

April 30, 2009

**Contributors:**

- Rod Confer
- Jeanelle Lust
- Kevin McManaman
- Tammy Schroeder
- Shirley Williams
- **Special Guest Contributor—  
Annie O'Campo, BSN, RN,  
CWOCN, DAPWCA**

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# Long-Term Care Newsletter

## **Pressure Ulcers and Beyond** By Annie A. O'Campo, BSN, RN, CWOCN, DAPWCA

*Annie O'Campo is a Certified Wound Ostomy Continence ("WOC") Nurse and is a current member of the National Wound Ostomy Continence Nurses Society, serving as a member of the Marketing Sub-committee. She currently works as a full-time WOC Nurse and as an independent WOC Nurse Consultant. She can be contacted through her e-mail address: WoundOstomyRN@gmail.com.*

On October 1, 2007, the Centers for Medicare and Medicaid Services (CMS) announced the implementation of a new payment system that will reward hospitals for quality care and that avoids payment for unnecessary and preventable costs.

The new payment system is known as the Medical Severity-Diagnosis Related Groups, or MS

-DRGs. The old payment system was based on a total of 358 DRGs. The new system reorganized this structure, reducing the number of DRGs down to 335. Each group is now subdivided into different levels of medical severity, resulting in a total of 745 MS-DRGs. ([http://www.wocn.org/About\\_Us/advocacy\\_and\\_policy/ipps\\_guidance/](http://www.wocn.org/About_Us/advocacy_and_policy/ipps_guidance/))

Acute care hospitals have many inquiries regarding the impact of this change. This change will have a direct impact on hospitals but will also impact all patient care settings, including long term acute care hospitals, nursing homes and outpatient clinics, in terms of healing outcomes and patient safety.

The objective of this change is to reimburse hospitals for the level of care they provide, but hospitals will receive less reimbursement for

uncomplicated cases and will receive higher payment for cases involving major complications and comorbidities.

### Quality Care: What Are the Incentives?

CMS have developed these incentives as a form of payment for quality care. In the United States, it has been reported that hospital-acquired conditions are a leading cause of mortality and morbidity with an estimated cost of \$17 billion to \$29 billion. These conditions, according to CMS, can be reasonably prevented with the use of evidence-based guidelines.

Effective October 1, 2008, hospitals that receive reimbursement by Inpatient Prospective Payment System (IPPS) will no longer

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## **Nursing Assistant Regulations Updates**

By Kevin R. McManaman

The State of Nebraska has recently revised its Nursing Assistant Regulations. (For continuity with licensure regulations, they have been transferred to the Health Professional and Occupational Licensure Title of the Nebraska Administrative code (172 NAC).) The new regulations pertain primarily to training, approval of training courses, and the Nursing Assistant Registry. A summary follows.

Nursing assistant training programs must now be approved through application to the Department of Health and Human Services (using the Department's form) outlining the curriculum of the course. The curriculum must

be in compliance with the regulations, including 75 hours of instruction, 16 hours of supervised practical training, and focus on the prescribed topics, including at least one hour of instruction on the responsibility to report suspected abuse or neglect. (The specifics are outlined in 172 NAC 108-003.01)

The application for approval of a training course must include the names and authors of all textbooks to be used (including publisher and edition), or if no textbooks will be used, a list of written materials that will be used including the source of such materials. Applicants must specify the specific topic units to be covered in the course as set forth in the regula-

tions, and the hours to be spent on each. The method of instruction for each unit has to be specified (e.g. lecture, demonstration, simulation, slide presentation, film strip, etc.) as well as a description of the practical training provided for each unit required by the regulations. Reading assignments, evaluation methods (written exams, demonstrations, competency check-off, etc.), an explanation of the grading system to be used, and other matters must be specified in the application, which must be submitted by the Executive Director at least 30 days prior to when the courses are to start.

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Preparing the Way  
Forward

**May is  
National  
Stroke  
Awareness  
Month**

## Pressure Ulcers (continued from pg. 1)

receive additional reimbursements for certain hospital-acquired conditions, namely:

- Foreign object retained after surgery
- Air embolism
- Blood incompatibility
- Falls and trauma, including fracture, dislocation, intracranial injury, crushing injury, burn, electric shock
- Surgical site infection, mediastinitis following coronary artery bypass graft
- Surgical site infection following bariatric surgery for obesity
- Catheter-associated urinary tract infection
- Stage III and Stage IV Pressure Ulcers
- Vascular catheter-associated infection
- Manifestations of poor glycemic control
  - Diabetic Ketoacidosis
  - Nonketotic Hyperosmolar Coma
  - Hypoglycemic Coma
  - Secondary Diabetes with Ketoacidosis
  - Secondary Diabetes with Hyperosmolarity
- Deep vein thrombosis/pulmonary embolus following certain orthopedic procedures

- Total Knee Replacement
- Hip Replacement
- Surgical site infections following certain orthopedic procedures
  - Spine
  - Neck
  - Shoulder
  - Elbow

### What's In It For Me?

If a patient has acquired a stage I pressure ulcer in a nursing home and was admitted to the acute care hospital because of an emergent condition and this stage I pressure ulcer has deteriorated to a stage III while at the hospital, then the hospital will not be eligible to receive payment for this condition. I believe it is a crucial point to all healthcare professionals, regardless if you are a clinician working in an acute care hospital or in a long term care facility, to initiate documentation of a skin breakdown, whatever classification it presents clinically, and initiate measures to prevent it from deteriorating.

In the clinical setting where I currently practice as a Wound Ostomy Continence Nurse, I have observed that this new system has empowered not only the nursing personnel but the entire facility to be more proactive in admission and documentation process, skin

assessment and pressure ulcer prevention.

Nursing staff in acute hospitals may be capturing every rash, bruise, pimple and any skin redness as it presents on admission, but this is a great avenue not only for receiving higher reimbursements when proper identification of pressure ulcers is done during admissions, but it is one of the best ways to reduce the occurrence of these hospital-acquired conditions, thus further improving patient safety and health outcomes.

For further review, the regulations can be accessed at the following websites:

- <http://www.cms.hhs.gov/transmittals/downloads/R161CP.pdf>
- <http://edocket.access.gpo.gov/2007/pdf/07-3829.pdf>
- <http://www.cdc.gov/nchsdatawh/ftpserve/ftpicd9/icdguide08.pdf>
- <http://edocket.access.gpo.gov/2008/pdf/08-1135.pdf>
- <http://www.cms.hhs.gov/AcuteInpatientPPS/downloads/CMS-1390-F.pdf>

## Nursing Home Transparency Bill Reintroduced

By Tammy Schroeder

Senators Chuck Grassley (R-IA) and Herb Kohl (D-WI) have decided to give the Nursing Home Transparency & Improvement Act of 2009 another chance at passing. Their goal with the bill: increase accountability in the nursing home industry and sort out the networks of owners that run many facilities.

The bill comes out of growing concerns about homes owned by large private equity firms who often build complex corporate structures to shield them from liability. Under this legislation, nursing homes would have to name the members of the groups that own them, give the organizational structures of all affiliated entities and give informa-

tion about those involved in the management, operation and financing.

The bill would require a real time system for reporting staffing information to the US DHHS, cutting down on a facility trying to manipulate its staffing numbers. The CMS would be able to provide more information on its Nursing Home Compare website, including the ownership information, staffing data and a standardized complaint reporting form.

The legislation would also give the government more enforcement options, including flexibility in assessing penalties and collecting money sooner. It would require

facilities to come up with compliance and ethics plans to prevent civil, criminal and administrative violations. Facilities would also have to develop internal quality assurance standards.

The last thing the legislation would do is require HHS to come up with a national monitoring program to watch over multi-state and large intra-state nursing home chains.

According to Sen. Grassley, the goal is more transparency, better enforcement and improved staff training. Currently the bill is pending before the Finance Committee.



## Nursing Assistant Regulations Updates (continued from pg 1)

Once approved, the courses do not require re-approval unless the course, or the law, is changed. If a nursing assistant training course is not approved, or such approval is suspended or revoked, the regulations provide notice and opportunity to be heard for the applicants. Attendance records are subject to review by the Department upon request and must be maintained for at least two years from the date of completion of each course. The nursing assistant training courses are also subject to on-site periodic review by the Department, and sponsors must provide written notices to the Department of the dates and location that a basic course will be held at least five working days before it is scheduled to begin.

In addition to other require-

ments, Nursing Assistants have to successfully complete an approved training course within 120 days of employment. Interestingly, when a Nursing Assistant becomes a Licensed Practical Nurse or a Registered Nurse, his or her Nursing Assistant registration becomes null and void. Subsequently, if the Registered Nurse or a Licensed Practical Nurse's license is revoked, suspended, or voluntarily suspended in lieu of discipline, he or she cannot act as a Nursing Assistant in a nursing home either.

Of course, Nursing Assistants cannot have been convicted of a crime involving moral turpitude rationally related to his or her practice, and the Department documents such convictions on its Registry, making the Nursing

Assistant ineligible for employment in a nursing home. The Department will give written notice of the reasons for the proposed finding and will place the name on the Registry 30 days after receipt of the notice unless a hearing is requested. Notably, after a year has passed from the date the Nursing Assistant was placed on the Registry, he or she may petition the Department to have the finding removed.

Nursing homes should become fully conversant with the training approval program requirements and organize accordingly. For a copy of the regulations, or to discuss any of the implications, feel free to contact the Knudsen Law Firm.



## Red Flags Rule: So You Thought CMS Was Fun?

By Kevin McManaman

By some estimates, nearly half of the health care providers in America will soon be in violation of a new federal identity theft rule. The so-called "Red Flags Rule" was developed pursuant to the Fair and Accurate Credit Transactions (FACT) Act of 2003, under the authority of the Federal Trade Commission (FTC). (See 16 CFR 681.) Many health care providers have still never heard of the Red Flags Rule, and many others who have are unsure whether the law applies. Very few are ready to comply by the May 1, 2009 deadline.

Under the rule, "creditors" with covered accounts must have implemented written identity theft prevention programs designed to identify, detect and

respond to patterns, practices or specific activities that could indicate identity theft. Any entity that provides goods or services and then later bills for the goods and services is a "creditor," so incidental bills to patients, private pay, and insurance claims can all fall under the rule because they defer payment for goods or services. As creditors with covered accounts, long-term care providers need to comply.

A program designed to identify and prevent identity theft must be in writing, and tailored to the particular institution. The red flags in the program may include, for example, unusual account activity, fraud alerts on a consumer report, or attempted use of suspicious account application documents. When a patient claims they are receiving a bill for a provider that never served

them or even a service that was never provided, for example, a red flag has likely been raised. The program must also describe the appropriate responses that would prevent and/or mitigate the crime and a detailed plan to update the program. Furthermore, senior employees or the board of directors should provide oversight, staff and training.

More information can be obtained from the Federal Trade Commission website, including guidelines that the FTC believes should be helpful in assisting covered entities in designing their programs. On April 2, the FTC provided additional guidance on its new Red Flags Rule website, including a new "How To" guide: <http://ftc.gov/redflagsrule>

## June is National Safety Awareness Month

**June 1-7:  
Teen Driving**

**June 8-14:  
Falls Prevention**

**June 15-21:  
Overexertion**

**June 22-28:  
Distracted Driving**



Knudsen, Berkheimer, Richardson &  
Endacott, LLP  
3800 VerMaas Place, Suite 200  
Lincoln, NE 68502

Toll Free: 800-714-3439  
Phone: 402-475-7011  
Fax: 402-475-8912  
E-mail: [tschroeder@knudsenlaw.com](mailto:tschroeder@knudsenlaw.com)



## Jeanelle Lust



Jeanelle Lust is the managing partner at the Knudsen Law Firm where she has practiced since 1994. Jeanelle is a multi-faceted trial lawyer who focuses on commercial litigation. She has represented clients in such varied lawsuits as RICO claims, professional malpractice claims involving doctors, lawyers, and accountants, automobile accidents, and bankruptcy. Jeanelle also handles all aspects of nursing home litigation, including licensure matters.

Jeanelle is a native of Madison, South Dakota. She graduated cum laude from Augustana College in Sioux Falls, SD in 1991. She at-

tended Creighton University School of Law, graduating summa cum laude in 1994. Jeanelle finished number one in her graduating class, receiving the Faculty of Law Highest Triennial Average Award for having the highest grade point average after each year in law school, and she was Assistant Editor of the Creighton Law Review.

Jeanelle is presently a member of the Publications Committee of the Nebraska Bar Association, that publishes and edits the Nebraska Lawyer Magazine. She is a member of the bar in South Dakota, Nebraska and Colorado.

Jeanelle is a charter Fellow in the Litigation Counsel of America and is participating in Inns of Court as a Master of the Bar. She is a frequent Continuing Legal Education speaker for the National Business Institute. Jeanelle is also actively involved in her community as former President of the Board of Directors for the Lincoln Children's Zoo and current president of the Board of Directors of the Capital Humane Society. She was also appointed by the Lancaster County Board to serve on the Indigent Defense Advisory Council. She and her husband John have two children, Joe and Jack.

## Model Policies and Forms for Nebraska Employers, 2009

Knudsen Law Firm and Kevin R. McManaman are proud to present the 2009 edition of Model Policies and Forms for Nebraska Employers. This book provides updated forms information on laws and regulations that affect you as an employer in the State of Nebraska. If you would like to order a copy of this handbook, please contact Deborah Schwab at 402-475-7011. You can also order the handbook online by visiting our website, [www.knudsenlaw.com](http://www.knudsenlaw.com), and clicking on the link.

