

BUILDING YOUR CASE OF PAST NON- COMPLIANCE

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TO CITE PAST NONCOMPLIANCE (PNC), ALL THREE CRITERIA MUST BE MET:

1. The facility was not in compliance with the specific regulatory requirement(s) (as referenced by the specific F-tag or K-tag) at the time the situation occurred;
2. The noncompliance occurred after the exit date of the last standard (recertification) survey and before the survey (standard, complaint, or revisit) currently being conducted; and
3. There is sufficient evidence that the facility corrected the noncompliance and is in substantial compliance at the time of the current survey for the specific regulatory requirement(s), as referenced by the specific F-tag or K-tag.

BENEFITS OF ESTABLISHING PAST NON-COMPLIANCE (PNC)

- Demonstrates facility has systems in place to identify and address adverse events- *good faith effort*
- A nursing home does not provide a plan of correction for a deficiency cited as past noncompliance
- If noncompliance is at a level of immediate jeopardy- shortens the length of potential CMP that may be applied and/ or per incident CMP

WHAT A SURVEYOR REVIEWS TO ISSUE PNC

- LTC Survey Pathway (observations, interviews and record reviews)
 - Necessary modifications to plans of care, notification
 - The facility's review, revision, or development of policies and/or procedures to address the areas of concerns
 - The provision and use of new equipment, as necessary

WHAT A SURVEYOR REVIEWS TO ISSUE PNC

- The provision of staff training required to assure ongoing compliance for the implementation and use of new and/or revised policies, procedures, and/or equipment, especially with new and/or temporary staff;
- The provision of additional staffing, changes in assignments or deployment of staff, as needed; and
- The provision of a monitoring mechanism to assure that the changes made are being supervised, evaluated, and reinforced by responsible facility staff

PAST NON-COMPLIANCE SAMPLE- BASED ON RECORD REVIEW AND INTERVIEWS, THE FACILITY DID NOT ENSURE A RESIDENT'S ADVANCED DIRECTIVES FOR CODE STATUS WERE IMPLEMENTED.

- Res. admitted to facility on 11/8/21. Spouse indicated DNR status. Res. was own person.
- On 11/11/21- facility reviewed code status with Res.- wishes to remain DNR. Form signed by Res. and witness by staff. Form not fully processed- no physician order obtained so Res/ remained as a FULL CODE status.
- On 12/6/21- Res. signed a CPR/ DNR form indicating DNR request- form not fully process- no physician order obtained so Res. remained a FULL CODE status.
- On 1/9/22- Res. became unresponsive and pulseless invoking Res. code status. Facility did not demonstrate timely response to code and called Res. spouse for input on what to do regarding code status.
- Res. provided CPR on 1/9/22- he did not survive and was pronounced deceased following event.

PAST NON-COMPLIANCE SAMPLE- CODE STATUS- CONTINUED

- ✓The facility's failure to ensure the advanced directives signed by Res. designating their code status was processed correctly and to ensure physician orders to legally designate Res. as having a DNR code status led to a situation of immediate jeopardy that began on 1/9/22 when Res. received CPR despite indicating DNR status.
- ✓Surveyor notified Administrator-A and DON-B (Director of Nurses) of the immediate jeopardy on 4/7/2022 at 11:03 AM.
- ✓The immediate jeopardy was removed on 1/20/22 when the facility initiated an audit process to verify code status and the deficient practice corrected on 3/16/22. **This is being cited as past noncompliance.**

IMMEDIATE JEOPARDY (APPENDIX Q)

- ✓ Immediate corrective action
- ✓ Noncompliance
- ✓ Caused or is likely to cause serious injury, harm impairment or death

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO19-09-ALL.pdf>

IJ Component	Yes/No	Preliminary fact analysis which demonstrates whether key component exists.
<p>Noncompliance: Has the entity failed to meet one or more federal health, safety, and/or quality regulations?</p> <p>If yes, in the blank space, identify the tag and briefly summarize the issues that lead to the determination that the entity is in noncompliance with the identified requirement. This includes the action(s), error(s), or lack of action, and the extent of the noncompliance (for example, number of cases). Use one IJ template for each tag being considered at IJ level.</p>	Yes/No	
AND		
<p>Serious injury, serious harm, serious impairment or death: Is there evidence that a serious adverse outcome occurred, or a serious adverse outcome is likely as a result of the identified noncompliance?</p> <p>If Yes, in the blank space, briefly summarize the serious adverse outcome, or likely serious adverse outcome to the recipient.</p>	Yes/No	
AND		
<p>Need for Immediate Action: Does the entity need to take immediate action to correct noncompliance that has caused or is likely to cause serious injury, serious harm, serious impairment, or death?</p> <p>If yes, in the blank space, briefly explain why.</p>	Yes/No	

TRIGGER EVENTS

Immediate Jeopardy Triggers

Abuse- Resident Outcome/ Experience (Unexplained head trauma/ bruising, resident fear)

Abuse- Staff/ Facility Action (failure to investigate, staff treatment of residents)

QOC/ QOL- Resident outcome/ Experience (Sudden/ unexpected COC, Repeat falls, Pressure injuries)

QOC/ QOL- Staff/ Facility Action (Inappropriate use of mechanical lifts, untrained staff)

Infection Control-Resident outcome/ Experience (Uncontrolled spread of infection)

Infection Control- Staff/ Facility Action (Using same needle for more than one resident)

Environmental/ Structural- Resident Outcome/ Experience (Burns, Side rail entrapment)

Environmental/ Structural- Staff/ Facility Action (Lack of Emergency Preparation)

WHAT TRIGGERS YOU TO INITIATE A IMMEDIATE PLAN OF CORRECTION?

- Incident reporting system
- Compliance Line
- Grievance program
- Rounding
- Others?

24/7 immediate reporting



SOMETIMES THE LITTLE
THINGS.....



Turn into

BIG things

STEPS TO DEMONSTRATE PNC- #1

- ✓ **Self report if applicable- Immediately initiate investigation**



STEPS TO DEMONSTRATE PNC- #2

- ✓ **Review LTC Survey Pathways**

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes.html>

- ✓ **Review Citations applicable to current adverse event –State Operations Manual Appendix PP**

https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltc.pdf

STEPS TO DEMONSTRATE PNC- #3

✓ Think “Plan of Correction”

1. What did you do for the resident affected by the deficient practice?
2. How did you identify other residents having the potential to be affected by the same deficient practice?
3. What measures will be put in place or systematic changes were made to ensure the deficient practice does not recur?
4. How will the facility monitor performance to make sure solutions are sustained?

STEPS TO DEMONSTRATE PNC- #4

✓ Document your action steps

- Critical event analysis and action plan worksheet
- PDSA cycle- CMS
<https://www.cms.gov/medicare/provider-enrollment-and-certification/qapi/downloads/pdsacyclededits.pdf>
- Action plan template
- Timelines

Performance Improvement Plan –

Facility:

Date:

Area of Concern	Root Cause	Action Items	Person (s) Responsible/ Due date	Status/Progress of each area

STEPS TO DEMONSTRATE PNC- #5

✓ Root Cause Analysis

- Timing post event
- Who to include

Debriefing- when to
use

- 5 Whys
- Fishbone
- Failure Mode and Effects Analysis (**my new favorite thing**)

STEPS TO DEMONSTRATE PNC- #6

✓ QAPI Committee involvement

- Involve medical director
- Review plan and results of monitoring with team
- Address ongoing actions, other potential systems/ processes affected
- Involve entire team
- Document in minutes
- **Don't wait until next schedule meeting-call a special meeting with short agenda**

WHAT CAN PREVENT ACHIEVING PAST NON-COMPLIANCE?



- Not enough time to prove substantial compliance
- Did not meet all conditions of requirements- missed some steps
- Lack of reporting from the front line
- Delay in initiating investigation
- Lack of thorough investigation
- No systematic way to address adverse events/ identify potential for adverse events

WI BNHRC Regional Offices:

<https://www.dhs.wisconsin.gov/dqa/bnhrc-regionalmap.htm>

Northwestern Regional Office

RFOD: Janell Hoyt 715-836-3030, cell: 715-215-2674

RFOS: Catherine Kutz 715-559-2437

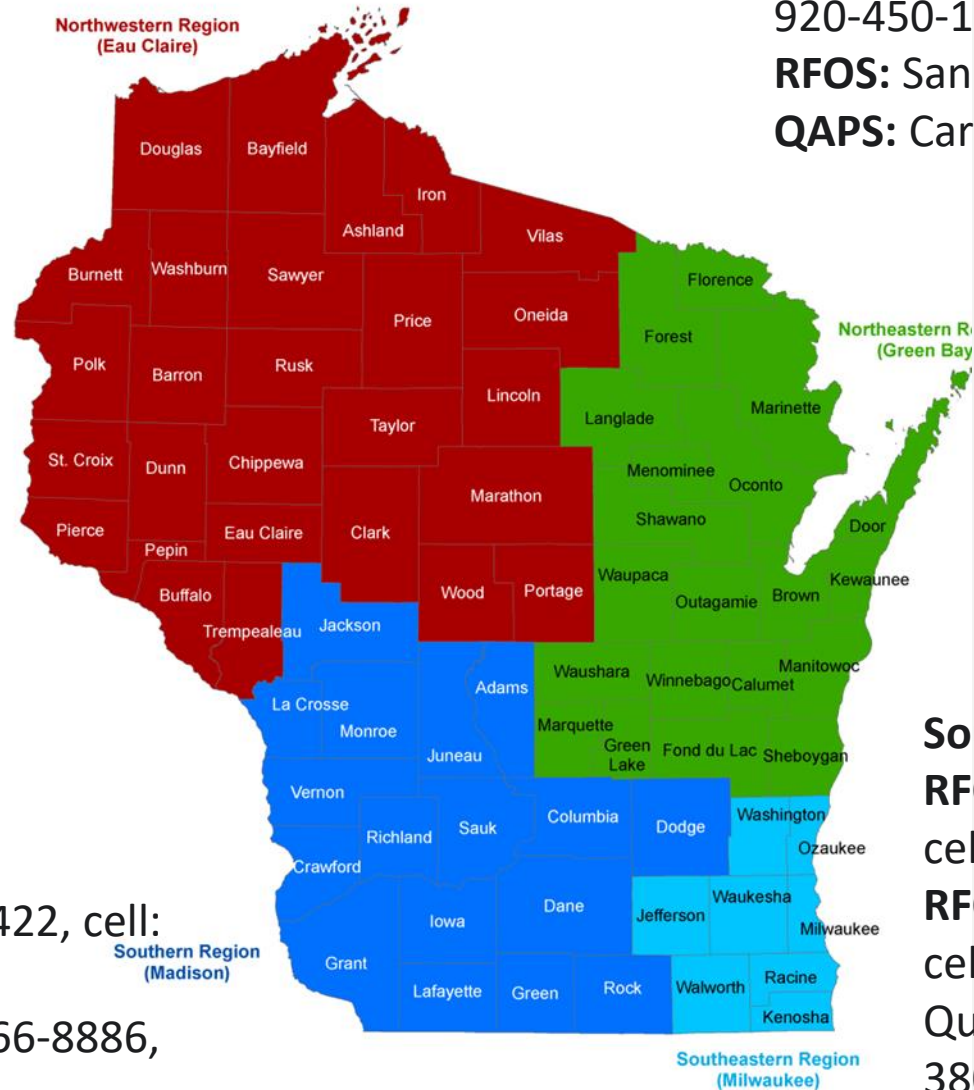
QAPS: Stephanie Kelly 715-836-4036

Southern Regional Office

RFOD: Juli Brandt, 608-266-9422, cell: 608-220-5278

RFOS: Meaghan Baker, 608-266-8886, cell: 608-332-6447

QAPS: Ashley Swatzell, 608-266-8939



Northeastern Regional Office

RFOD: Corrine Hayes, 920-448-5241, cell: 920-450-1720

RFOS: Sandra Schoen, 920-360-7903

QAPS: Carly Heyrman, 920-448-5081

Southeastern Regional Office

RFOD: Kristen Isham, 414-227-4563, cell: 414-750-2634

RFOS: Sue Farmer, 414-227-4908, cell: 414-507-3620 and Amy Quartaroli, 414-227-4914, cell: 414-380-7458

QAPS: Damon Scott, 414-227-4047

QUESTIONS?

References:

- Center for Critical Standards and Quality/ Quality, Safety and Oversight Group. Revisions to Appendix Q, Guidance on Immediate Jeopardy. Ref: QSO-19-09-ALL. Revid July 13, 2019: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO19-09-ALL.pdf>
- CMS State Operations Manual Appendix PP: https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf
- State Operations Manual, Chapter 7- Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities: <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c07.pdf>
- CMS QAPI Process Tool Framework: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/QAPI/Downloads/ProcessToolFramework.pdf>
- All Cause Harm Prevention in Nursing Homes: <https://qioprogram.org/all-cause-harm-prevention-nursing-homes>
- CMS LTC Survey Pathways: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes.html>