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September 19, 2008

Ms. Karen Schoeneman
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Re: Proposed Revisions to Interpretive Guidelines Related to Culture Change

Dear Ms. Schoeneman:

The American Health Care Association (AHCA) appreciates the opportunity to comment on the proposed revisions to Interpretive Guidelines to make those guidelines more "culture change-friendly". AHCA is a strong supporter of culture change for nursing homes and we are pleased that the Centers for Medicare & Medicaid Services (CMS) is taking a pro-active approach to support this endeavor.

AHCA is concerned, however, that many of the proposed modifications do not take into account the diversity of patients/residents who are living in nursing homes today. Much of what is proposed in these guideline revisions is not appropriate for short-stay patients who are in a nursing home for rehabilitation. The medical equipment that must be available, accessible, and visible and the type of "institutional" feel in such a home is not inappropriate.

Additionally, the use of some of the modified guidance in homes that serve predominantly a younger population with not only medical needs but mental health needs could result in placing all patients/residents in danger. To quote from a letter written by a provider in Missouri:

Inner city facility in at least St. Louis frequently house relatively young adults with legitimate medical as well as mental health needs that justify placement in the SNF. Federal regulations and guidelines often overlook such residents and the authors of the guidelines apparently assume that all SNFs and NFs care only for frail elderly. Guidelines consistently fail to take into consideration the specialized needs of all clientele and, as a result, create situations at times that could result in harm to the general resident population as well as specific residents.

The proposed addition says that anyone can visit at all times without restrictions, as

long as it is agreeable with the resident. These broad visiting policies are allowed with no exception, regardless of the nature of the visit or safeguards the facility may need to put into place to restrict or at least supervise the private visits. Within the last two years I have been in facilities in which visitors – allowed after hours – delivered illegal drugs to the resident late at night and, on one occasion, several residents and visitors were smoking marijuana in a resident room in the early morning hours with the door closed. The administrator obviously could not search the visitors but did limit the visiting hours to those times in which he had security guards on the premises.

Sadly, this is an example of a very real concern for many nursing homes and these guidelines as written will put providers in an untenable situation. AHCA has made specific recommendations for modifying this provision in the attached “red-lined” document.

The following appears in the Intent section of F252: “Many homes cannot immediately achieve these changes, but it should be a goal for all homes that have not yet made this type of structural changes to work toward them.” The concern is that an overzealous surveyor will expect a facility to develop a timeline for achieving these bullets that the author(s) have decided will result in a “homelike” environment.

There are costs associated with many of the changes that are recommended. It is absolutely crucial that surveyors recognize that we are not in a perfect world, and there are going to be many homes that will be able to move forward with culture change very slowly and incrementally, particularly when it comes to making physical plant modifications. Until the law and regulations are changed to require these changes and the payment system supports the changes, CMS cannot require many of the suggestions that are contained in this document.

As AHCA has said innumerable times in comments to CMS, by including much of this language (which is really educational information for the surveyor and the provider) the suggestion is that these items are not suggestions but expectations and requirements. We encourage you to carefully review and reconsider some of the changes you recommend to accommodate all nursing homes, regardless of the residents/patients they serve.

Thank you again for the opportunity to comment. If you have any questions or would like to discuss any of our comments please feel free to contact me by email at lbentley@ahca.org, or at 202-898-6304. AHCA looks forward to continuing its work with CMS to implement culture change in a meaningful way in nursing homes.

Sincerely,

Lyn C. Bentley, MSW
Director of Regulatory Services