



## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

September 27, 2016

RE: DAL-NH-16-05  
Protecting Resident Privacy and Prohibiting  
Mental Abuse Related to Photographs and  
Audio/Video Recording by Nursing Home Staff

Dear Nursing Home Administrator:

On August 5, 2016 the Center for Clinical Standards and Quality/ Survey Group for the Centers for Medicare and Medicaid Services (CMS) issued S&C 16-33-NH which provides guidance aimed at protecting resident privacy and prohibiting mental abuse related to photographs and audio/video recordings by nursing home staff. Mental abuse includes, but is not limited to, abuse that is facilitated or caused by nursing home staff taking or using photographs or recordings in any manner that would demean or humiliate a resident(s). This memorandum discusses the facility and State responsibilities related to the protection of residents. This guidance is effective immediately for all nursing homes and for all surveys completed on or after **September 5, 2016**.

Each nursing home must develop and implement policies and procedures that prohibit all forms of abuse, including mental abuse. Each nursing home must review and/or revise their written abuse and prevention policies and procedures and their training on abuse prohibition policies and procedures to include and ensure that nursing home staff are prohibited from taking or using photographs or recordings in any manner that would demean or humiliate a resident(s). This would include any type of equipment (e.g., cameras, smart phones or other electronic device) to take, keep, or distribute photographs and recordings through any media including social media.

The provision of in-service education on abuse prohibition alone does not relieve the nursing home of its responsibility to assure the implementation of these policies and procedures. The nursing home must provide oversight and supervision to staff in order to assure that these policies are implemented as written.

Anytime a nursing home receives an allegation of abuse, including involving posting of unauthorized photograph or recording of a resident on social media, the facility must not only report the alleged violation to the Administrator and other officials, but must initiate an immediate investigation and prevent further potential abuse. Based on investigation findings, the facility must implement corrective actions to prevent recurrence.

During the next standard survey on or after September 5, 2016, whether a traditional survey or Quality Indicator Survey (QIS), the New York State Department of Health's Division of Nursing Homes and ICF/IID Surveillance ("the Department") survey team will request and review the nursing home policies and procedures related to prohibiting nursing home staff from taking or using photographs or recordings in any manner that would demean or humiliate a resident(s). Survey teams will implement this policy until each nursing home has been surveyed for inclusion and implementation of such policies.

If the Department receives an allegation of mental abuse related to an unauthorized transmission of photographs or recordings of a resident(s), any humiliation or demeaning of a resident, the Department will conduct an onsite investigation. In addition, the Department must evaluate whether the allegation may require referral to law enforcement.

Should you have any questions please contact The Division of Nursing Homes and ICF/IID Surveillance at (518) 408-1267.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shelly Glock".

Shelly Glock  
Director  
Division of Nursing Homes and ICF/IID Surveillance  
Center for Health Care Provider Services and Oversight