



Technical Advisory: HAI-2009-002

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Healthcare Associated Infection Prevention Section

Written Notification of Health Care-Associated Infections to Responsible Parties in Healthcare Facilities

Pursuant to Section 405(a) of the Medical Care Availability and Reduction of Error (MCARE) Act, 40 P.S. § 1303.405(a), the occurrence of a health care-associated infection (HAI) in a long-term care nursing facility (nursing home) is deemed a serious event as defined in section 302 of the MCARE Act, 40 P.S. § 1303.302. Chapter 3 of the MCARE Act, 40 P.S. §§ 1303.301-1303.415, contain various provisions relating to serious events, many of which become applicable to nursing homes by virtue of the MCARE Act's deeming of an HAI as a serious event. Particularly important are the requirements in Section 308(b) of the MCARE Act, 40 P.S. § 1303.308(b), for providing written notification to a patient or available family member or designee of the occurrence of a serious event, in this case an HAI.

This advisory shall serve to provide additional information to nursing homes of the requirements for patient notification under Section 308(b).

A nursing home is responsible for determining the specific content of its written serious event/HAI notification to the patient or available family member or designee. The written notification should contain sufficient information to the patient or available family member or designee to comply with Section 308(b) by informing the patient or available family member or designee of the occurrence of the event.

The nursing home may make its own determination as to the means of communication or transmission of the written notification, being aware that State and Federal laws, for example the Health Information Portability and Accountability Act of 1996, 42 U.S.C § 1303 *et seq.*, and implementing regulations 45 CFR Parts 160 and 164, may provide certain privacy, confidentiality, and security safeguards and requirements which must be observed. Communication or transmission of the written notification by any of the available means, including hand delivery, mail, courier, facsimile, or e-mail, is acceptable as long as such communication or transmission method complies with State and Federal law relating to privacy and confidentiality of health information.

A nursing home may also make its own determination as to whether to keep a copy of the written notification and where the notifications will be placed in the nursing home (*e.g.* resident's records, nursing homes HAI records, etc.). There are no requirements in the MCARE Act for the nursing home to maintain a copy of the written notification, but a nursing home should consider how it will document that it has complied with Section 308(b) should proof of compliance be required during an investigation by a regulating agency.

If a resident is legally competent to receive the written notification and make his own health care decisions, Section 308(b) requires only that the resident be provided the written notification, or, with resident consent, that the written notification be provided to an available family member or designee. If a resident has been deemed by law or court order as not being legally competent to make his own health care decisions or receive notification about his healthcare, the written notification must be provided to the individual who a nursing home has on record as the appropriate health care representative, who may be an agent under a power of attorney, a legal guardian, or other person authorized by law to act on the resident's behalf with respect to health care decision making.

Providing written notification of the occurrence of an HAI is consistent with the existing Federal regulatory requirements found at 42 CFR § 483.10(b)(11), and a nursing home should consider these requirements and any guidance issued by the Department or the U.S. Department of Health and Human Services with respect to such Federal requirements when developing its policies and procedures for complying with Section 308(b) as written notification of the occurrence of an HAI to meet the requirements of the MCARE Act may provide the resident or the resident's responsible party the proper notification of a change in condition dealing with a healthcare associated infection.

**Questions regarding this advisory may be directed to the
Healthcare Associated Infection Prevention Section, Telephone (717) 425-5422.**