

CMS REVISITS SMOKING SAFETY IN LONG TERM CARE FACILITIES

The Centers for Medicare & Medicaid Services ("CMS") just released a Survey & Certification Letter (S&C: 12-04-NH) to address a recent report of a nursing facility resident death due to a smoking accident. A resident who was deemed appropriate to smoke unsupervised, but failing to wear a smoking apron, died as the result of injuries she sustained while smoking unsupervised outside a facility. CMS published the Letter to review the current regulations and Guidance to Surveyors at 42 CFR 483.25(h), and tag F323, Accidents and Supervision.

CMS restated that survey agencies must do all they can to remind and encourage nursing homes with residents who smoke to take reasonable precautions to ensure the safety of residents to the maximum extent possible. The above regulation Guidance describes appropriate precautions such as smoking only in designated areas, supervising residents whose assessment and plans of care indicate a need for supervised smoking, and limiting the accessibility of matches and lighters by residents who need supervision when smoking.

The facility's assessment of each smoking resident's capabilities and deficits determines whether or not supervision is required. A resident deemed incapable of independent smoking should have this information documented in the care plan or other designated location, so staff know the correct procedure for each individual. This information must be kept current and updated as needed in accordance with the individual's capabilities and needs.

The facility must have in place a policy that describes the methods by which residents are deemed safe to smoke without supervision. This assessment must take into account the resident's cognitive ability, judgement, manual dexterity, and mobility. Surveyors may request to see documentation of the assessment that resulted in a resident being permitted to smoke without supervision. Facilities should err on the side of caution and provide staff, family, or volunteer supervision when unsure of whether or not the resident is safe to smoke unsupervised.

Oxygen use is prohibited in smoking areas for the safety of residents. An oxygen-enriched environment facilitates ignition and combustion of any material, especially smoking products such as matches and cigarettes. Facilities should ensure resident safety by such efforts as informing visitors of smoking policies and hazards to prevent smoking related incidents and/or injuries.

Additional guidance about resident smoking can be found at 42 CFR 483.15(b), F242 Self- Determination and Participation. Surveyors are reminded that according to the Interpretive Guidelines at F242, a change in the facility's policy to prohibit smoking does not affect current residents who smoke. Current residents are allowed to continue smoking in a designated area that may be outside, weather permitting. Residents admitted after the policy change must be informed, during the admission process, of the policy prohibiting smoking.

The facility is obligated to ensure the safety of designated smoking areas which includes protection of residents from weather conditions and non-smoking residents from second hand smoke. The facility is also required to provide portable fire extinguishers in all facilities. The Life Safety Code requires each smoking area be provided with ashtrays made of noncombustible material and safe design. Metal containers with self closing covers into which ashtrays can be emptied must be readily available.

A new issue concerns the use of electronic cigarettes ("e-cigarettes"). These products are designed to deliver nicotine or other substances to the user in the form of a vapor. They are composed of a rechargeable, battery-operated heating element, a replaceable cartridge that may contain nicotine or other chemicals, and an atomizer that, when heated, converts the contents of the cartridge into a vapor. The vapor has a light odor that dissipates quickly. These e-cigarettes are not considered smoking devices, and their heating element does not pose the same dangers of ignition as regular cigarettes.

Should you have any questions, please contact:

Todd Selby at 317.977.1440 or tselby@hallrender.com;

Brian Jent at 317.977.1402 or bjent@hallrender.com; or

David Bufford at 502.568.9368 or dbufford@hallrender.com,

or your regular Hall Render attorney.