Policy

During the initial tour, health surveyors must identify whether the facility has a locked unit. Surveyors must ask facility staff if there are any locked units in the NF and look for units within the facility that are segregated by locking mechanisms.

A unit with doors that have delayed-egress locking mechanisms is not considered a locked unit. Delayed egress locking mechanisms are the common push bar type devices that require an individual to press and hold a bar for three seconds, an alarm will sound, and the lock will release in fifteen to thirty seconds. Life Safety Code, Section 7.2.1.6.1 permits the use of these devices on interior and exterior exit doors of stores, restaurants, and health care occupancies including assisted living facilities and nursing facilities.

A locked unit is a facility, or portion of a facility, that has special locking devices installed on the doors in recognition of the clinical needs of the residents. These special locking arrangements were developed by DADS under the authority of the Life Safety Code. If a health surveyor encounters a unit that is segregated by a locking mechanism other than the delayed egress mechanism described above, the surveyor must identify that unit as being a locked unit.

If the health survey team identifies, or is informed of a locked unit, the health survey team coordinator must cross-reference the Roster/Sample Matrix to ensure that at least one resident in each locked unit is included. ***(Note: If the surveyor has questions or concerns about the safety or propriety of the type of special locking device being used on the unit he or she should also ensure the regional Life Safety Code Program Manager is informed of the situation.)***

After identifying the locked unit and ensuring that at least one resident from the locked unit is included in the survey sample, surveyors must determine how the facility is using the locked unit. Resources that may assist in making this determination would include direct observation, interviews (e.g., discussion with residents, family members, facility staff, and the facility ombudsman) and review of facility records (e.g., resident assessment documentation, physician's orders, facility policies, and disclosure documentation).

If the locked unit is used to provide specialized care for cognitively impaired residents, the Code of Federal Regulation (CFR) located at 42 CFR §483.13(b) [F223] indicates that placement in the unit is not considered involuntary seclusion, as long as care and services are provided in accordance with each resident's individual needs and preferences rather than for staff convenience, and as long as the resident, surrogate, or representative (if any) participates in the placement decision and is involved in continuing care planning to ensure the placement continues to meet the resident's needs and preferences. The surveyor must evaluate the resident's records to determine if the services and service planning meet these guidelines. If the facility is not using the locked unit to provide specialized care for cognitively impaired residents, surveyors should consider whether a citation under 42 CFR§483.13(b) [F223] or 40 TAC §19.601(b) is warranted.

42 CFR §483.10(a) [F151] Exercise of Rights states that the resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States. Exercising rights means that residents have autonomy and choice, to the maximum extent possible, about how they wish to live their everyday lives and receive care. In the case of a resident adjudged incompetent under State law, 42 CFR§483.10(a)(3) [F152] states that the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf. In the case of a resident who has not been adjudged incompetent by the State court 42 CFR§483.10(a)(4) [F152] states that a legal-surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law. The facility should verify that a surrogate or representative has the necessary authority to make decisions regarding a resident's rights. For example, a court-appointed conservator might have the power to make financial decisions, but not health care decisions for an individual.

If a surveyor encounters a situation in which an individual has expressed concern regarding residing in a locked unit, the surveyor should closely evaluate the care planning processes to ensure that the individual's rights were respected. Surveyors should determine whether the representative that made the decision that resulted in the resident living in a locked unit provided the facility with documentation indicating that he or she had the legal authority to make the decision. Additionally, surveyors should evaluate whether the facility's process afforded the resident the right to participate in the development of his or her own plan of care to the extent possible (e.g., was the resident afforded the opportunity to participate in meeting if he or she expressed an interest). If the facility does not have documentation that indicates that the individual or a person designated in accordance with State law was involved in the care planning that resulted in the individual's placement in a locked unit, surveyors should consider whether a citation under 42 CFR §483.10 (a) [F151 or F152] or 40 TAC §19.402 is warranted.

In addition to complying with the expectations above, NFs with residents in locked units must comply with other NF requirements and standards that may be associated with residents living in locked units. These requirements include:

- Admission – The NF must be able to meet the needs of the resident. 42 CFR §483.20(a) [F271] relating to Admission Orders, states that at the time each resident is admitted, the facility must have physician orders for the resident's immediate care. If admission to a locked unit is required for the resident's immediate care, this must be noted in the physician's orders.
- Assessment – Assessment requirements including the following examples can also be associated with placement in a locked unit.
 - Resident Assessment [F272] 42 CFR §483.20 - The facility must conduct initially and periodically a comprehensive, accurate, standardized reproducible assessment of each resident's functional capacity. The intent of this regulation is to provide the facility with ongoing assessment information necessary to develop a care plan, to provide the appropriate care and services for each resident, and to modify the care plan and care/services based on the resident's status. If the resident's status necessitates placement in a locked unit, this must be evident in assessment documentation.
 - 42 CFR §483.10(d)(3) [F280] - The resident has the right to, unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment. Surveyors must consider what part the resident or the resident's legally authorized representative had in the decision to place the resident in a locked unit.

Surveyors should determine the answers to the following questions, at a minimum, when deciding whether to cite a facility for deficient practice:

1. Is the purpose of the unit to provide specialized care for residents who are cognitively impaired? 42 CFR§483.13(b) [F223] or 40 TAC §19.601(b)
2. Is the resident (and the legally appointed representative if applicable) afforded the autonomy and choice, to the maximum extent possible, about how the resident wishes to live his or her everyday life and receive care? 42 CFR §483.10 (a) [F151 or F152]
3. Are the residents living in a locked unit placed appropriately in accordance with physician's orders? CFR§483.20(a) [F271]
4. Is there clinical justification to have the residents residing in a locked unit(s)? §483.20(b)(1) [F272]

If you have questions about locking devices, please contact an architect in the Architectural unit at (512) 438-2371.

Policy-related questions may be directed to a policy specialist in the Policy, Rules and Curriculum Development unit at (512) 438-3161.

Sincerely,

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