

# Legal Update: Reappraisals, Wound Care and Dementia Plans of Operation

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## QUESTION:

A resident's family member complained that she had not been provided with notice of a reappraisal. We demonstrated to our LPA that we did provide notification, but we were cited because two reappraisals "were not signed to show the family was aware of the reports." Do we need to obtain family signatures on reappraisals?

## ANSWER:

No. The applicable regulation is § 87587 which requires that providers update their pre-admission appraisals in writing whenever necessary to note significant changes and to keep the appraisal accurate. Subsection (b) requires providers to "immediately bring any such changes to the attention of the resident's physician and his family or responsible person." Therefore, the regulation, on its face, not only does not require that reappraisals be signed by the resident's family or responsible person, the regulation does not even require that notification be in writing. A telephone call is sufficient.

Of course, providers would be well served to provide written notice to the resident's family or responsible person so that you have documentation that notification was provided in case an issue ever arises. Please note that subsection (c) of § 87587 requires RCFE's to arrange a meeting with the resident, the resident's representative, if any, appropriate facility staff, and a representative of the resident's home health agency, if any, when there is a significant change in the resident's condition but in any event not less than every 12 months.

## QUESTION:

We recently received a deficiency because a caregiver was changing a resident's wound dressings at a time when her supervising nurse was not present in the building. Our deficiency specifically stated that a "skilled professional did not visit the facility for wound dressing changes of the resident" on the day in question. Was this deficiency legitimate?

## ANSWER:

No. Regulation § 87713 states that RCFE's may retain residents with a healing wound under certain circumstances including "when care is performed by or under the supervision of an appropriately skilled professional." The term "appropriately skilled professional" is defined in regulation § 87101(a)(9) to mean an individual who has the training and is licensed to perform necessary medical procedures prescribed by a physician. The list includes, but is not limited to, registered nurses and licensed vocational nurses.

The term "supervision" is defined in § 87101(s)(10) as follows:

"Supervision' means to oversee or direct the work of

an individual or subordinate but does not necessarily require the immediate presence of the supervisor." (Emphasis added.)

Apparently, the sole basis for you being cited was your LPA's presumption that a licensed professional had to be present in the building at the time that wound dressings were being changed. This interpretation, however, would effectively defeat the whole purpose of the provision in § 87713 that permits delegation. If a licensed professional must be directly present whenever dressings are changed, the licensed professional could change the dressings him or herself, and there would be little point in delegating responsibility. This is not what the regulation requires.

(P.S., This deficiency was just overturned on appeal.)

## QUESTION:

I understand that we are no longer required to obtain a dementia waiver. We want to put in place a dementia program but I was told that if we did not get the Department's approval, we would be cited. Is this right?

## ANSWER:

Yes. Although providers are no longer required to obtain a dementia waiver, there are new requirements for providing dementia care. Specifically, § 87725 requires that any RCFE that advertises, promotes or otherwise holds itself out as providing special care, programming, and/or environments for residents with dementia must meet a number of specifically enumerated requirements. Among those requirements is that the provider include in its plan of operation a brief narrative description of a number of specific features of its dementia care program. These include items such as program philosophy, preadmission assessment, admission criteria, reassessments, activities, staff qualifications and training and environmental features.

Regulation § 87222, that deals with Plans of Operation, states, "Any significant changes in the plan of operation which would affect the services to residents shall be submitted to the licensing agency for approval." There is no question that the implementation of a dementia program would constitute a significant change in operation and the plan would need to be submitted to the Department for approval.

Note, providers that do not hold themselves out as providing special dementia programs do not need to meet the requirements of § 87725. Any facility that retains a resident with dementia, however, must meet the requirements of § 87724, including those pertaining to alarmed doors and other physical plant requirements. But presumably any RCFE that has set aside a special unit for dementia care would "hold itself out" as doing so and thus would have to meet the enhanced requirements of § 87725. n