

Nursing Homes
SB 1202 Questions and Answers
February 15, 2002

Medical Director Criteria

1. Must the Medical Director be certified or credentialed?

Answer – 59A-4.1075 specifies new requirements for Medical Directors. Medical Directors must be certified or credentialed only if they do not have hospital privileges.

Liability Insurance Requirement

2. Will facility be required to have a certain coverage amount of liability insurance?

Answer – the law does not specify a minimum coverage amount.

3. What type of liability insurance is required – general, professional, etc?

Answer – The definition of liability insurance is found in 624.605 (1)(b).

4. Will self-insurance suffice for the liability insurance requirement?

Answer – No. The Department of Insurance defines liability insurance as the transfer of risk to an insurance carrier approved by the Department. Therefore, self-insurance that does not involve a transfer of risk to a carrier approved by the Department to write such coverage is not acceptable for meeting the nursing home liability insurance requirement.

Risk Management

5. Must a nursing home risk manager be licensed or credentialed?

Answer - Section 400.147(1)(a) does not require that the risk manager have particular credentials, only that the facility have a risk manager designated who is responsible for the implementation and oversight of the facility's risk management and quality assurance program.

6. How is "elopement" defined for the purposes of adverse incident reporting?

Answer: Elopement is when a resident leaves the facility without following facility policies and procedures.

7. Are all events reported to law enforcement adverse incidents?

Answer – Yes.

8. If, prior to the required report date, facility staff determine that an incident does not meet the definition of an adverse incident as specified in statute, is a report to the Agency still required?

Answer – Only those incidents that meet the definition of an Adverse Incident must be reported to the Agency. If the facility is able to determine that the incident does not meet the definition, prior to the required report date, then a report is not required. However, if the facility has not yet determined if the incident meets the adverse incident definition the incident must be reported on the 1-Day report. After the facility investigation is complete and if it is determined that the incident does not meet the definition of an adverse

incident, then the facility staff may report on the 15-Day report that the incident was determined not to be an adverse incident.

9. What should a facility provide in the adverse incident report?

Answer - All the questions on the Adverse Incident Report forms should be answered. The description of the incident should include answers to basic questions like Who, What, Where, When, Why, allows AHCA reviewers to determine appropriate action.

10. When a resident is transferred under the Baker Act and law enforcement is called for the purposes of transporting the resident does this event qualify as an adverse incident?

Answer – the event is an adverse incident if it meets the definition of an adverse event as defined in 400.147. For a Baker Act, the primary considerations would be was this an event over which facility staff could exercise control that required transfer, an event reported to law enforcement, or does it meet any other adverse incident definition as provided in 400.147, F.S.

11. How long must a facility keep Adverse Incident reports on file?

Answer – At a minimum, reports should be maintained through a full survey cycle - through the next full licensure and re-certification survey, or as required by the facility policies and procedures if longer.

12. Can a surveyor ask to review a facility’s internal risk management and quality assurance incident reports?

Answer – The facility must maintain evidence of compliance with the risk management and quality assurance requirements of state and federal law that is available to surveyors upon request. If the facility relies upon the internal incident reports to suffice as the documentation of compliance, then these reports must be produced upon surveyor request. However, if the facility maintains separate sufficient evidence of compliance, such as logs, summaries, and/or other reports, then the internal incident reports would not be necessary.

13. How long must a facility keep its internal incident reports?

Answer – If these reports are necessary to show evidence of compliance with the risk management and quality assurance requirements as described in the previous question, then these reports should be maintained through a full survey cycle: through the next full licensure and re-certification survey, or as required by the facility policies and procedures if longer.

14. Facilities are receiving letters for an Agency staff person titled an “investigation specialist”. Who is this person and what is their role in review of adverse incidents?

Answer – Investigation Specialists are staff of the Agency’s Medical Quality Assurance (MQA) division who investigate possible practitioner violations. Facilities may be contacted by MQA staff during the course of a practitioner investigation.

15. Are a facility's risk management and quality assurance records protected from public disclosure once they are sent to the Agency, such as with a plan of correction?

Answer – All documents received by the agency are considered public records unless there is a specific public record exemption in law. Only the adverse incident reports themselves are protected from public record. Any documents submitted with a plan of correction are not protected from public disclosure, however, resident unique identifying information remains protected and redacted from documents prior to the release of the records.

Staffing

16. Can nursing assistants in approved training programs be counted toward the certified nursing assistant (CNA) minimum staffing ratio?

Answer: Section 400.23(3)(a), F.S. states, "...Nursing assistants employed under s. 400.211(2) may be included in computing the staffing ratio for certified nursing assistants only if they provide nursing assistance services to residents on a full-time basis...". Section 400.211(2), F.S. states, "The following categories of persons who are not certified as nursing assistants under part II of chapter 464 may be employed by a nursing facility for a period of 4 months: (a) Persons who are enrolled in, or have completed, a state-approved nursing assistant program; (b) Persons who have been positively verified as actively certified and on the registry in another state with no findings of abuse, neglect, or exploitation in that state; or (c) Persons who have preliminarily passed the state's certification exam. The certification requirement must be met within 4 months after initial employment as a nursing assistant in a licensed nursing facility", and refers to nursing assistants who are not yet certified but working toward certification. These individuals may be counted toward the CNA staffing ratio if providing nursing assistance services to residents on a full-time basis.

17. What is an approved training program as described in section 400.211(2)(a), F.S.?

Answer: A CNA training approved by the Department of Education. A CNA "test-prep" course does not meet the definition of s. 400.211(2)(a) unless it is approved by the Department of Education as a CNA training program.

18. Can a nurse with managerial responsibilities be counted toward the ratio for any time that is spent providing direct care?

Answer – Section 400.23(3), F.S. requires "hours of direct care per resident per day". Nurse Managers may count time spent providing direct care if it is part of their duties and they are on the facility schedule to provide direct care during that time. However, documentation must specify the amount of time spent providing direct care versus administrative duties for that shift. A job description alone is not sufficient evidence that a nurse manager should be counted toward the minimum nurse staffing ratio.

19. Question – Can a graduate nurse who is awaiting licensure as a nurse be counted toward the minimum nurse staffing ratio?

Answer – Yes, within the limits of their certification, if they have applied for licensure as a nurse.

20. Can a facility meet the staffing requirements by increasing staff shifts from 7.5 to 8 hours?

Answer – Section 400.23(3), F.S. requires “hours of direct care per resident per day”. The length of a shift does not modify the facility’s obligation to meet the 24-hour minimum.

21. Does the requirement to never be below one nurse per 40 residents mean that each nurse must have a specific assignment of no more than 40 residents, or can a nurse have an assignment of more than 40 residents if a nursing supervisor who performs direct care has partial responsibility for her residents?

Answer – The staffing ratios required 400.23(3), F.S. are evaluated on a facility-wide basis.

22. Consider this scenario on the 11-7 shift in a 120-bed SNF with two 60-bed nursing units. Can there be a licensed nurse assigned to each 60-bed unit with a house supervisor who floats between both units and provides direct care on both units (for a total of three licensed nurses)? Or does there need to be two nurses on each unit (for a total of four nurses) if the census on each individual unit exceeds forty (40)?

Answer – The minimum nursing ratios required in s. 400.23(3) are based on the facility census, not on the census of each unit. However, the facility must have “sufficient staff” at all times, on all units to meet the needs of residents.

23. Can a community with both a nursing home and assisted living facility beds on the same campus share staff? Can this shared staffing be considered toward the nursing home minimum staffing ratios?

Answer – Shared staffing is permissible as allowed by the nursing home and assisted living facility statutes and rules, however, staff must have specific assignments in the nursing home and can only count the time spent providing direct care to nursing home residents toward the minimum staffing requirements. Staff may be able to handle both nursing home and assisted living facility residents at the same time if those residents are located in the same building and the total residents cared for do not exceed requirements of either program.

24. How will the Agency review for compliance with the minimum required staffing ratios? Specifically, will surveyors be comparing the mid-night census with the staffing ratio for the following 24-hour period?

Answer – Yes, surveyor will typically use the midnight census.

Alzheimer’s Training and Information

25. For the purpose of the required 1-hour training, how is "direct contact" defined? Would this definition include housekeeping and dietary personnel?

Answer – Guidance to surveyors defines direct contact as person to person contact whether the contact be physical, verbal, or within the resident’s surroundings. Staff

meeting this definition include but are not limited to nursing staff, dietary staff, activity staff, social service staff, housekeeping staff and maintenance staff.

26. For the purposes of the required 3-hour training, how is "direct care" defined?

Would this definition include only nursing staff or therapists and others?

Answer – Direct care would include providing personal or health care services to residents.

27. Are all existing direct care staff required to have 3 hours of Alzheimer's training by July 1, 2002 or only those hired after July 1, 2001?

Answer - Only those hired after July 1, 2001. However, all staff are required to have the skills and education to provide the necessary care and services to residents.

Question - Can the Alzheimer's training requirement count toward the 18 hours of CNA training required annually?

Answer – Yes.

CNA In-service Requirements

28. Is a nursing home required to provide 18 hours of in-service training to private-duty CNAs each year? Private duty are those employed or under contract with a resident, not the facility.

Answer – The facility is not required to provide in-service to individuals whom they do not employ or contract with to provide services to residents, however, if the CNA is providing services as part of the facility's care plan, the facility is responsible to assure that CNA is adequately trained and qualified to provide those services. CNAs are now required to have 18 hours of in-service training each year to maintain certification.

Discharge and Transfer

29. If the resident's physician signs for the resident's discharge is the AHCA Discharge and Transfer Notice required?

Answer – Section 400.0255, F.S. requires the notice only for discharge initiated by the facility, not the resident or resident's physician. However, physician signature alone is not sufficient to support that the physician initiated the discharge or transfer.

Documentation that the resident or the resident's physician initiated the discharge or transfer should be maintained if the facility does not complete the AHCA Discharge and Transfer Notice.

30. Does a Baker Act transfer require use of the AHCA Discharge and Transfer Notice?

Answer – Section 400.0255, F.S. requires the notice only for discharge initiated by the facility, not the resident or resident's physician. The details of the Baker Act transfer must be evaluated to determine if the Notice is required.

31. If the CARES Team is initiating the Discharge is the AHCA Notice Required?

Answer – If the discharge is not initiated by the resident or resident's physician the AHCA Notice should be given to provide the opportunity to request a hearing of the decision.

32. Is the state regulation regarding when notice is required for a discharge or transfer consistent with the federal regulation and policy regarding when notice is required?

Answer – Yes.

33. Can a physician designee sign for the physician on the notice form?

Answer – Section 400.0255(3), F.S. states, “...Any notice indicating a medical reason for transfer or discharge must either be signed by the resident's attending physician or the medical director of the facility, or include an attached written order for the discharge or transfer. The notice or the order must be signed by the resident's physician, medical director, treating physician, nurse practitioner, or physician assistant.”

Care Plan Signatures

34. Can anyone else sign care plans in case of DON incapacity or unavailability?

Answer – Guidance to Surveyors (N0076) details delegation of the DON signature to the Assistant DON in accordance with 59A-4.108(1) or to another nurse (registered) through formal delegation of institutional responsibilities demonstrates compliance. Such delegation should be documented and remain on file.

35. How are institution responsibilities defined?

Answer – Institutional responsibilities include the responsibilities related to personnel (hiring and firing) and budget responsibilities (allocation of resources).

36. How often must the Director of Nursing (DON) sign the care plan?

Answer – The care plan must be signed by the DON each time it is completed, i.e. quarterly or when a significant change has occurred.

37. Where does the DON sign the care plan?

Answer - The law does not specify where the DON should sign on the actual care plan.

38. By what date must the DON sign the care plan?

Answer – Guidance to Surveyors (N0076) indicates signature within 7 days of the comprehensive assessment as the care plans must be completed within 7 days.

39. Can a signature stamp be used for the DON signature on a care plan.

Answer – No.

40. What is the facility's responsibility if the resident or resident representative will not sign the care plan?

Answer – The facility staff should document and retain on file, efforts to obtain the resident signature.

41. When a facility notifies a physician that a resident exhibits signs of dementia or cognitive impairment, what is the facility responsibility after that notification?

Answer - Facilities already have the obligation to implement appropriate interventions for a change in condition.

Six-Month Survey Cycle

42. Will facilities be placed on a six-month survey cycle for deficiencies that were cited before the effective date of the bill, May 15, 2001?

Answer – The last qualifying deficiency must have been cited during a survey that ended subsequent to May 16, 2001. However, the agency has the authority to conduct surveys at any time.

Fines

43. If a nursing home is cited for a violation that results in a fine, when is the fine due.

Answer – The provider is notified of fines with an initial notice, either an Administrative Complaint (for deficiencies) or an Intent to Impose Letter (for late application fines or other licensure violations). The provider is given choices to elect to pay or challenge the fine. If a challenge is chosen, the provider has 21 days to request hearing. When the provider decides to pay or upon the conclusion of the challenge, the fine will be imposed by a Final Order generally providing 30 days to pay. If the fine is not paid within the timeframes established by the Final Order, the license may be denied, revoked, or suspended pursuant to s.400.121, F.S. and s.400.111, F.S.

Dining and Hospitality Assistance

44. Who can assist a resident with eating?

Answer – The Health Care Financing Administration (now CMS) defines assistance with eating, such as feeding a resident, as a nursing related service. The only staff who can provide nursing and nursing related services are nurses aides, licensed health professionals, registered dietitians or licensed dietitian/nutritionists and volunteers.

Licensed health professionals are defined [42 CFR 483.75(e)(1)] as a physician, physician assistant, nurse practitioner, physical therapist, speech therapist, occupational therapist, physical or occupational therapy assistant, registered professional nurse, license practical nurse or licensed or certified social worker.

Accompanying a resident during meal-time or queuing a resident to eat are not considered nursing related services.

Feeding or hand-over-hand assistance are nursing related services.