

Promising Practices: Resident Lifestyle Choices

The CMS Interpretive Guidelines:

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Access and Visitation

Below is the full text of the CMS Interpretive Guidelines changes for the tags related to Promising Practices. *The CMS revisions are in red italics.*

Portions of the new text related to resident lifestyle choices are boxed in yellow.

The full revisions beyond the resident lifestyle choices can be accessed at:

http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter09_31.pdf

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§483.10(j) Access and Visitation Rights

§483.10(j)(1) The resident has the right and the facility must provide immediate access to any resident by the following:

- (i) Any representative of the Secretary;
- (ii) Any representative of the State;
- (iii) The resident's individual physician;
- (iv) The State long term care ombudsman (established under section 307 (a)(12) of the Older Americans Act of 1965);
- (iv) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);
- (v) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);
- (vi) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

- (vii) **Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.**

§483.10(j)(2) The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

Interpretive Guidelines: §483.10(j)(1) and (2)

The facility must provide immediate access to any representative of the Secretary of the Department of Health and Human Services, the State, the resident's individual physician, the State long term care ombudsman, or the agencies responsible for the protection and advocacy of **individuals with developmental disabilities or mental illness**. The facility cannot refuse to permit residents to talk with surveyors. Representatives of the Department of Health and Human Services, the State, the State **long term care** ombudsman system, and protection and advocacy agencies for **individuals with developmental disabilities or mental illness** are not subject to visiting hour limitations.

Immediate family or other relatives are not subject to visiting hour limitations or other restrictions not imposed by the resident. **Likewise, facilities must provide 24-hour access to other non-relative visitors who are visiting with the consent of the resident. These other visitors are subject to "reasonable restrictions" according to the regulatory language. "Reasonable restrictions" are those imposed by the facility that protect the security of all the facility's residents, such as keeping the facility locked at night; denying access or providing limited and supervised access to a visitor if that individual has been found to be abusing, exploiting, or coercing a resident; denying access to a visitor who has been found to have been committing criminal acts such as theft; or denying access to visitors who are inebriated and disruptive.** The facility may change the location of visits to assist care giving or protect the privacy of other residents, if these visitation rights infringe upon the rights of other residents in the facility. For example, a resident's family visits in the late evening, which prevents the resident's roommate from sleeping.

An individual or representative of an agency that provides health, social, legal, or other services to the resident has the right of "reasonable access" to the resident, which means that the facility may establish guidelines regarding the circumstances of the visit, such as location. *If there are problems with the facility's provision of reasonable privacy for a resident to meet with these representatives, refer to §483.10(e), Privacy and Confidentiality F164.*