

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-09-39

DATE: May 29, 2009

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Food Procurement at 42 CFR 483.35(i)(1)(2), Tag F 371, and Self Determination and Participation at 42 CFR 483.15, Tag F 242

Memorandum Summary

This memorandum clarifies that:

- The language at 42 CFR 483.35(i), Tag F 371 “Procure food from sources approved or considered satisfactory by Federal, State or local authorities” is intended solely for the foods procured by the facility. A revision has been made to the interpretive guidelines at F371 to further clarify this intent;
- Foods accepted by residents from visitors, family, friends, or other guests are not subject to the regulatory requirement at F 371; and
- Residents have the right to choose to accept food from visitors, family, friends, or other guests according to their rights to make choices at §483.15, F 242, Self Determination and Participation.

The Centers for Medicare & Medicaid Services (CMS) regulation at 42 CFR 483.35, Tag F 371, states that foods procured by the facility must come from sources approved or considered satisfactory by Federal, State, or local authorities. The surveyors should use the regulation and interpretive guidelines at F 371 when determining how the facility acquired food for resident consumption. This regulatory requirement does not expand beyond the scope of the intent to monitor how the facility procures food for the nursing home resident population.

The surveyor(s) should not use the food procurement regulatory language at F 371 to monitor any food(s) provided by visitors, friends, family members, or resident guests which the resident has chosen to accept. The facility does have a responsibility under the food safety regulatory language at F371 to help visitors to understand safe food handling practices (such as not holding or transporting foods containing perishable ingredients at temperatures above 41 degrees F.) and to ensure that if they are assisting visitors with reheating or other preparation activities, that facility staff use safe food handling practices and encourage visitors and residents who are contributing to food preparation in the facility to use these safe practices as well.

A clarification has been added to F371, which CMS has released as an advance copy along with revisions to several quality of life and environment tags, with an issuance date of June 17, 2009.

The CMS regulation at §483.15, F242 protects the resident(s) right to choose to accept food from visitors, family, friends, or other guests (e.g., facility-sponsored activities such as a community pot luck). This regulation states, “the resident has the right to make choices about his or her life in the facility that are significant to the resident.”

When the survey team determines that a facility has not allowed a resident or residents to choose to accept food from any friends, family, visitors or other guests, the team should consult the regulation and guidance at F 242 to determine if the resident(s) rights have been violated.

For questions regarding this memorandum, please contact Debra Swinton-Spears at (410) 786-7506 or e-mail at debra.swinton-spears@cms.hhs.gov.

Effective Date: This clarification is effective immediately. Please ensure that all appropriate staff are fully informed within 30 days of the date of this memorandum.

Training: This information should be shared with all appropriate survey and certification staff, surveyors, their managers, and applicable staff.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management