

MEMORANDUM

Texas Department of Human Services * Long Term Care/Policy

TO: LTC-R Regional Directors
Section/Unit Managers

FROM: Marc Gold
Section Manager
Long Term Care-Policy
State Office MC: W-519

SUBJECT: Regional Survey & Certification Letter #00-03

DATE: January 26, 2000

The attached RS&C Letter is being provided to you for information purposes and should be shared with all professional staff.

- RS&C Letter No. 00-03 -- Clarification on Citing Deficiencies for Situations Involving Abusive Behaviors by Demented Residents; Call Beverly Tucker, Professional Services, Long Term Care-Regulatory, at (512) 438-2631.

If you have any questions, please direct inquiries to the individuals or sections listed above.

~Original Signature on File~

Marc Gold

DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

Region VI
1301 Young Street, Room 833
Dallas, Texas 75202

January 19, 2000

REGIONAL SURVEY AND CERTIFICATION LETTER NO: 00-03

To: All State Survey Agencies (Action)
All Title XIX Single State Agencies (Information)

Subject: Clarification on Citing Deficiencies for Situations Involving Abusive Behaviors by Demented Residents

We have recently done a review of deficiencies involving citations of abuse, and found some problems with how deficiencies are cited when a demented resident is involved. This letter gives guidance on how to investigate and cite deficiencies for these situations. 42 CFR '488.301 defines abuse as "...the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. " There is additional guidance in State Operations Manual (SOM) Appendix P - Guidance to Surveyors, Long Term Care Facilities, Revision 10, dated July 1999. This definition and the SOM guidance make it clear that a determination of abuse requires that the incident under investigation must have been willful and/or deliberate. If the perpetrator of the incident is demented, willfulness cannot be established. A diagnostic criterion of dementia is the deterioration of intellectual functioning and other cognitive skills. If the resident's decision-making skills are impaired, the resident's actions cannot be considered willful and the resident cannot be held accountable. Thus, citing a deficiency under 42 CFR 488.301 (Tag F-223) is not appropriate and a violation of abuse must not be cited. However, these kinds of incidents should be investigated for possible deficiency citations under other regulations. When actions by a demented resident constitute inappropriate behavior and/or may be a threat to other residents or himself, the facility is accountable. Thus, surveyors should investigate whether deficiencies exist for the regulatory requirements of 42 CFR 483.13 (c)(2) and (3), specifically Tags F-224 - Neglect on the part of the facility to allow this behavior and not protect residents and Tag F-226 - Policies and Procedures.

Please implement this guidance immediately. Correct citations of deficiencies are critical for ensuring that enforcement actions are supportable and hold facilities accountable. If you have any questions, please contact Theresa Bennett or Dan McElroy at (214) 767-6301.

Sincerely,

~Signature on File~

Molly Crawshaw, Acting Chief
Survey and Certification Operations Branch