

Painting the Picture 2009

Principles of Regulatory
Documentation
And Compliance Tools

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Objectives:

At the end of the training each participant will demonstrate an:

Understanding of the importance of legal aspects of regulatory documentation

- ✓ **Understanding of the principles of documentation and how to use them to accurately communicate findings**

What is expected of us as regulators

Integrity-Our reputations as professional investigators rest on our ability to be honest and “above board” in our conduct

- ✓ **Mature Judgment-Because of our positions of public trust that we hold, our judgment must be guided by known facts and reasonable assumptions based on those facts.**

Adopted from NCIT Basic Program

Principles of Documentation

The survey process determines the compliance or noncompliance of providers

- ✓ **The documentation records the compliance or noncompliance**

The Importance of Effective Documentation

- ✓ **Licensors and investigators cannot rely on memory**
- ✓ **We must record in detail what is heard, seen or read during site visits and interviews**
- ✓ **Is necessary to form the basis for record and decision making**
- ✓ **Becomes part of subsequent legal proceedings arising from contested decisions**
- ✓ **Provides the facility with the information necessary to analyze and correct its problems**

Sources of Evidence

- ✓ **Observation: source, date, time, and location of observations**
- ✓ **Interview: date and time of interviews, titles of interviewed person or identifiers if not confidential**
- ✓ **Record Review: types and dates of all documents reviewed.**

Observations

- ✓ **Information gathered based on input from the senses. It is what we see, hear, touch or smell**
- ✓ **It must answer the who, what, where, when and how question**
- ✓ **Avoid terms such as “throughout the monitoring visit”**
- ✓ **Goals of observation are to gather resident-specific information, observe the environment for features that impact residents’ quality of life, and to be alert to the way care is provided, and how staff and residents interact.**

Interview

- ✓ **Talking to individuals (residents, staff, family, visitors, physicians, etc.) to collect information regarding rule compliance**
- ✓ **Information obtained can support a deficiency**
- ✓ **To the extent possible, interview information is verified through observation and record review.**
- ✓ **If this is not possible, information can be verified through multiple interview sources.**

Record Review

- ✓ **Process of reviewing and analyzing administrative and clinical documents**
- ✓ **To determine the needs of the resident and if the provider has addressed those needs**
- ✓ **Identify the record that contained or failed to contain the documentation**
- ✓ **If documentation is lacking, ask a staff member if further documentation is available.**

Outcomes

The endpoints or final goals of the care and services provided

- ✓ **If at all possible, outcomes should be included in the findings**
- ✓ **Include the specific results or consequences of the provider's deficient practice for the individual cases**

Principle #1

Using Plain Language

Exclude the use of consultation, advice, comments or directions aimed at the provider

- ✓ **Each deficiency citation relates to a rule requirement in 10A NCAC F, 10A NCAC 13G or General Statute**
- ✓ **Inclusion of extraneous information or consultative remarks may lead to confusion**

Writing Clearly

- ✓ **Minimizes misunderstanding and legal problems**
- ✓ **Write**
 - ✓ **For the reader**
 - ✓ **In a way that can be understood by all**
 - ✓ **As you speak**
 - ✓ **To inform----not to impress**

Best Practice is to.....

Keep sentences short

- ✓ **Avoid undefined abbreviations, initials, and jargon**
- ✓ **Write in layman's terms**
- ✓ **Ensure the accuracy of quoted material**
- ✓ **Put all relevant facts in chronological order**

Best Practice is to...

Use active voice.

The resident was approached by the personal care aide



The personal care aide approached the resident

Avoid unnecessary words



The dining room was yellow in color

The dining room was yellow.

Best Practice is to...

- ✓ **Avoid vague words or phrases.**
- ✓ **The resident had a large ulcer on the ankle.**



✓ **The resident was observed to have an ulcer on the left inner ankle. The wound was open with yellow drainage and measured approximately one inch in diameter and 1/4 inch deep.**

Best Practice is to...

✓ **Avoid words that imply**




The personal care aide was rude to the resident

The personal care aide told the resident to “shut up.”

Principles #2

Components of a Citation

- ✓ **Regulatory Reference**
 - ✓ **Statement of deficient practice**
 - ✓ **Relevant findings**
- 
- A decorative silhouette of a mountain range in a darker teal color, located in the bottom right corner of the slide.

Concern or Deficiency?

- ✓ **Concern - scope and/or severity not present documented on a monitoring report**
- ✓ **Deficiency - scope and/or severity present documented on a corrective action report (CAR)/statement of deficiency (SOD)**

What is a Deficiency?

- ✓ **A failure to comply with a licensure rule 10 A NCAC 13 F/G or residents' rights as specified in G.S 131D-21**
 - ✓ **It is based on what you, see, hear and read**
 - ✓ **Information gathered is evaluated for scope and severity**

Scope and Severity

- ✓ **Scope is the number of residents potentially or actually affected**
- ✓ **Severity is the effect on resident outcomes**
- ✓ **Expressed in numerical format**
- ✓ **When the deficient practice does NOT apply to all residents, we must attempt to determine the relevant universe**
- ✓ **The relevant universe is the total number of residents affected by the failed practice.**

SCOPE



SEVERITY

		Type A & Penalty
	Type B & Directed POC Date	
MR or CAR		

Documentation Tools

- ✓ **Monitoring Report**
- ✓ **Corrective Action Report (CAR)**
- ✓ **Statement of Deficiency (SOD)**
- ✓ **Penalty Proposals**

Monitoring Report

✓ WHAT:

✓ Form used to document routine or f/u up monitoring visit

✓ Should include:

✓ purpose of visit

✓ sample size

✓ monitoring activities

✓ follow up to previous concerns

✓ provider comments & signature

✓ When:

✓ completed if problems noted do not have scope & severity for deficiency

✓ Should be completed prior to exit or during exit conference

Corrective Action Report Statement of Deficiency



✓ **WHAT:**

- ✓ **Tool or form used to document substantial non-compliance**
- ✓ **A written enforceable agreement between the facility and the regulatory agency**
- ✓ **The official document on which deficiencies are recorded**

✓ **WHEN:**

- ✓ **A previously cited concern has not been corrected**
 - ✓ **A violation of residents' rights**
 - ✓ **Non-compliance that involves the health, safety and welfare of resident(s)**

Corrective Action Report

✓ When

- ✓ A previously cited concern has not been corrected
- ✓ A violation of residents' rights
- ✓ Non-compliance that involves the health, safety and welfare of resident(s)

Components of a Deficiency

- ✓ **Regulatory reference**
- ✓ **Statement of Deficiency**
- ✓ **Findings**

The Regulatory Reference

- ✓ **Examine the language of the regulation**
- ✓ **What does it say? What does it require?**
- ✓ **Determine the regulation the provider may have violated**
- ✓ **10A NCAC 13G. 0507 Training on CPR**
- ✓ **Each family care home shall have at least one staff person on the premises at all times who has completed within the last 24 months a course on cardio-pulmonary resuscitation and choking management.**

The regulatory reference is composed of:

- ✓ **The reference:**
 - ✓ **10A NCAC 13F**
 - ✓ **10A NCAC 13G**
 - ✓ **General Statute**
- ✓ **The language from the reference that specifies the aspects not met**
- ✓ **An explicit statement that the requirement was “NOT MET” (Deficient Practice Statement)**

Deficient Practice Statement

- ✓ **Written specifically to allow the reader to understand the part of the requirement not met (summary of problem)**
- ✓ **Source from which evidence obtained (observation, record review and interview)**
- ✓ **Identifies scope and severity**
- ✓ **Includes what the provider did or did not do to cause the noncompliance**

Deficient Practice Statement

- ✓ **Specific action(s), error(s), lack of action**
- ✓ **Resultant outcome (when possible)**
- ✓ **Extent of deficient practice (# of deficient cases relative to total in the sample)**
- ✓ **Identifiers of individuals**
- ✓ **Based on record reviews and staff interviews, it was determined that 4 of 6 resident records did not have complete medication orders (#1, 2, 3 and 6).**

Deficient Practice Statement

✓ Example

- ✓ **Based on observation, record review and staff and resident interviews, the facility failed to ensure licensed health professional support reviews were done for 3 of 5 sampled residents (# 4, 13, and 18). Sampled residents required reviews due to insulin administration, oxygen, and nebulizer treatments.**

Findings... “Just the facts

✓ **Facts** ma’am”

- ✓ **How** - source of evidence
- ✓ **What** - the facility did or failed to do and
- ✓ **What** was the impact on the Resident?
- ✓ **Who** - the staff or resident(s) involved
- ✓ **Where** - it occurred
- ✓ **When** - the problem occurred and how long it lasted

Finding

- ✓ **Record review for Resident #3 revealed an FL-2 dated 01/28/08 with a diagnoses of diabetes and an order for a no concentrated sweets diet. During observation of the 04/01/08 lunch meal at 12:15 PM, Resident #3 was observed to receive a frosted cake square and iced tea.**

Interview with the dietary staff at 1:00 PM on 04/20/08 verified that the cake and iced tea contained sugar. The cook stated that he thought “all the residents were on regular diets and that’s how I cook”.

Identifiers

- ✓ **Use resident roster to assign identifier numbers.**
- ✓ **When referencing confidential interview, do not use a date or time of interview.**
- ✓ **If an interviewee does not wish the provider to know the source of information DO NOT USE an identifier, date or time.**
- ✓ **“During a confidential interview.....”**

Examples of Identifiers

- ✓ **For 2 of 5 residents sampled (#3 and 4)**
- ✓ **For 5 of 5 personal care aides (C,D,E,F and G).**
- ✓ **During dining room observations on Jan 21, 2008 at 12:30 p.m., 2 non-sampled random residents were observed asking for second helpings and being told “no” by facility kitchen staff. In addition, a confidential interview revealed “there is never enough food here.”**

Organize your Findings

- ✓ **Findings are facts that allow the provider to compare what it did or failed to do with what is required.**
- ✓ **Cite only findings attributable to the provider**
- ✓ **Findings should be organized in a chronological and logical order, not necessarily the order in which you found them**
- ✓ **Findings with the most compelling scope and severity should be first**
- ✓ **When including a series of facts and events, begin with relevant background facts.**

Principle # 3

Onsite Correction

What if the provider corrects the deficiency during a survey?

- ✓ **The deficiency is still documented**
- ✓ **Correction of the finding reported does not eliminate the presence of the problem**
- ✓ **Fixing the problem for the identified resident does not necessarily mean the underlying cause of the problem of system failure has been identified and corrected for all residents.**

Principle #4

Interpretations

- ✓ **The deficiency demonstrated how the provider failed to comply with rule requirements, NOT interpretations**
- ✓ **Interpretations are designed to assist both DSS/DHSR and providers in understanding the requirements**
- ✓ **Interpretive guidelines do NOT replace or supersede regulatory requirements.**

Principle #5

Adverse Actions

- ✓ **The findings explain how the scope and/or severity of the deficient practice justifies a Type A or Type B violation (impact to resident)**

Type A Violations

- ✓ **One that results in death or serious physical harm or substantial risk that death or serious physical harm will occur**
- ✓ **Type A violations require a directed plan and date of correction.**
- ✓ **The violation is forwarded to DHSR as a penalty proposal for review and consideration**

Type B Violations

- ✓ A violation which presents a direct relationship to health, safety, or welfare of any resident, but does not result in substantial risk that death or serious physical harm will occur.
- ✓ A Type B violation is documented on a CAR/SOD and has a directed date of compliance. The facility is required to submit a plan of correction.

Type B Penalty Proposal

- ✓ **If the violation is not corrected by the date specified, the type B violation will then be forwarded to DHSR as a penalty proposal.**
- ✓ **The proposal is based on the failure to correct by the time frame specified and the findings from the follow up visit.**

SUBSTANTIAL COMPLIANCE

- ✓ **The word substantial means to be supported with evidence.**
- ✓ **The word compliance means to act in accordance with the rules.**
- ✓ **The facility must have been found to be acting or carrying out their business in accordance with the rules set forth by GS 131D-2 and 10A NCAC 13F/G as verified by evidence.**
- ✓ **Non-compliance (scope and severity) is minimal in relationship to potential outcome.**

Conclusions

- ✓ **Correctly documenting is the key to success of the survey/monitoring and licensure process.**
- ✓ **It is the knowledge of the regulations and how to apply them in a consistent manner that produces a clear description of the problem.**
- ✓ **When the provider resolves these cited problems, quality of care and quality of life can be a reality in the adult care home.**