

# CMS: No-CPR Policies Are Not Permitted in Nursing Homes

## Introduction

In a recent case in California, a nurse in an independent living facility refused to perform cardiopulmonary resuscitation ("CPR") on an elderly resident who was experiencing respiratory distress, even after a 911 dispatcher recommended that the nurse do so. The facility had a policy requiring that nurses wait for emergency responders to arrive and administer CPR. The resident subsequently died. The fallout from this case led the Centers for Medicare and Medicaid Services ("CMS") to issue Memorandum 14-01-NH (the "Memorandum").

## CMS Guidance

On October 1, 2013, CMS released the Memorandum, which shed light on CMS's position regarding the administration of CPR in nursing homes. While the Memorandum did not necessarily present a major change in course for CMS, it provided some clarity for facilities grappling with the question of what form their CPR and advance directive policies should take. It is important to note that the requirements for CPR in the independent living context are governed by state law and are thus not the subject of this memorandum.

The Memorandum begins by noting that facilities must "meet professional standards of quality," and that the American Heart Association Guidelines for CPR and Emergency Cardiovascular Care set the applicable standard for determining whether to administer CPR. These guidelines urge the administration of CPR by a rescuer unless (1) the resident has a valid Do Not Resuscitate (DNR) order in place, (2) the resident exhibits obvious signs of clinical death, or (3) administering CPR could cause injury or peril to the rescuer.

CMS acknowledges the general inefficacy of CPR with regard to elderly nursing home residents, but notes that nursing homes are increasingly serving younger residents who only require short-term rehabilitation. With nursing homes serving growing numbers of both younger, healthier residents, and residents with diverse cultural backgrounds that may influence their desired approaches to end-of-life care, CMS is concerned that nursing homes adopt policies that allow for full

### POSTED:

Jul 20, 2014

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implementation of advance directives and promote person-centered care. Accordingly, the Memorandum states that nursing homes may not adopt facility-wide policies indicating that the nursing home staff will not administer CPR ("No CPR Policies").

## Implementation in Wisconsin

Following publication of the Memorandum, the State of Wisconsin released DQA Memo 13- 022, which affirms that nursing homes are not permitted to have No-CPR Policies. Nursing homes that have No-CPR Policies or policies that distinguish between witnessed and unwitnessed cardiac arrest must revise their policies. These nursing homes must also notify residents, guardians, etc. of the change and determine if residents wish to make changes to advance directives they had previously expressed. No-CPR Policies are to be treated as violations of a nursing home's residents' right to formulate advance directives and cited at F155.

Despite regulatory guidance, many nursing homes still have No-CPR Policies in place. If nursing home operators have not yet done so they should review and, if necessary, revise their CPR policies. The Memorandum's "Survey Implications" section provides several guidelines. First, CPR policies must "direct staff to initiate CPR as appropriate[,] " which would include administering CPR to residents experiencing cardiac arrest who:

1. have not formulated an advance directive;
2. have an advance directive that specifies the resident's desire to receive CPR;
3. do not have a valid DNR Order; or
4. do not show signs of clinical death, as defined in the American Heart Association Guidelines for CPR and Emergency Cardiovascular Care.

Second, CPR policies must not limit staff-members to only calling 911 when a resident experiences a cardiac event. Third, nursing homes must administer basic life support (including CPR) to the residents identified above until the arrival of emergency responders. Finally, facilities must ensure that CPR-certified staff-members are on-hand at all times.

Although not addressed in the Memorandum, the State of Wisconsin also advises all nursing homes to have an effective system for quickly distinguishing those



residents who do not want resuscitation from those who do.

If you have any questions about the subject of this client e-alert, or if you would like help developing a CPR policy, please contact Rob Heath or another member of Reinhart's Long Term Care, Assisted Living, and Senior Housing practice group.

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