



Surveys Gone Crazy

Lessons From Fighting Back

Presenters:

Craig Conley
Shareholder
Baker Donelson

Mark Davis
Director of Operations
Harber Laman Healthcare
Management

Circumstances That Can Cause Surveys To Spin Out Of Control

- ▶ Adversarial relationships with surveyors
- ▶ Staff interviewed repeatedly until give admissions
- ▶ Surveys lasting for weeks

Action Steps To Take When Survey Starts To Go Wrong

- ▶ Priority 1 – get back into substantial compliance
- ▶ Get support – clinical, operational and legal
- ▶ Begin gathering ammunition for your IIDR and/or appeal

State Type A Penalties v. Federal IJs

- ▶ Dichotomy of Parallel Tracks
- ▶ Fed's Big Hammer – huge CMPs, 5-Star consequences, decertification
- ▶ State's Big Hammer – SOA and Type A Penalties



A Story of Fighting Back

Health Facilities Commission

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: TN1702	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED C 12/13/2022
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NAME OF PROVIDER OR SUPPLIER ALAMO NURSING AND REHABILITATION CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 580 W MAIN STREET ALAMO, TN 37006
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
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N 000	Initial Comments	N		
An inv TN001 11/28/ and R under Term	<p>N 000 Initial Comments</p> <p>An investigation of complaints #TN00059683, TN00058686, and #TN00058960 was conducted 11/28/2022 through 12/13/2022 at Alamo Nursing and Rehabilitation. Health deficiencies were cited under 42 CFR Part 483, Requirements for Long Term Care Facilities.</p> <p>The deficiencies cited resulted in a Serious and Immediate threat to the health and safety of the</p>			
The d Imme rele Penal was n	<p>The facility was notified in the CMS imposition notice dated January 25, 2023, that deficient practice was identified by the Tennessee State Survey Agency (SSA) during the survey of December 13, 2022. The facility did not agree with the deficient practice cited as immediate jeopardy at F810-J, F889-J, F835-J and requested an Independent Informal Dispute Resolution (IIDR). As a result, the IIDR Panel recommended to delete F810-J and F835-J and uphold F889-J federal requirements.</p> <p>After review of the IIDR materials the facility submitted to the SSA, CMS concluded that F889-J shall remain, as originally cited by the SSA. Resident #1, was aphasic, wheelchair bound, had severe cognition impairment, had diagnoses of Cerebral Infarction Affecting Right Side, Aphasia, Convulsions, Hemiplegia and</p>			

Health Facilities Commission LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE	TITLE	(X6) DATE
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Subject Incidents

- ▶ Resident #1 – Smoking
- ▶ Resident #4 – Gait Belt

Original Statement of Deficiencies

- ▶ **N401** - Administration – Full Time Administrator
 - Resident #1 and Resident #4
- ▶ **N424** – Administration – Adopt Safety Policies
 - Resident # 1 and Resident #4
- ▶ **N1207** – Resident Rights Documentation
 - Resident #1

Original 2567

- ▶ F610 – Investigation

- Resident #1

- ▶ F689 – Free of Accidents/Supervision/Devices

- Resident # 1 and Resident #4

- ▶ F835 – Administration

- Resident #1

Notice of Suspension of Admissions and Assessment of Type A Civil Monetary Penalty

- ▶ Survey concluded – 12/13/22
- ▶ 10 business days plus 2 days closed for holidays – 12/29/22
- ▶ Executive Director's Notice – 1/3/23

Answer and Petition for Hearing

- ▶ Contesting suspension of admissions and Type A penalties

Department of Health & Human Services
Centers for Medicare & Medicaid Services
Center for Clinical Standards & Quality
61 Forsyth Street, SW, Suite 4T20
Atlanta, Georgia 30303-8909



Refer to: 5467.CMS.Post IIDR.Review.03.16.23

IMPORTANT NOTICE - PLEASE READ CAREFULLY

spark@harberlaman.com

(Receipt of this notice is presumed to be March 16, 2023- Date notice emailed)

March 16, 2023

Seleena Park, Administrator
Alamo Nursing and Rehabilitation Center
580 West Main Street
Alamo, Tennessee 38001
spark@harberlaman.com

Re: CMS Review Post IIDR
CMS Certification Number: 44-5467

Dear Selena Park:

You were notified in our imposition notice dated **January 25, 2023**, that deficient practice was identified by the Tennessee State Survey Agency (SSA) during the survey of **December 13, 2022**. You did not agree with the deficient practice cited as immediate jeopardy at F610-J, F689-J, F835-J and requested an Independent Informal Dispute Resolution (IIDR). As a result, the IIDR Panel recommended to delete F610-J and F835-J and uphold F689-J federal requirements.

After review of the IIDR materials you submitted to the SSA, CMS concludes that F689-J shall remain, as originally cited by the SSA. Resident #1, is aphasic, wheelchair bound, severe cognition impairment, diagnoses of Cerebral Infarction Affecting Right Side, Aphasia, Convulsions, Hemiplegia and Hemiparesis, Dementia and not able to ask for help (he does not talk, he does hand motions). Resident #4 requires extensive assistance by two staff members for transfers, was not steady and was only able to stabilize with staff assistance when moving from seated to standing position, turning around, walking, moving on and off the toilet and surface to surface transfers, and used a wheelchair and walker for mobility. The facility failed to ensure these residents environment remained as free of accident hazards as is possible; each resident received adequate supervision and assistance devices to prevent accidents; and staff followed facility policies. These failures resulted in the residents being placed at risk in an environment that created the likelihood for serious injury, serious harm, serious impairment, or death and one resident sustaining a hip fracture.

You were notified in our imposition notice dated **January 25, 2023**, that deficient practice was identified by the Tennessee State Survey Agency (SSA) during the survey of **December 13, 2022**. You did not agree with the deficient practice cited as immediate jeopardy at F610-J, F689-J, F835-J and requested an Independent Informal Dispute Resolution (IIDR). **As a result, the IIDR Panel recommended to delete F610-J and F835-J and uphold F689-J federal requirements.**

After review of the IIDR materials you submitted to the SSA, CMS concludes that F689-J shall remain, as originally cited by the SSA.

Amended Statement of Deficiencies

- ▶ N424 tag which provides as follows:
 - Each nursing home shall adopt safety policies for the protection of residents from accident and injury

Parties Stipulations as to Law

LAW

Regulations Cited

16. Tenn. Comp. Rule and Regulation 1200-8-6-.04(15) (now 0720-18-.04(15)) was cited in the Amended Statement of Deficiencies in relation to the N424 tag which provides as follows:

Each nursing home shall adopt safety policies for the protection of residents from accident and injury.

17. Tenn. Code Ann. § 68-11-802(a) provides as follows:

Type A civil monetary penalties may be imposed whenever the executive director of the health facilities commission finds the conditions in a nursing home are, or are likely to be, detrimental to the health, safety or welfare of the patients, and the executive director has accompanied this finding by ordering the nursing home to suspend the admission of any new patients, as provided by § 68-11-252.

Issues

- ▶ F424 - Adopt safety policies
- ▶ Type A - Conditions... “are or likely to be detrimental to the health, safety or welfare of the patients....”
- ▶ State Operations Manual - Unavoidable Accident – “Means an accident occurred despite sufficient and comprehensive facility systems.”

- ▶ Did Alamo adopt a substantially compliant policy on safe smoking and safe transfers with gait belts?
- ▶ Did Alamo train on that policy?
- ▶ Was a violation of the policy a violation of the regulations or did the Alamo policy require more than the regulations?
- ▶ When a staff member deviated from that policy, did Alamo discipline and re-educate?

Alamo Adopted Safety Policies

Smoking Policy – Residents

Highlights	Policy Statement
	This facility shall establish and maintain safe resident smoking practices.
	Policy Interpretation and Implementation
Accommodation of Smoking Preferences	1. Prior to, or upon admission, residents shall be informed about any limitations on smoking, including designated smoking areas, and the extent to which the facility can accommodate their smoking or non-smoking preferences.
Designated Smoking Area	2. Residents who desire to smoke may do so at the designated smoking times and only in the designated resident smoking area, which is the outside patio lounge. Smoking is prohibited inside the building, in resident rooms, and in all other areas.
Nonsmoking Areas	3. Oxygen use is prohibited in smoking areas.
Ashtrays	4. Only facility-approved ashtrays and other smoking equipment/paraphernalia shall be used. 5. Metal containers shall be available in smoking areas. 6. Ashtrays shall only be emptied into designated receptacles.
Smoking Restrictions	7. A smoking assessment will be completed on each resident on admission/readmission to the facility to determine if he or she is a smoker and to determine his or her ability to smoke safely. 8. The staff shall consult with the Attending Physician and the Director of Nursing Services to determine any restrictions on a resident's smoking privileges.
Review of Smoking Restrictions	9. The facility may impose smoking restrictions on residents at any time if it is determined that the resident cannot smoke safely with the available levels of support and supervision. 10. A resident's smoking status and ability to smoke safely will be re-evaluated quarterly, upon a significant change, and as determined by the staff.
Assisting Residents with Smoking	11. Any smoking-related privileges, restrictions, and concerns shall be on the resident's plan of care, and all personnel caring for the resident/anyone providing smoking supervision shall be alerted to these issues. 12. Residents shall have the direct supervision of a staff member, family member, visitor, or volunteer worker at all times while smoking. No resident will be permitted to smoke alone. Visitors to the facility are asked to please check with the charge nurse before assisting any residents with smoking.
Periodically Reviews	13. The staff will review the status of a resident's smoking privileges periodically, and consult as needed with the Director of Nursing Services and the Attending Physician.

Safe Lifting and Movement of Residents

Highlights	Policy Statement
	In order to protect the safety and well-being of staff and residents, and to promote quality care, this facility uses appropriate techniques and devices to lift and move residents.
	Policy Interpretation and Implementation
Resident Safety/Dignity/Comfort/Condition	1. Resident safety, dignity, comfort and medical condition will be incorporated into goals and decisions regarding the safe lifting and moving of residents.
Manual Lifting	2. Manual lifting of residents shall be eliminated when feasible.
Assessment of Transfer Assistance Needs	3. Nursing staff, in conjunction with the rehabilitation staff, shall as needed assess individual residents' needs for transfer assistance on an ongoing basis. Staff will document resident transferring and lifting needs in the care plan. Such assessment may include: <ol style="list-style-type: none"> Resident's preferences for assistance; Resident's mobility (degree of dependency); Resident's size; Weight-bearing ability; Cognitive status; Whether the resident is usually cooperative with staff; and The resident's goals for rehabilitation, including restoring or maintaining functional abilities. <p>0 = Independent = When transferring from bed to chair or chair back to bed, the resident is able to stand up from a seated position (without requiring any physical or verbal help) and walk from the bed to chair and chair back to the bed every day during the 7 day look back period.</p> <p>1 = Supervision = Staff must supervise the resident during the transfer from bed to wheelchair daily. Staff must bring the chair next to the bed and then remind the resident to hold on to the chair and position their body slowly.</p> <p>2 = Limited Supervision = Resident is able to transfer from the bed to chair when using a walker. Staff placed the walker near the bed and then assist the resident with guided maneuvering during the transfer. The resident is noted to transfer from bed to chair six times during the 7 day look back period.</p> <p>3 = Extensive Assistance = Resident partially participates in the task of transferring. The resident was noted to have transferred 14 times during the 7 day look-back period, each time requiring weight-bearing assistance of one staff member.</p> <p>4 = Total Dependence = Resident did not participate and required two staff to transfer out of bed. The resident was transferred out of bed to chair daily during 7 day look back period.</p>

Alamo Adopted Safety Policies

▶ Training on the smoking policy

29. All staff members are trained on the Smoking Policy upon hire. Nurse Aide #2 had been trained on the Smoking Policy on September 1, 2022, and CNA #6 had been trained on the Smoking Policy on February 24, 2022.

▶ Training on gait bet policy

52. All staff members are trained on the Transferring the Patient policy, which includes the use of gait belts, upon hire. A review of CNA #4's training records shows that on September 28, 2021 and July 8, 2022, her skills were verified as competent on Transferring the Patient.

▶ 16 days of surveyor document review and observations

ALAMO NURSING AND REHABILITATION CENTER
GAIT BELT AWARENESS FORM

I, Lauren Bishop have been instructed on the proper use of the gait belt and I am aware that it is to be used during ANY transfer or ambulation with a resident. The gait belts are to be kept for each resident in the top drawer of their bedside table. If the resident is moved to a different floor or D/C then please collect that particular resident's gait belt and send to laundry.

Lauren Bishop

CNA/NA signature

7-8-22

Date

[Redacted Signature]

Supervisor signature

7-8-22

Date

Smoking Policy/Regulation

- ▶ The smoking policy was violated
- ▶ No regulation was violated

22. The designated smoking area is adjoined to the Facility and is accessible only through the employee breakroom. It is covered and enclosed from the elements except to allow for proper ventilation. The area is not accessible from the outside and has a glass door and windows from the employee breakroom.
23. Resident #1 was assessed and evaluated as safe for smoking by Alamo after admission. The most recent assessment, prior to the subject incident, on July 25, 2022, confirmed that he is safe to smoke with no concerns noted, including to safely extinguish his cigarette and that he is mobile and propels himself in his wheelchair.

Resident #1 screened as safe to smoke alone

Smoking Safety Evaluation V 2.0		
Resident: [REDACTED]	Effective Date: 07/25/2022 11:33	Location: W 23 B
Initial Admission: 05/03/2019	Admission: 05/03/2019	Date of Birth: [REDACTED]
Score: NA	Category: NA	Physician: [REDACTED] Loren

TOB. Tobacco utilization

1. Does Resident utilize tobacco a. Yes b. No

1_1. Note: Supervision will be required for all Residents during designated smoking times. This evaluation will be utilized for the Resident's smoking care plan on admission and as indicated.

SSE. Evaluation

2. Poor vision or blindness a. Yes b. No

3. Balance problems while sitting or standing a. Yes b. No

4. Total or limited ROM in arms or hands a. Yes b. No

5. Insufficient fine motor skills needed to securely hold cigarette a. Yes b. No

6. Lethargic / falls asleep easily during tasks or activities a. Yes b. No

7. Burns skin, clothing, furniture or other a. Yes b. No

8. Drops ashes on self a. Yes b. No

9. Follow the facility's policy on location and time of smoking a. Yes b. No

SSC. Concerns

10. Unable to light a cigarette safely a. Yes b. No

11. Unable to hold a cigarette safely a. Yes b. No

12. Unable to extinguish a cigarette safely a. Yes b. No

13. Unable to use ashtray to extinguish a cigarette a. Yes b. No

Resident #1 completed smoking safely on the porch

22. The designated smoking area is adjoined to the Facility and is accessible only through the employee breakroom. It is covered and enclosed from the elements except to allow for proper ventilation. The area is not accessible from the outside and has a glass door and windows from the employee breakroom.



Resident #1 received a full assessment and had a scraped elbow

- 32. EMS alerted the Facility staff who immediately assessed Resident #1 head-to-toe.
- 33. The Facility nurse found that he had a skin tear to his right elbow. No other injuries were sustained by Resident #1.
- 37. The Nurse Practitioner saw Resident #1 two days and confirmed he had a skin tear. No other injuries were noted by the Nurse Practitioner.

# 103	Un-witnessed	Date: 9/25/2022 08:20
Resident:	[REDACTED]	
Incident Location:	Outside	Resident Location: W 23-B
Person Preparing Report:	Lea [REDACTED]	
Incident Description		
Nursing Description:	At approximately 8:20 am this nurse was on med pass when 3 EMTs were walking towards the breakroom and saying "he's on the ground, what is the passcode for this door?? this nurse asked EMTs "What is going on, who is on the ground?!" Deanna [REDACTED] LPN reported to this nurse that resident was on the ground in the smoke shack and the EMTs that were here at the time to transport a different resident to the ER had noted Mr. [REDACTED] in the smoke shack on the ground and attempted to assist him but couldn't get to him due to no outside door to the smoking area. This nurse and the 3 EMTs entered the smoking area and noted resident sitting on the ground in front of his wheelchair with legs stretched out in front of him. No other resident or staff members present during this time. Skin tear noted to right elbow. Head to toe skin assessment done at this time. Resident unable to voice details of what happened. Denies pain at this time. Resident assisted back to his wheelchair, skin tear cleansed, TAO applied with clean dry bandage in place. MD notified. Family notified. Neurochecks initiated at this time. Vitals temp- 98.2, p-70, resp-20, bp-142/70, 96% on room air. No further concerns noted at this time.	
Resident Description:	Resident Unable to give Description	

Reporting to state 9/25/22 and supplemented 9/29/22

Incident ID: 2022926132146		
Date of Report: 9/26/2022 Submitted - Yes CAP Status - None	Reported By: Seleena [REDACTED] Email: S[REDACTED]@harberlaman.com Phone: (731) 696-4541	
Facility Information	General Information	
ALAMO NURSING AND REHABILITATI 580 W MAIN STREET PO BOX 367 ALAMO, TN 38001 7316964541 Facility Type: 021 License #: 29 Region: W	Date of Occurrence: 9/25/2022 Time of Occurrence: 1:00 AM Age: 66Year Sex: Male Race: White	
Incident Information		
Medical Record #: 15522		
Summary: Resident #15522 was escorted by a staff member TR to the smoking area on 09-25-22 at approximately 8AM. This staff member lit his cigarette for him and left him unattended. A second staff member, HO, walked out to the smoking area at the same time. She also left the resident unattended and returned to the building. Resident was left unattended in smoking area for approximately 20 minutes. He attempted to propel himself back into the facility unsuccessfully and fell out of his wheelchair. EMS was at facility to pick up another resident and saw him. EMS notified staff in the facility who then responded to him. Resident was assessed and found to be without injury. He was brought back into the facility and no further concerns were noted. Staff are being re-educated on the smoking policies and abuse/neglect. Investigation is pending at this time.		
Occurrence Codes	Diagnosis Information	Procedure Information
971	Cerebral Vascular Injury/Diseases	N/A
No history to show (Hover over names for contact info.)		

Incident ID: 2022926132146		
Date of Report: 9/29/2022 Submitted - Yes CAP Status - None	Reported By: Seleena Park Email: spark@harberlaman.com Phone: (731) 696-4541	
Facility Information	General Information	
ALAMO NURSING AND REHABILITATI 580 W MAIN STREET PO BOX 367 ALAMO, TN 38001 7316964541 Facility Type: 021 License #: 29 Region: W	Date of Occurrence: 9/25/2022 Time of Occurrence: 1:00 AM Age: 66Year Sex: Male Race: White	
Incident Information		
Medical Record #: 15522		
Summary: Resident #15522 was escorted by a staff member TR to the smoking area on 09-25-22 at approximately 8AM. This staff member lit his cigarette for him and left him unattended. A second staff member, HO, walked out to the smoking area at the same time. She also left the resident unattended and returned to the building. Resident was left unattended in smoking area for approximately 20 minutes. He attempted to propel himself back into the facility unsuccessfully and fell out of his wheelchair. EMS was at facility to pick up another resident and saw him. EMS notified staff in the facility who then responded to him. Resident was assessed and found to be without injury. He was brought back into the facility and no further concerns were noted. Staff are being re-educated on the smoking policies and abuse/neglect. Investigation is pending at this time. Update: 09-29-22 Investigation revealed that two staff members of the facility (HO, TR) left resident unattended in the smoking area. This is a direct violation of the facility smoking policy for residents. Staff members HO and TR were terminated from facility related to leaving resident unattended in a smoking area. Facility staff re-educated on smoking policy for residents including not leaving residents unattended in smoking area. Staff also re-educated on abuse/neglect policy. Resident #15522 has a BIMS score of 3 but is able to make needs known to staff. Error in previous report regarding injuries sustained during fall - resident did sustain a skin tear to his right elbow. Area is being treated by staff. No other injuries noted, no reports of pain.		
Occurrence Codes	Diagnosis Information	Procedure Information
971	Cerebral Vascular Injury/Diseases	N/A
Incident History (Hover over names for contact info.)		
Action: Incident Rejected Date: 9/27/2022 9:17:29 AM By: Marjorie Prather Comments: 1. What is the outcome of the facility's investigation? 2. What is the BIMS of the resident? 3. What type of plan has the facility put in place to ensure this type of incident does not reoccur?		

Alamo disciplined and reeducated when the smoking policy was not followed

44. Neither staff member involved ever worked in the Facility after their shifts on the date of the event. Both were terminated effective September 25, 2022. This was contemporaneously documented in both of their personnel files on September 26, 2022, by the DON.
45. The Facility staff was retrained on the Smoking Policy beginning on September 26, 2022 and continuing as each reported for their next shift through October 4, 2022.
46. The Administrator conducted the first retraining of the Smoking Policy. The Facility DON conducted the retraining on the subsequent days.

CNA #4 deviated from Alamo's Gait Belt Policy

48. On September 14, 2022, CNA #4 was assisting Resident #4 into bed. During the transfer, Resident #4 was holding onto her walker, CNA #4 was holding onto the resident at her waist band with one hand while moving the walker with the other, and the resident lost her balance and fell.

Alamo disciplined and reeducated when the gait belt policy was not followed

49. CNA #4 was provided a written disciplinary action for not using a gait belt to assist Resident #4 in transferring per the Facility's policy.
50. The Facility's disciplinary action of CNA #4 following Resident #4's fall was timely and appropriate.

Staff who violated Gait Belt Policy immediately re-educated on the spot

Notes

9/20/2022	Fall investigation completed. Staff states that resident was attempting to transfer from wheelchair to bed with staff. Staff did not use gait belt for transfers. Resident stood with walker while staff attempted to move wheelchair. staff re-educated and disciplinary actions issued	ROMITCHELL
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Health Facilities Commission

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: TN1702	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED C 12/13/2022
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NAME OF PROVIDER OR SUPPLIER ALAMO NURSING AND REHABILITATION CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 580 W MAIN STREET ALAMO, TN 38001
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
N 424	Continued From page 2 for 2 of 3 sampled residents (Resident #1 and #4) reviewed for accident hazards. The facility's failure to ensure a safe and secure environment resulted in a serious and immediate threat to the health and safety of the residents and staff when 2 staff members left Resident #1 in the smoking area unsupervised with a lit cigarette for an undetermined amount of time. Resident #1, an aphasic, wheelchair bound resident with severe cognition impairment, was found on the ground of the Smoke Shack by an outside source. Resident #1 sustained a skin tear. The failure of the facility to ensure a safe environment resulted in harm when a staff member (Certified Nurse Assistant (CNA) #4) failed to follow facility policy related to use of a gait belt during resident transfers, and Resident #4 sustained a fall hip fracture during the transfer. An acceptable Removal Plan, which removed the serious and immediate threat, was received on 12/6/2022 and was validated onsite by the surveyors on 12/12/2022 by policy review, medical record review, observation, review of education records, auditing tools, and interviews. The findings include: 1. Review of the facility's policy titled, "Neurological Assessment," dated 3/2015 revealed, "...The purpose of this procedure... provide guidelines for a neurological assessment...when following an unwitnessed fall...Neurological assessments are indicated...Following an unwitnessed fall...When assessing neurological status, always include frequent vital signs...Perform neurological checks with the frequency as ordered or per falls protocol...The following information should be recorded in the residents' medical record...date	N 424		

An acceptable **Removal Plan**, which removed the serious and immediate threat, was received on 12/6/2022 and was validated onsite by the surveyors on 12/12/2022 by policy review, medical record review, observation, review of education records, auditing tools, and interviews.

**Allegation of Removal of Jeopardy/Allegation of Compliance
(F689)**

Alamo Nursing and Rehabilitation Center
December 5, 2022

Credible Allegation of Compliance and Correction:

For the purposes of any allegation that states Alamo Nursing and Rehabilitation Center is not in substantial compliance with the regulations set forth, this response constitutes Alamo Nursing and Rehabilitation Center's *Credible Allegation of Correction and Compliance and Removal of Immediate Jeopardy*.

Accidents (F689)

On the evening of 12/5/22
Nursing that the facility v
adequate supervision for
unattended with a lit cig
Incident Reporting System
on 9/26/2022 that the re
BIMS score of 3, is able to

Beginning on December 1
the smoking area at the
members and not being
Restorative Nurse, Skilled
breaks to ensure resident
will be conducted daily for

Nursing staff were in-ser
serviced on 12-01-22 on
Assessments. Facility sta
Abuse/Neglect Preventio

Beginning on 12-06-22 facility staff will be in-serviced on the Resident Smoking Policy and Abuse and Neglect. Nursing staff will also be in-serviced on Assessing Falls and Their Causes on 12-06-22.

Medical Director Notification

The facility Medical Director, was apprised of the cited deficiencies on 12/5/2022. An immediate ad-hoc meeting with the Administrator, Director of Nursing, Performance Improvement (PI) Nurse, Facility Owner, Board Members, and Corporate Compliance Nurses was conducted on 12/5/2022 to discuss the Immediate Jeopardy deficiencies.

Respectfully Submitted,

Seleena Park, Administrator

Accidents (F689)

On the evening of 12/5/2022, it was brought to the attention of the Administrator and Director of Nursing that the facility was being cited with Immediate Jeopardy citations due to failure to provide adequate supervision for a resident during a smoke break when 2 staff members left **Resident #1** unattended with a lit cigarette and without supervision for an undetermined amount of time. (Per the Incident Reporting System 3.0, it was noted on the report of the fall that was submitted for this resident on 9/26/2022 that the resident was left unattended for 20 minutes, and the resident, despite having a BIMS score of 3, is able to make needs known to staff).



State of Tennessee
Health Facilities Commission
West Tennessee Regional Office
295 Summar Drive, 2nd Floor, Jackson, Tennessee 38301
www.tn.gov/hfca Phone: 731-984-9684 Fax: 731-427-0407

IMPORTANT NOTICE - PLEASE READ CAREFULLY

(Receipt of this notice is presumed to be 12/22/2022--date notice emailed to facility.)

December 22, 2022

SUBSTANDARD QUALITY OF CARE (SQC)

Your facility's noncompliance with the following:

- F610 – Investigate/Prevent/Correct Alleged Violation**
- F689 – Free of Accident Hazards/Supervision/Devices**

has been determined to constitute Substandard Quality of Care (SQC) as defined in §448.301. Sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Social Security Act and 42 CFR 488.325(h) require that the attending physician of each resident who was found to have received SQC, as well as the State board, responsible for licensing, the facility's Administrator will be notified of the SQC. In order to satisfy these notification requirements, and in accordance with §488.325(g), **you are required to provide the following information to this agency within 10 working days of your receipt of this letter the name and address of the attending physician(s) of each resident found to have received Substandard Quality of Care, as identified as:**

Resident(s): #1

The office of Health Facilities Commission notified the Centers for Medicare and Medicaid Services (CMS) Regional Office of the IMMEDIATE JEOPARDY (I) and/or SUBSTANDARD QUALITY OF CARE (SQC) findings for the following regulatory requirements:

- §483.12 Freedom from Abuse, Neglect, and Exploitation**
- §483.25 Quality of Care**
- §483.70 Administration**

As a result of the survey findings, the West Tennessee Regional Office of Health Facilities Commission notified the administrator on exit, that immediate jeopardy exists and that it would

Proof

- ▶ Adopted safety policies
- ▶ Conditions... “are or likely to be detrimental to the health, safety or welfare of the patients....”
- ▶ Unavoidable Accident – “Means an accident occurred despite sufficient and comprehensive facility systems.”

Alamo's Counter Claim

COUNTERCLAIM

In support of its Counterclaim, the Facility will show that a revisit survey was conducted at the Facility on January 17, 2023, and the Facility was determined to be in substantial compliance with an effective date of January 9, 2023. The suspension of admissions became effective on January 4, 2023 and was lifted effective January 19, 2023. As a result of the suspension of admissions, the Facility was deprived of \$99,904.22 of potential revenue based upon the Facility's average operating metrics. Factoring in the costs associated with the

In addition to the relief sought in its Amended Answer and Petition for Hearing filed in this matter, the Facility requests that the Administrative Judge award it damages incurred as a result of the suspension of admissions and any and all other relief in relation to the suspension.

Pursuant to Civil Code Section 3361(a)(2)(B), the Facility seeks damages for the loss of revenue due to the improper suspension of admissions and files this counterclaim for the recovery of said damages.

In addition to the relief sought in its Amended Answer and Petition for Hearing filed in this matter, the Facility requests that the Administrative Judge award it damages incurred as a result of the suspension of admissions and any and all other relief in relation to the suspension.

Suspension of Admissions

TCA 68-11-252 provides in pertinent part as follows:

(a) The commissioner has the authority to suspend admissions of any new patients or residents to any facility or licensee in those cases where the commissioner has a factual basis upon which to believe ***that the conditions in any such facility of licensee are, or are likely to be, detrimental to the health, safety or welfare of a patient or resident.***

State found alleged serious and immediate threat was removed on 12/12/22:

An acceptable Removal Plan, which removed the serious and immediate threat, was received on 12/6/2022 and was validated onsite by the surveyors on 12/12/2022 by policy review, medical record review, observation, review of education records, auditing tools, and interviews.

23 days later, on 1/4/23, a Suspension of Admissions was issued:

The Suspension of Admissions shall be effective at 5:00pm, **January 4, 2023**. This facility is hereby ordered to post a copy of this letter where it may be plainly seen by those entering the facility and to make a copy of this letter available for anyone requesting a copy.

Attached is a statement of your rights in this matter.

Sincerely,



Logan Grant
Executive Director
Health Facilities Commission

Tenn. Code Ann. § 68-11-252

68-11-252. Suspension of admission to facilities detrimental to health, safety or welfare of patients or residents.

- (m) The board has the authority to:
 - (1) Continue, revoke, or modify the suspension of admissions; and
 - (2) Enter such other orders as it deems necessary.

State Proceedings

- ▶ Originally set for hearing – March 14, 2023
- ▶ Hearing continued – March 27, 2023

STATE OF TENNESSEE
HEALTH FACILITIES COMMISSION
BEFORE THE EXECUTIVE DIRECTOR

IN THE MATTER OF:)
)
ALAMO NURSING AND REHAB. CENTER) DOCKET NO. 35.00-225379J
S.N.F., LIC. NO. 29)
RESPONDENT)
)
ALAMO, TN)

AGREED SETTLEMENT ORDER

The Tennessee Health Facilities Commission ("Commission"), by and through the Office of Legal Services ("Office"), and the Respondent, Alamo Nursing and Rehabilitation Center (Respondent), by and through its legal counsel, hereby stipulate and agree, subject to approval by the Tennessee Health Facilities Commission Executive Director or Designee, to the following:

I. AUTHORITY AND JURISDICTION

1. The Board for Licensing Health Care Facilities ("Board") has the authority to license and regulate hospitals, recuperation centers, nursing homes, homes for the aged, residential HIV supportive living facilities, assisted care living facilities, home care organizations, residential hospices, birthing centers, prescribe childcare centers, renal dialysis clinics, ambulatory surgical treatment centers, outpatient diagnostic centers, adult care homes, and traumatic brain injury residential home. T.C.A. § 68-11-202.
2. A "Nursing Home" means any institution, place, building or agency represented and held out to the general public for the express or implied purpose of providing care for one (1) or more nonrelated persons who are not acutely ill, but who do require

Federal Proceedings

- ▶ Pre-Hearing Exchange
- ▶ Settlement Conference
- ▶ Stipulation of Fact and Statement of Issues

Questions

