

HIGHLIGHTS: Overview of S&C Memo 16-33-NH

CMS issued S&C memo 16-33-NH in August, 5, 2016 that adds

- Taking of photographs or video recordings of residents or their personal space without their consent is a violation of their privacy rights specified in 483.10(e) and tag (F164).
 - Personal space examples includes the resident's room or furnishing (which may or may not include the resident) or a resident eating in the dining room, or participating in an activity in common areas.
- Using or sharing of photographs or video's in any format must both comply with the residents consent and cannot be considered demeaning or humiliating and any such use will be investigated as abuse related to tags F223 or F226.
- Training all staff, consultants, contractors, and volunteers who provide care and services to residents on the facility P&P on taking or and use of photographs, specifically emphasizing how resident's should decide what is considered demeaning or humiliating prior to any use.
- Reporting all allegations of abuse of this policy (or any abuse), conduct a thorough investigation, implement corrective actions to prohibit further abuse and to report findings as required under abuse reporting requirements (see S&C memo 11-30-NH January 20, 2012 on reporting reasonable suspicion of a crime in LTCF).

REVIEW & ACTION: Implementation Strategies and Tips

This new guidance went into effect September 5th, 2016.

- ✓ Steps Center may want to take
 - Update your P&P on Abuse, Neglect and Exploitation of Residents & Property (required under 483.12) using the below template P&P language for taking and using photos or video recordings.
 - *Develop a process by which all photographs or video recording are reviewed prior to use of any kind to make sure they comply with the resident's consent to have photos taken and ideally the photos should be shared with the resident or their representative prior to any use to make sure they do not find the photos or video recordings humiliating or demeaning.*
 - Create short in-service for all staff, contractors, consultants and volunteers on the taking of and use of photos or video recordings that they should complete prior to starting to work in the Center.
 - Develop a process to make sure all staff, contractors, consultants and volunteers receive the training and to also document their completion of the training.

- Encourage staff who see sharing or posting of photographs or videos on social media, internet or other mechanisms, to report these occurrences to their supervisor or facility administration.

RESOURCES: Additional Materials to Help You

Template P&P language

Sample policy and procedure language: AHCA has developed sample language that nursing centers may incorporate (and adapt as needed) into their existing abuse policy. This language has been shared with CMS and we have incorporated their feedback but it does NOT represent endorsement by CMS.

Policy Purpose: *To prevent the taking and use of photographs or video of residents that the resident (or their representative when they can't make their own decisions) have not granted consent or believes may be demeaning or humiliating.*

Policy & Procedure Language:

Taking or distributing of any photographs or video recordings of a resident or his/her private space without the resident's, or designated representative's, written or verbal consent (unless directed by the courts or law enforcement officials), must not be done by any employees, consultants, contractors, volunteers, or other caregivers at <insert name of Facility>. Examples include, but are not limited to, staff taking unauthorized photographs of a resident's room or furnishings (which may or may not include the resident), a resident eating in the dining room, or a resident participating in an activity in the common area. Should a photograph or video recording be taken unintentionally; they must be destroyed unless the resident (or their representative should the resident be unable to consent) provides consent.*

While residents may give consent for taking of photographs or videos, the use of those photographs must be consistent with the consent and cannot be demeaning or humiliating. Using photographs or video recordings in ways not covered by the consent may be inappropriate. Any photograph(s)/video(s) should ideally be shared with resident or their representative prior to use to make sure they do not find it humiliating or demeaning.

Staff must report to their supervisor any unauthorized (or suspected to be unauthorized) taking of photographs or videos as well the sharing of such recordings in any medium. Violation of this policy may result in disciplinary actions including up to termination.

All staff, consultants, contractors, volunteers and other caregivers will be educated about this policy ideally as part of their orientation prior to providing services to residents but MUST receive training within 14 days of starting their work at <insert facility name>.

** Note: Written or verbal consent requires the resident to understand the implications of their consent. Also, residents (or their representative if they are unable to consent) may change their consent at any time, which should be documented.*

Additional Resources:

- ahcancaLED has a number of [resources](#) on the use of photographs or video recordings.
- [AHCA Social Media Guidance Tool Kit](#)