



# SMOKING IN WISCONSIN NURSING HOMES

Wisconsin Department of Health Services / Division of Quality Assurance

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## PURPOSE

The purpose of this publication is to provide nursing home staff with the resources needed to plan and provide care to those residents who smoke while residing in nursing homes and to do so safely and in accordance with the regulations.

Under the Quality of Care regulation at 42 CFR 483.25, each resident must receive, and the facility must provide, the necessary care and services to allow a resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the resident's comprehensive assessment and plan of care. To achieve this, the facility must, among other requirements, "ensure" that each resident's environment remains as free of accident hazards as possible [42 CFR 483.25(d)1]. It must "take reasonable steps to ensure that a resident receives supervision and assistance devices [42 CFR 483.25(d)2] designed to meet his assessed needs and to mitigate foreseeable risks of harm from accidents. The facility must anticipate what accidents might befall a resident and take steps to prevent them.

A facility is permitted the flexibility to choose the methods it uses to prevent accidents, but the chosen methods must constitute an "adequate" level of supervision under all the circumstances. Whether supervision/assistive devices are adequate for a particular resident "depends on the resident's ability to protect himself from harm."

The Wisconsin Clean Indoor Air Act (Wis. Stat. § 101.123), which became effective July 5, 2010, prohibits smoking in all Wisconsin inpatient health care facilities, including nursing homes. The statute defines "smoking" as "burning or holding, or inhaling or exhaling smoke from, any of the following items containing tobacco:

1. A lighted cigar.
2. A lighted cigarette.
3. A lighted pipe.
4. Any other lighted smoking equipment."

The Clean Indoor Act does not prohibit the use of electronic cigarettes (e-cigarettes). These are addressed on page 3.

## DEVELOPMENT OF POLICIES AND PROCEDURES

With respect to smoking, nursing homes have two options. They may (1) allow smoking in a designated smoking area outdoors or (2) ban smoking altogether by designating the entire campus as non-smoking. Whichever option is chosen, facilities should develop written policies and procedures that clearly identify:

- Whether residents and staff are allowed to smoke on facility grounds and, if so, where smoking is allowed;
- What accommodations the facility will provide with respect to smoking; and
- The type of staff assistance facility staff will give to residents who smoke.

Each facility should clearly explain these policies and procedures orally and in writing to all new or prospective admissions. A facility policy that clearly articulates smoking restrictions will allow potential residents to determine if they can abide by the conditions of the policy when they are considering admission. An explicit policy will also help deter or settle issues that might arise concerning smoking.

### ***Reasonable Limitations and Restrictions***

As you develop your policies, please keep the following in mind: Some individuals who are admitted to a facility that permits smoking may have or develop serious physical, mental, or cognitive disabilities. These residents do not lose their right to smoke just because they need monitoring and assistance by facility staff for safety. A facility's smoking policy, however, may provide reasonable limitations and restrictions on a resident's right to receive staff assistance to smoke (time of day, weather conditions, frequency, type of assistance that will or will not be provided, including assistance with the actual act of smoking, etc.). The clearer the policy, the less likely that conflicts will arise later. When developing your policy, keep in mind that facilities are still responsible for the safety of residents who smoke even if the smoking area is off-campus. A resident smoking off-campus (generally on the sidewalk) does not absolve a facility from providing needed supervision to prevent an accident.

### ***Assistance and Supervision***

In all cases involving residents who are able to smoke safely and without assistance, staff must help transport the residents to and from the smoking area, whether on-campus or off-campus, if the resident needs this type of assistance. This includes transporting residents, who live on a secure unit, to and from the on-campus or off-campus smoking area. It also includes monitoring a resident's whereabouts at the smoking area, as some residents who are escorted outside to smoke will have histories of elopement. In all cases, staff should ensure that no resident is allowed outside to smoke with an oxygen tank, regardless of whether the tank is running or shut off.

### ***Designated Outdoor Smoking Areas***

Facilities that allow smoking in a designated outdoor smoking area should ensure that each designated outdoor smoking area is located in an area adjacent to the facility that is easily accessed and protected from the weather (e.g., covered, wall or fence on one side if there are winds typically from one direction, etc.). The area or areas must also protect nonsmokers from the potential hazards of second-hand smoke. The Life Safety Code (NFPA 101, 2012 ed., 19.7.4) requires each smoking area be provided with ashtrays made of noncombustible material and safe design. Metal containers with self-closing covers into which ashtrays can be emptied must be readily available. Oxygen tanks are not allowed in the area and must be removed from residents before they are taken outside to smoke.

## **REVISION OF POLICIES AND PROCEDURES**

Facilities that allow smoking in a designated outdoor smoking area can change their policies and become a non-smoking campus at a later date. Facilities making such a change must ensure that this is clearly stated in a revised admission agreement.

### ***Notification Requirements***

Facilities that become non-smoking campuses must remember the notification requirements found in the federal and state nursing home regulations. These regulations require the nursing home to give oral and written notice of the change to the resident or legal representative in a language the resident or legal representative understands [42 CFR 483.10(g)16.; 42 CFR 483.10(g)(14); Wis. Admin. Code § DHS 132.31(4)(b)].

The federal regulation at 483.10(g)16 also requires the nursing home to obtain written confirmation from each resident or legal representative acknowledging his/her receipt of the notice of a change in rules and regulations governing resident conduct and responsibilities.

The facility should also consider notifying the community, potential visitors, and referral sources of the change in smoking policy.

### ***Rights of Current Residents***

Residents who are admitted on or after the effective date of the policy are subject to the restrictions of the smoking policy. Current residents who smoke, however, are considered grandfathered for outdoor smoking since they were admitted to the facility at a time when smoking was allowed on the campus. Guidance at 42 CFR 483.10(f)2 says, "if a facility changes its smoking policy and prohibits smoking, it must allow current residents who smoke to continue smoking in an area that maintains the quality of life for these residents." This means that nursing homes that currently allow smoking outdoors will need to continue to provide an outdoor smoking area for current residents even after it becomes a non-smoking campus.

For any nursing home considering becoming a non-smoking campus, we would like to reiterate the advice provided in prior guidance. While "we are all keenly aware of the dangers of smoking, we also recognize that many residents have smoked for years and depriving them of the opportunity to smoke could be counterproductive to their welfare. We encourage consideration of the residents' rights issues and accommodations for those who wish to smoke, and strongly urge that prior to implementation of total smoking restriction in your facility, the psychological and social impact upon your residents be carefully reviewed."

As you weigh the pros and cons of becoming a non-smoking campus, keep in mind that facilities are responsible for finding "options that most meet the physical and emotional needs of each resident" [Guidance for 42 CFR 483.40(d)]. Facilities are also responsible for accommodating "an individual's needs and choices for how he/she spends time, both inside and outside the facility" [Guidance for 42 CFR 483.10(f)8].

## ELECTRONIC CIGARETTES

The Wisconsin Clean Indoor Air Act does not prohibit the use of electronic cigarettes (e-cigarettes). Electronic cigarettes are not tobacco products, although they are designed to look and feel like traditional cigarettes. E-cigarettes have been marketed as an alternative nicotine delivery device for use in places where smoking is not permitted since they do not produce smoke. A typical e-cigarette consists of three components: a battery, an atomizer, and a cartridge containing nicotine. Most replaceable cartridges contain nicotine suspended in propylene glycol and water.

Wisconsin Facilities may develop their own policies with respect to e-cigarettes. Facilities may allow indoor or outdoor smoking of e-cigarettes, may limit the use of e-cigarettes to designated smoking areas, or may ban their use altogether. As with smoking, these policies must be clearly spelled out in writing and communicated to all current and prospective residents. An explicit policy will help deter or settle issues that might arise concerning the use of e-cigarettes.

If a nursing home changes past policy with respect to the use of e-cigarettes, this change must be clearly stated in a revised admission agreement and communicated orally and in writing to current residents and their family.

With respect to e-cigarettes, many health experts state they are safer to use than cigarettes. Whether that makes them safe to use, however, is still being debated. The American Lung Association has noted there are "nearly 500 brands and 7,700 flavors of e-cigarettes are on the market and none of them have been evaluated by the FDA. We don't know for sure what's in them. Studies have found toxic chemicals, including an ingredient used in antifreeze and formaldehyde in e-cigarettes." It has also noted, "While e-cigarettes do not contain smoke, they do expose others to secondhand emissions. Little is known about these emissions or the potential harm they can cause.

Two studies have found formaldehyde, benzene, and tobacco-specific nitrosamines (all carcinogens) coming from those secondhand emissions. Other studies have shown that chemicals in the vapor contain formaldehyde, acetaldehyde, and other potential toxins. There is no evidence that shows e-cigarette emissions (secondhand aerosol) are safe for non-users to inhale." See:

<http://www.lung.org/stop-smoking/smoking-facts/myths-and-facts-about-e-cigs.html>

<http://www.lung.org/stop-smoking/smoking-facts/e-cigarettes-and-lung-health.html>

Beginning August 8, 2016, new federal rules require e-cigarette producers to register with the Food and Drug Administration and to provide a detailed account of their products' ingredients and their manufacturing processes. Producers will also have to apply to the FDA for permission to sell their products.

## SMOKING CESSATION PROGRAMS

Nursing homes are responsible for providing assistance to residents who wish to quit smoking. 42 CFR 483.40(d) requires nursing homes to "provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident." Guidance at this regulation indicates that "medically-related social services" means services provided by the facility's staff to assist residents in maintaining or improving their ability to manage their everyday physical, mental, and psychosocial needs."

Smoking cessation products are part of the drug benefits available through a Medicare Part D Prescription Drug Plan. If payment is denied by Medicare, a claim for certain products can be submitted to Wisconsin Medicaid and BadgerCare Plus. Wisconsin Medicaid and BadgerCare Plus cover a small number of over-the-counter patches and nicotine chewing gum. They require a diagnosis restriction for smoking cessation when the drug claim is submitted to Medicaid.