



Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-09-39

**DATE:** May 29, 2009

**TO:** State Survey Agency Directors

**FROM:** Director  
Survey and Certification Group

**SUBJECT:** Food Procurement at 42 CFR 483.35(i)(1)(2), Tag F 371, and Self Determination and Participation at 42 CFR 483.15, Tag F 242

**Memorandum Summary**

This memorandum clarifies that:

- The language at 42 CFR 483.35(i), Tag F 371 “Procure food from sources approved or considered satisfactory by Federal, State or local authorities” is intended solely for the foods procured by the facility. A revision has been made to the interpretive guidelines at F371 to further clarify this intent;
- Foods accepted by residents from visitors, family, friends, or other guests are not subject to the regulatory requirement at F 371; and
- Residents have the right to choose to accept food from visitors, family, friends, or other guests according to their rights to make choices at §483.15, F 242, Self Determination and Participation.

The Centers for Medicare & Medicaid Services (CMS) regulation at 42 CFR 483.35, Tag F 371, states that foods procured by the facility must come from sources approved or considered satisfactory by Federal, State, or local authorities. The surveyors should use the regulation and interpretive guidelines at F 371 when determining how the facility acquired food for resident consumption. This regulatory requirement does not expand beyond the scope of the intent to monitor how the facility procures food for the nursing home resident population.

The surveyor(s) should not use the food procurement regulatory language at F 371 to monitor any food(s) provided by visitors, friends, family members, or resident guests which the resident has chosen to accept. The facility does have a responsibility under the food safety regulatory language at F371 to help visitors to understand safe food handling practices (such as not holding or transporting foods containing perishable ingredients at temperatures above 41 degrees F.) and to ensure that if they are assisting visitors with reheating or other preparation activities, that facility staff use safe food handling practices and encourage visitors and residents who are contributing to food preparation in the facility to use these safe practices as well.

A clarification has been added to F371, which CMS has released as an advance copy along with revisions to several quality of life and environment tags, with an issuance date of June 17, 2009.

The CMS regulation at §483.15, F242 protects the resident(s) right to choose to accept food from visitors, family, friends, or other guests (e.g., facility-sponsored activities such as a community pot luck). This regulation states, “the resident has the right to make choices about his or her life in the facility that are significant to the resident.”

When the survey team determines that a facility has not allowed a resident or residents to choose to accept food from any friends, family, visitors or other guests, the team should consult the regulation and guidance at F 242 to determine if the resident(s) rights have been violated.

For questions regarding this memorandum, please contact Debra Swinton-Spears at (410) 786-7506 or e-mail at [debra.swinton-spears@cms.hhs.gov](mailto:debra.swinton-spears@cms.hhs.gov).

**Effective Date:** This clarification is effective immediately. Please ensure that all appropriate staff are fully informed within 30 days of the date of this memorandum.

**Training:** This information should be shared with all appropriate survey and certification staff, surveyors, their managers, and applicable staff.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management

Center for Medicaid, CHIP, and Survey & Certification/Survey & Certification Group

Ref: S&C: 11-38-NH

**DATE:** September 7, 2011  
**TO:** State Survey Agency Directors  
**FROM:** Director  
Survey and Certification Group  
**SUBJECT:** Compliance with Food Procurement Requirements for Nursing Homes with Gardens Producing Foods for Residents

Memorandum Summary

- **Policies and Procedures:** Facilities with nursing home gardens are compliant with the food procurement requirements at 42 CFR 483.35(i), Sanitary Conditions, Tag F371 as long as the facilities have and follow policies and procedures for maintaining the gardens.
- **Outbreaks of Food Borne Illness from any Cause:** The facility should immediately report any outbreaks of food borne illnesses, from any cause, to their local health department. Surveyors should request the policy and procedures for maintaining nursing home gardens if there is an outbreak of food-borne illness and the facility's primary food service source has been ruled out as the cause of the outbreak.

The Centers for Medicare & Medicaid Services (CMS) and the Food and Drug Administration (FDA) have received inquiries from nursing homes and State survey agencies asking if Federal law permits nursing homes to have produce gardens and use the foods harvested on the menu for any portion of the resident population. Residents can benefit from having a variety of fresh foods for their consumption, as long as the dangers of food-borne illness are mitigated to the greatest extent possible through the facility. The facility should be following safe food handling practices once foods are harvested and brought to the kitchen for preparation.

Nursing homes with gardens are compliant with the food procurement requirements at 42 CFR 483.35(i), Sanitary Conditions, F371 as long as the facility has and follows policies and procedures for maintaining the gardens. Surveyors should request the policy and procedures for maintaining nursing home gardens if there is an outbreak of food-borne illness and the facility's primary food service source has been ruled out as the cause of the outbreak. Facilities should report all outbreaks of food-borne illnesses to their local health department.

If there are local or State requirements related to food grown on the facility grounds for resident consumption, facilities are to be in compliance with the specific State requirement.

Noncompliance with food procurement requirements should be cited at Tag F371.

**Effective Date:** Immediately. Please ensure that all appropriate staff are fully informed within 30 days of the date of this memorandum.

**Training:** The information must be shared with all nursing home survey and certification staff, surveyors, managers, and the State and CMS regional office training coordinators.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management