

# Elder Justice: What “No Harm” Really Means for Residents

November 2017

## Background

The Centers for Medicare & Medicaid Services (CMS) works with State Survey Agencies for the purposes of inspecting nursing homes. Surveyors conduct inspections annually (9 to 15 month cycle) and when a complaint has been made against a nursing home. Nursing homes that participate in Medicare and/or Medicaid must always adhere to the Requirements of Participation, which specify the standards of care required by federal regulations.

When inspecting nursing homes, surveyors must determine whether nursing homes have met the standards of care. Nursing homes that have not met the required standards of care are cited for deficiencies. Deficiencies are cited based on a requirement’s corresponding F-Tag. For instance, the standards of care for pressure ulcers is cited as F-314;<sup>1</sup> a substandard nursing home in this requirement would be cited for an F-314 deficiency. All of a nursing home’s deficiencies are listed in the Statement of Deficiencies for that inspection, which the public can access by going to [Nursing Home Compare](#).

Substandard nursing homes are also cited based on the scope and the severity of a deficiency. The scope of a deficiency can range from isolated, pattern, or widespread. The severity of a deficiency can range from “no actual harm with potential for minimal harm” (A-C) and “no actual harm with potential for more than minimal harm” (D-F) to “actual harm that is not immediate” (G-I) and “immediate jeopardy to resident health or safety” (L-J).

CMS may impose various remedies on nursing homes based on the scope and severity of a deficiency. These remedies include plans of correction, federal fines, payment denials, and no

longer being able to participate in Medicare and Medicaid. For “no harm” deficiencies (A-F), CMS rarely imposes federal fines or payment denials.

A report by the Long Term Care Community Coalition indicates that states only identify resident harm about five percent of the time in which a health violation is identified.<sup>2</sup> Unfortunately, the lack of accountability for abuse often results in resident harm without the nursing home being cited for actual harm and without financial penalties.

CMS’s weak enforcement of the government’s own standards of care puts residents at risk of real harm, regardless of any “no harm” label. The following section, taken from Statement of Deficiencies, illustrates real stories of residents who have been harmed by nursing homes across the country. Surveyors classified all of them as “no harm.” This review includes health deficiencies from the latest, most complete survey month listed on [data.medicare.gov](#) at the time of publication.

### Quick Facts (August 2017):

- Surveyors inspected 7,715 nursing homes in the first half of 2017
- Surveyors cited 4,413 deficiencies in August
- 4,206—95.3 percent—were cited as “no harm” (A-F)

## Mission Arch Center, New Mexico

### Number of health deficiencies found: 8

Mission Arch Center’s survey date was August 18, 2017. State surveyors cited the nursing home for an F-328 deficiency (42 C.F.R. § 483.25(b)(2)(i)(ii))—“Properly care for residents needing special services, including: injections, colostomy, ureostomy,

ileostomy, tracheostomy, care, tracheal suctioning, respiratory care, foot care, and prostheses.”<sup>3</sup>

During the inspection, surveyors asked two certified nurse aides (CNAs) to check the portable oxygen tanks of three residents.<sup>4</sup> Upon inspection, the CNAs told the surveyors that the oxygen tanks were empty and not blowing any air.<sup>5</sup> A review of each resident’s care plan indicated that oxygen therapy was ordered for a diagnosed condition.<sup>6</sup>

The surveyors cited the facility for the deficiency. Specifically, surveyors stated “[t]his deficient practice has the potential to result in complications related to pneumonia, heart failure . . . lung disease . . . [and] not enough oxygen pass[ing] from lungs to blood.”<sup>7</sup> Nevertheless, the surveyors cited the deficiency as “no harm” (E), rather than as having caused either harm or immediate jeopardy to any of these residents’ well-being.

## **Good Samaritan Society - Ellsworth Village, Kansas**

### **Number of deficiencies found: 6**

Good Samaritan Society’s survey date was August 10, 2017. State surveyors cited the nursing home for an F-314 deficiency (42 C.F.R. § 483.25(b)(1))—“give residents proper treatment to prevent new bed (pressure) sores or heal existing bed sores.”<sup>8</sup>

A resident’s care plan noted that the resident had an unstageable pressure ulcer on his/her left heel.<sup>9</sup> Among other instructions, the care plan ordered staff to reposition the resident every 2 hours while awake, float the resident’s heel off the bed, place a heel boot on the resident’s foot, and stop using socks until the pressure ulcer was healed.<sup>10</sup>

During the inspection, surveyors saw that the nursing home did not comply with the resident’s care plan.<sup>11</sup> The resident had a sock on his/her left heel, the resident’s heels were not elevated in a manner that would relieve pressure, the resident’s boot was not placed on properly, and the nurse did

not apply the foam dressing that the wound clinic had required.<sup>12</sup>

The surveyors cited the nursing home for the deficiency. According to the surveyors, the nursing home “failed to provide necessary treatment and services to prevent the development of an unstageable pressure ulcer . . .”<sup>13</sup> Surveyors still cited the deficiency as “no harm” (D).

## **Cedar Wood Healthcare Community, Montana**

### **Number of deficiencies found: 16**

Cedar Wood Healthcare Community’s survey date was August 10, 2017.<sup>14</sup> State surveyors cited the nursing home for an F-441 deficiency (42 C.F.R. § 483.80(a)(2)(4)(e)(f))—“have a program that investigates, controls and keeps infection from spreading.”<sup>15</sup>

During the inspection, one staff member was observed performing a blood glucose test on a resident.<sup>16</sup> The staff member placed the glucometer on the medication chart without using a barrier.<sup>17</sup> The staff member then went into the resident’s room and placed the glucometer on the dresser, again without using a barrier.<sup>18</sup> After performing the test, the staff member placed the glucometer back into its case without cleaning the device.<sup>19</sup>

Surveyors subsequently interviewed the staff member about the blood test.<sup>20</sup> The staff member stated that she did not clean the glucometer before or after use; however, she said that she sometimes cleaned the device at the end of her shift.<sup>21</sup> She also noted that she did not know how to clean the glucometer and was not trained to use a barrier.<sup>22</sup>

The surveyors cited the nursing home for the deficiency. The surveyors noted that “the facility failed to appropriately manage the use and cleaning of glucometers to prevent the spread of infection.”<sup>23</sup> Still, the surveyors determined that there was “no harm” (D).

“Elder Justice: What “No Harm” Really Means for Residents” is a monthly newsletter that provides readers with a background on “no harm” deficiencies, monthly data on the number of times surveyors cited “no harm” deficiencies, and real stories of residents who were harmed by “no harm” deficiencies. The newsletter is published jointly by the Center for Medicare Advocacy and the Long Term Care Community Coalition.

## The Centennial Homestead, Kansas

### Number of deficiencies found: 16

The Centennial Homestead’s survey date was August 10, 2017.<sup>24</sup> State surveyors cited the nursing home for an F-325 deficiency (42 C.F.R. § 483.25(g)(1)(3))—“make sure that each resident gets a nutritional and well balanced diet, unless it is not possible to do so.”<sup>25</sup>

An assessment showed that a resident had a poor appetite, had low weight, and required assistance with eating.<sup>26</sup> The care plan ordered staff to provide fortified milk and ice cream with every meal, and to provide a protein shake in the afternoons.<sup>27</sup> The care plan also required staff to assist the resident with eating and to provide alternative foods when s/he was not eating the prepared meals.<sup>28</sup>

In reviewing the July Supplement Record, consisting of a 24-day period, surveyors found that the resident was not given the fortified milk in the mornings at least 6 times and there was no documentation that the milk was given during lunches and dinners.<sup>29</sup> The record also showed that the ice cream was not given during either of the meals at least 14 times.<sup>30</sup>

During their observation, surveyors were present when the resident was served breakfast.<sup>31</sup> Surveyors noted that the resident did not properly eat the meal and that the staff encouraged the resident to eat the meal, even though it had been sitting in the resident’s room for over an hour and half.<sup>32</sup> The staff removed the food after nearly two and half hours but did not offer the resident an alternative meal.<sup>33</sup> The dietary manager later acknowledged that the meal should have been taken away after 30 minutes.<sup>34</sup>

The surveyors cited the nursing home for the deficiency. Specifically, the surveyors stated that the “facility failed to provide appropriate nutritional interventions and accurately monitor nutritional supplement intake to maintain nutritional status . . .

placing the resident at risk for weight loss.”<sup>35</sup> Surveyors identified this as “no harm” (D).

## Talbot Center for Rehab & Healthcare, Washington

### Number of deficiencies found (complaint): 1

Talbot Center for Rehab & Healthcare’s complaint inspection date was August 30, 2017. State surveyors cited the nursing home for an F-309 deficiency (42 C.F.R. § 483.24)—“provide necessary care and services to maintain the highest well-being of each resident.”<sup>36</sup>

A resident returned to the nursing home after a hospital stay.<sup>37</sup> The resident’s assessment indicated that s/he needed assistance with activities of daily living.<sup>38</sup> One of the hospital admission records showed that the resident was very unkempt, his beard was covered in an unknown substance and had to be shaved off, his hands and nails were filthy, he was picking out large chunks of unknown substance from his mouth, he had a deep tissue pressure ulcer, and his dressings were dried to the bed of his wound.<sup>39</sup>

A review of the resident’s records showed that the last wound change was 7 days before his hospital stay.<sup>40</sup> When surveyors interviewed the staff, they noted that resident was difficult and regularly refused care.<sup>41</sup> During the inspection, surveyors saw that the resident’s finger nails were still dirty.<sup>42</sup> Another staff member entered the resident’s room later and noted that the resident’s fingers nails could be a source for cross contamination.<sup>43</sup>

Surveyors interviewed staff about what procedures needed to be taken when the resident refused care. One staff member stated that nursing assistants should re-approach the resident three times and then notify the nurse assigned to the unit.<sup>44</sup> If the resident still refuses care, then it should be reported to the resident care manager.<sup>45</sup> The staff member could not recall any additional interventions.<sup>46</sup>

The resident’s care plan provided that the primary care physician (PCP) was to be notified of any refusals.<sup>47</sup> The PCP stated that s/he was notified that the resident refused insulin injections and blood sugar monitoring.<sup>48</sup> However, the PCP stated that there was no notification in regards to dressing changes.<sup>49</sup> Surveyors found there was no documentation on whether notification actually occurred.<sup>50</sup>

The surveyors cited the nursing home for the deficiency. The surveyors stated that by not ensuring that the facility had a “policy to address care refusals, or a policy on providing care for residents with dementia, [the facility] placed residents at risk for health complications associated with unmet care needs.”<sup>51</sup> Surveyors categorized the deficiency as “no harm” (D).

## Conclusion

The nursing home industry is currently campaigning for deregulation. In October 2017, 120 Representatives and 24 Senators signed on to letters calling for revisions to the Requirements of Participation due to financial and regulatory burdens.<sup>52</sup>

Additionally, CMS released a draft memorandum ([comments due December 1, 2017](#)) highlighting potential revisions to the imposition of remedies. Most notably, CMS removed language connecting specific scope and severity levels to specific categories of remedies; instead, CMS wants to allow regional offices the flexibility to choose remedies that “encourage” providers to attain compliance.<sup>53</sup> CMS also wants regional offices to consider whether a deficiency was a “one-time mistake.”<sup>54</sup>

Resident harm is never a mistake. At best, it is negligence and, at worst, it is intentional harm. Nursing homes should not be “encourage[d]” to attain compliance; they must be in compliance. Nursing home residents do not waive their civil rights upon entering nursing homes. The Nursing Home Reform Act of 1987 promised them the “the highest practicable physical, mental, and psychosocial well-being.”<sup>55</sup> Residents, families, friends, and advocates should make sure federal and state officials live up to that promise.

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<sup>1</sup> A new survey process will be implemented on November 28, 2017. This will result in a completely new F-Tag scheme. The new pressure ulcer F-Tag will be F-686.

<sup>2</sup> Richard J. Mollot & Rediet Demissie, *The Identification of Resident Harm in Nursing Home Deficiencies: Observations & Insights*, NursingHome411.Org, <http://nursinghome411.org/identification-of-resident-harm-in-nursing-home-citations/>.

<sup>3</sup> *Statement of Deficiencies for Mission Arch Center*, CMS (Aug. 18, 2017), <https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=325044&SURVEYDATE=08/18/2017&INSPATYPE=STD&profTab=1&state=NM&lat=0&lng=0&name=MISION%20ARCH%20CENTER&Distn=0.0>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Statement of Deficiencies for Good Samaritan Society-Ellsworth Village*, CMS (Aug. 10, 2017), <https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=175231&SURVEYDATE=08/10/2017&INSPATYPE=STD&profTab=1&state=KS&lat=0&lng=0&name=GOOD%20SAMARITAN%20SOCIETY%20-%20%20ELLSWORTH%20VILLAGE&Distn=0.0>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Statement of Deficiencies for Cedar Wood Healthcare Community*, CMS (Aug. 10, 2017), <https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=275053&SURVEYDATE=08/10/2017&INSPATYPE=STD&profTab=1&state=MT&lat=0&lng=0&name=CED>

[AR%2520WOOD%2520HEALTHCARE%2520COMMUNITY&Distn=0.0](#)

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Statement of Deficiencies for The Centennial Homestead*, CMS (Aug. 10, 2017),

<https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=175512&SURVEYDATE=08/10/2017&INSPATYPE=STD&profTab=1&state=KS&lat=0&lng=0&name=THE%2520CENTENNIAL%2520HOMESTEAD&Distn=0.0>

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Statement of Deficiencies for Talbot Center for Rehab & Healthcare*, CMS (Aug. 30, 2017),

<https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=505202&SURVEYDATE=08/30/2017&INSPATYPE=CMPL&profTab=1&state=WA&lat=0&lng=0&name=talbot&Distn=0.0>

[SPTYPE=CMPL&profTab=1&state=WA&lat=0&lng=0&name=talbot&Distn=0.0](#).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Letter from Members of the House of Representatives to Eric Hargan & Seema Verma (Oct. 11, 2017),

<http://renacci.house.gov/cache/files/8ad42967-7fd9-4d12-abaa-f65dda6e0426/renacci-rop-final-letter-10.11.17.pdf>;

Letter from Senators to Eric Hargan & Seema Verma (Oct. 26, 2017),

<https://www.hoeven.senate.gov/imo/media/doc/10.26.17%20SNF%20Rop%20Letter%20FINAL.pdf>.

<sup>53</sup> *Revised Policies regarding the Immediate Imposition of Federal Remedies- FOR ACTION*, CMS (Oct. 27, 2017),

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-18-01.pdf>.

<sup>54</sup> *Id.*

<sup>55</sup> 42 U.S.C. § 1395i-3(a)(2).