



# LeadingAge – Wisconsin Quality Forum Division of Quality Assurance Updates

Otis L. Woods, DQA Administrator  
June 19, 2013

## DQA Updates

- ▶ Survey trends
- ▶ Statistics
- ▶ Quality Improvement initiatives
- ▶ Right the Rules Report
- ▶ Pending Federal (CMS)  
Issues/updates
- ▶ Q&A



## DQA Survey Trends

- ▶ Focus on F329 – Antipsychotic drug use
- ▶ Quarterly statistics – See handout
  - DQA vs. Region V States vs. Nation
- ▶ Top 10 survey outcomes
- ▶ IJs and actual harm numbers



## DQA Survey Statistics

- ▶ Refer to handout
- ▶ Highlights
  - IJ citations to date
  - Average deficiencies per survey increase



## Quality Improvement Initiatives

- ▶ QAPI continues to roll out
  - DQA consulting with local expert on quality systems review
  - Awaiting federal rules and guidance
  - Anticipated additional federal training of survey agency personnel
  
- ▶ QA/I Committee Projects



## Quality Improvement Initiatives

- ▶ QA/I Committee Projects
  - Wisconsin Clinical Resource Center
  - Alzheimer's Alliance Training on sexual activities amongst the elderly
  - UW Madison consultation on infection control
  - Relocation Ombudsman – permanent funding sought
  
- ▶ CMP projects approved by the QA/I Committee are posted at [http://www.dhs.wisconsin.gov/rl\\_DSL/Providers/qai-projects.htm](http://www.dhs.wisconsin.gov/rl_DSL/Providers/qai-projects.htm)
  
- ▶ QA/I Committee main webpage at [http://www.dhs.wisconsin.gov/rl\\_DSL/Providers/qai-intro.htm](http://www.dhs.wisconsin.gov/rl_DSL/Providers/qai-intro.htm) provides an intro to the committee and links to the application guidelines, projects and committee members



# Pending Federal (CMS) Issues

## Sprinkler System Impact

**CORRESPONDENCE/MEMORANDUM** Office of Plan Review and Inspections

**DATE:** June 5, 2013  
**TO:** Otis Woods, Administrator  
**FROM:** David Soons, Director  
 Office of Plan Review and Inspections  
**SUBJECT:** CMS Sprinkler Impact to Wisconsin Nursing Homes

The Centers for Medicare and Medicaid Services (CMS) adopted a rule on August 13, 2008, that requires all Nursing Facilities (NF) and Skilled Nursing Facilities (SNF) to be sprinkler protected over a 5 year phase-in period.

Historical Improvement:	Year	% Without full Sprinkler
	2005	30%
	2008	30%
	2011	25%
	2012	15%
	2013 (May)	12% ( 47 Homes )

**Regulatory proactive efforts to remind facilities of this requirement:**

- October 2008: CMS Memo 5&C 09-04 issued to all Wisconsin nursing homes. Memo outlines the regulatory requirement and five-year phase-in period for compliance.
- November 2008: CMS Memo 5&C 09-04 stored on the DQA website for active reference in future DQA training and outreach efforts.
- January 2009: DQA Quarterly reminder and explanation of the CMS sprinkler mandate
- April 2011: DQA Memo 11-012 reminder for all Wisconsin nursing homes
- November 2011: Nursing home associations notified of short list of facilities not fully sprinkler protected. Encourage to notify their members of the pending deadline and implications.
- January 2012: DQA last reminder to the short list of facilities not fully sprinkler protected.
- February 2012: DQA Regional BPHRC directors informed of facilities within their regions and they in turn took a proactive approach to also encourage compliance.
- CMS Notices: Every enforcement letter contains standard language reminding the facility of the deadline.

Various approaches are being taken by the facilities, some are completing their sprinkler protection, some are undergoing replacement, some are for sale, yet many lack sufficient funding and are not implementing any sprinkler protection at this time.

Less than three (3) months remain until the deadline and OPRI estimates that 15-35 buildings will not be fully sprinkler protected by August 13, 2013. DQA has been given the direction to issue a federal deficiency at the facilities next recertification survey, not offer any waiver provisions, and turn the case over to CMS for adjudication.

Position: Responsibility for compliance rests solely on the facility.

cc: Juan Flores, Deb Bursaw, Henry Kosarzycki, Sandy Meyers



## CMS Updates

- ▶ Anticipated memo addressing:
  - Abuse and neglect
  - Strict liability
- ▶ Increased surveyor training on use of antipsychotic medication with elderly residents
- ▶ Review of CPR issues
- ▶ Immediate jeopardy citations



## CMS Updates

- ▶ New guidance on F309 and F329 for dementia care and antipsychotics released May 24<sup>th</sup>
  - Facilities should become familiar with this information including the dementia care checklist
  - All of the information is in S&C Memos 13-34 and 13-35 and corresponding attachments
  - Last installment of the CMS surveyor training which is available to providers is not yet up as of today...but is supposed to be available sometime after May 31<sup>st</sup>
- ▶ [http://www.leadingage.org/CMS\\_Clarifies\\_Guidance\\_for\\_Care\\_of\\_Persons\\_with\\_Dementia.aspx](http://www.leadingage.org/CMS_Clarifies_Guidance_for_Care_of_Persons_with_Dementia.aspx)



## CMS – Legal Update

- ▶ Fifth Circuit Court overturned an IJ citation at F371 and \$5000 per-instance CMP in Texas for runny, undercooked eggs, even though the violation had been upheld by an Administrative Law Judge and, later, by the DHHS Departmental Appeals Board
- ▶ According to the decision:
- ▶ SOM states that “[f]oods should reach the following internal temperature,” but its description of eggs includes “145 degrees F for 15 seconds; (NOTE: case comes down to this semicolon) until the white is completely set and the yolk is congealed.” There are thus two possible requisites: (1) time and temperature and (2) degree or extent of congealing.
- ▶ CMS’s proposed interpretation treats that phrase as conjunctive—absence of either is a violation. Elgin proposes that the phrase is disjunctive—meeting either is sufficient. The language and context of the SOM show that a disjunctive reading is the better. The punctuation between the clauses –a semicolon– tends to suggest related but separate ideas and stands for “or,” not “and.” Clauses separated by a semicolon “are presumed to be independent clauses.” *In re Owsley*, 384 B.R. 739, 748 (Bankr. N.D. Tex. 2008); see also *McLeod v. Nagle*, 48 F.2d 189, 191 (9th Cir. 1931). [Emphasis added.]
- ▶ Whereas Texas and CMS had argued that eggs had to be cooked at 145 degrees for 15 seconds AND the white had to be completely set and the yolk congealed (and they had evidence of the latter), the Circuit Court ruled that only one of these elements had to be met. Because the facility was able to argue that the eggs had been cooked at 145 degrees for 15 seconds (and because the surveyors had no evidence to dispute), the Court overturned the citation and the CMP.
- ▶ <http://www.ca5.uscourts.gov/opinions/pub/12/12-60086-CV0.wpd.pdf>



## CMS Updates

- ▶ CMP Project Results
  - Implementation of CMP tool
  - CMS amending recommended CMP amounts
  - DQA tracking changes
  - CMS has increased and decreased amounts
    - Removing dates of IJ
    - Converting 'Per Instance' to 'Per Day' and vice versa



## CMS Update

- ▶ Impact of Sequestration/CMS Efficiencies
  - Special Focus Facility reduction
  - Short form life safety code inspections
  - Amended hospital investigation protocol
  - 9 - 12 month ICF/IID surveys have replaced Time Limited Agreement process
  - Reduced federal travel
  - Nursing home accreditation
  - Abbreviated (focused)survey initial discussions



## Right the Rules

- ▶ Committee Study
- ▶ DHS 132
  - Not included
  - Interest in additional changes
- ▶ DHS 88 (adult family homes) and 89 (resident care apartment complexes) included
- ▶ 2011 changes to nursing home oversight
  - Citing federal rules
  - Eliminated dual enforcement



## Miscellaneous Updates

- ▶ DNR Bracelets – preliminary information
- ▶ Staff
  - Engineer Vacancy
- ▶ Helen E.F. Decision
  - Guidance to law enforcement
  - Pending DQA memo to affected provider entities
  - Pending legislation regarding emergency detention and protective placement
- ▶ Virtual Pace



▶ Q&A

