

**Grievances**

**WHCA/WiCAL**  
**Fall Convention 2019**

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**Overview**

- The Law: SNFs, CBRFs, RCACs
- Why grievance procedures are important
- How to handle grievances

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What are the resident's rights and the facility's obligations?

**THE LAW**

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**Skilled Nursing Facilities**

- Residents have the right to voice grievances to the facility or other agency or entity that hears grievances without fear of discrimination or reprisal
- Grievances may include care and treatment (furnished or unfurnished), behavior of staff and other residents, any other concerns regarding their stay at the facility

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**Skilled Nursing Facilities**

- The facility must make information available on how to file a grievance
- The facility must establish a grievance policy
- The facility must make prompt efforts to resolve grievances

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**Skilled Nursing Facilities**

- The grievance policy must provide for notifying resident individually or through postings of:
  - The right to file a grievance
  - Right to file anonymously
  - Contact information for grievance official
  - A reasonable expected time frame for completing review of a grievance
  - Right to obtain a written decision
  - Contact information of independent entities with whom grievances may be filed

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**Skilled Nursing Facilities**

- Grievance policy must:
  - Identify the grievance official (and list of his/her responsibilities)
  - Require taking immediate action, where necessary, to prevent further potential violations of resident rights while grievance is being investigated
  - Require immediate reporting of all allegations of neglect, abuse, and misappropriation of resident property

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**Skilled Nursing Facilities**

- The grievance policy:
  - Must provide a written decision that includes:
    - Summary of the grievance,
    - Steps taken to investigate,
    - Pertinent findings or conclusions,
    - Grievance confirmed/not confirmed,
    - Any corrective action and date of issue

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**Skilled Nursing Facilities**

- The grievance policy:
  - Maintain evidence demonstrating results of all grievances for a period of at least 3 years from issuance of final decision
  - Cannot retaliate or discourage resident from making a complaint to external entities and regulators

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**Skilled Nursing Facilities**

- Separate obligation to have policies and procedures to investigate any allegation of abuse, neglect, exploitation, and misappropriate of property
- Allegations of violations by persons licensed, certified or registered shall be promptly reported by the facility to the appropriate licensing, examining or affiliated credentialing board and to the person against whom the allegations have been made

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**Skilled Nursing Facilities**

- 42 CFR § 483.10
- 42 CFR § 483.12
- Wis. Stat. 50.09
- Wis. Admin. Code DHS 132.31

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**CBRFs**

- A resident or any individual on behalf of the resident may file a grievance with the facility, the resident's case manager, the board on aging, Disability Rights WI, or any organization providing advocacy assistance
- Must have written grievance procedure and provide a copy to each resident before or at time of admission

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### CBRFs

- Grievance procedure must:
  - Include contact information for advocacy organizations and regional DHS office
  - Investigator must not have had involvement in the issue leading to the grievance
  - Cannot discourage, prevent, or retaliate against an individual from filing grievance
  - Must provide to resident and maintain a copy of written summary of grievance, findings and conclusions, and actions taken

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### CBRFs

- Wis. Stat. 50.09
- Wis. Admin. Code DHS 83.32-33

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### RCACs

- Must have written grievance procedure and provide a copy to each resident before or at time of admission
- Investigator must not have had involvement in the issue leading to the grievance
- Must provide to resident and maintain a copy of written summary of grievance, findings and conclusions, and actions taken

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**RCACs**

- Wis. Admin. Code DHS 89.34-35

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How to deal with complaints and grievances

**APPLICATION**

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**Overview**

- Preliminary Considerations
- Prevention
- Identifying Grievances
- Investigative Procedure

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### Preliminary Considerations

- Purpose of Grievance Procedure
  - Enhance resident satisfaction
  - Avoid regulatory citations
  - Prevent lawsuits

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### Preliminary Considerations

- Reasons to conduct thorough investigations:
  - Protect residents
  - Satisfy reporting obligations in case of abuse, neglect, misappropriation
  - Provide accurate evidence in the case of a lawsuit

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### Implementation

- Establish a strong grievance policy
- Designate and provide high-level support for "grievance officer"
- Train all staff on grievance procedures and importance of treating all allegations as credible
  - On hire
  - Ongoing

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### Implementation

- Train staff that grievances are not just written complaints to management - all staff are responsible for identifying grievances
  - Proactively identify potential resident rights violations
  - Actively listen to residents

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### Procedure - All Staff

- Define complaint or grievance broadly so as to trigger grievance process
- First steps:
  - Treat all complaints and grievances seriously
  - Alert grievance officer and supervisor
  - Always protect resident first

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### Procedure - Grievance Officer

- Establish/confirm resident safety
- Determine any reporting requirements
- Create an investigation plan

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### Procedure - Investigation Plan

- Consider invoking attorney-client privilege
  - How to establish
  - Treat all documents as if eventually discoverable
- Outline scope of investigation
  - What preliminary review should be undertaken?
  - Who should be interviewed, in what order, by whom?
  - Focus investigation on allegations or on accused individual

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### Procedure - Privilege

- Attorney Client privilege protects:
  - Communications between a client
  - And their attorney, acting as an attorney,
  - Made in confidence,
  - For the purpose of obtaining or providing legal advice

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### Procedure - Privilege

- Attorney-client communication will not be privileged if it is:
  - made in the presence of a third party
  - made with the intent to disclose
  - made to an employee or others who did not need access

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### Procedure - Privilege

- Attorney-client communication may lose its privilege if:
  - the client waives the privilege
  - the communication is not maintained as confidential information
  - the communication is inadvertently disclosed and not timely clawed back

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### Procedure - Initial Review

- Collect and review relevant documentation:
  - Resident's complaint
  - Resident's medical record
  - Admission agreement
  - Applicable policies
  - Other relevant records/documents to review (i.e., any relevant recent survey findings/citations)

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### Procedure - Interviews

- Plan interview questions carefully
  - Make a list of questions so nothing is missed
  - Use open ended questions
  - If interviewing individuals outside of facility, beware privacy issues

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### Procedure - Interviews

- Set appropriate tone and maintain control over flow of interview
- Explain purpose of interview in general terms and investigator's role
- Consider providing copies of applicable policies in advance
- Explain interviewee's role in investigation and (including whether subject of accusations)

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### Procedure - Interviews

- Use open ended questions and silence to encourage witness to keep talking
- Conclude with catch all questions
  - Is there anything else you think I should know?
  - Is there anyone else I should talk to?
  - Is there anything you thought I would ask but did not?

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### Procedure - Interviews

- Should you ever record an interview?
- Document the content of the interview in as much detail as possible
- Ask interviewee not to share information regarding the interview with others

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### Procedure - Evaluation

- Root cause-type analysis
- Evaluate relative credibility of each source of information:
  - Corroboration and consistency
  - Quality of recollection
  - Biases/interests/motives
  - Background, history, patterns
  - Demeanor/attitude

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### Procedure - Next Steps

- Determine appropriate remedial steps:
  - Evaluate what the resident would want to effectively resolve grievance and determine whether its feasible to provide
  - Discipline or terminate employee
  - Report caregiver misconduct
  - Additional training (or retraining) of staff
  - Revise policies

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### Procedure - Next Steps

- Determine if any actions should be taken to continue protecting residents
- If resident rights not violated, determine if any action can efficiently increase resident satisfaction
- Communicate to complainant the procedure and conclusion of investigation in writing

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## Procedure - Next Steps

- Prepare final report with conclusions and elements of the required report to be provided to the resident
- Maintain report and documentation of each part of process from complaint to interviews for at least 3 years

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## Questions?



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