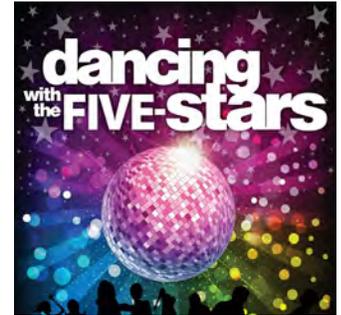


## Table of Contents

- Page 1 · Coming Soon: LNHA Spring Conference  
 · Clarification of Exit Conference Protocol
- Page 2 · Clarification of Exit Conference Protocol (cont.)  
 · Share Your Observation Stay Story
- Page 3 · End-of-Life Discussions Improve Outcomes  
 · National Nursing Home Week Product Guide
- Page 4 · “Persuader” Regulations Expand Employers’  
 · Reporting Obligations Under LMRDA
- Page 5 · LNHA’s Upcoming Events and Trainings  
 · LNHA Facilities Earn Deficiency-Free Survey

## Coming Soon: LNHA Spring Conference & Trade Show!

We are less than a month away from the 2016 LNHA Spring Conference & Trade Show! Enjoy engaging speakers and lively discussions as you gain a wealth of knowledge from experts in the long term care industry. Join us on May 3-4, 2016 to hear from experts presenting updates on the following topics: Five-Star Rating System, the Payroll-Based Journal, managed care, Online Tracking Incident System (OTIS) reporting and much more. Click [here](#) to view the agenda. Be sure to register your staff ahead of time so they receive the handouts and presentations to print before attending. [Sign up today](#) to attend this exciting event!



## CMS Update Offers Clarification of Exit Conference Protocol



On March 11, 2016, CMS issued a memorandum to State Survey Agency Directors clarifying the procedure for conducting the Exit Conference. The purpose of the [S&C: 16-11-All memo](#) is to guide surveyors regarding the degree of specificity they should share with providers during the Exit Conference concerning deficiencies found while conducting federal surveys. To ensure clarity and consistency during the survey process, CMS has revised the State Operations Manual (SOM), Chapters 2, 5, and Appendix P.

This memo reminds surveyors to clearly state to providers that all findings presented at the Exit Conference are preliminary and subject to change pursuant to the State and CMS supervisory review process. If the provider requests the specific regulatory source or the specific tag number, the surveyors may provide this information again with the statement that such coding classifications are preliminary and shared only to assist the provider in acquiring greater understanding of the issues. If the facility does not specifically request the regulatory source or tag number, the survey team has the option to use its own judgment in determining whether this information would add any further interpretive value for the facility.

The most significant message of this memo comes in the form of a caution to surveyor teams still deliberating which tags are the most pertinent or under which tag a deficiency should be cited. The memo cautions surveyors that they must not speculate at the exit conference as to the specific tag coding that will be issued. The survey team is instructed to describe the general area on noncompliance without identifying a specific tag code.

At no time should the surveyors provide the scope and severity of a given deficiency finding (unless it is an Immediate Jeopardy). The team may discuss the general seriousness or urgency that a specific deficiency may present to the welfare of the residents. If asked the prevalence of the noncompliance, the surveyor may offer a factual statement (i.e., noncompliance was found affecting X number of residents). (continued on page 2)

# CMS Update Offers Clarification of Exit Conference Protocol (cont.)

Finally, the CMS memo says the integrity of the state and CMS post-survey review process is central to having substantiated, evidence-based deficiency findings that appropriately establish the level of harm or potential harm to the resident. It also serves to reinforce that states must not leave draft CMS-2867 forms onsite before they are finalized. The state survey agency directors are instructed that general state policies do not supersede CMS policies.



Author: [Rita Finn](#), MSN, RN, Regulatory Director for LNHA



Observation stays which are unannounced by hospitals are hurting post-acute care patients because the patients believe they are receiving Medicare-approved skilled nursing facility care but in fact are not because of the absence of a three-day hospital inpatient stay. A large bill from the skilled nursing facility then awaits them.

LNHA is requesting observation stays stories that are brief (no more than two paragraphs) and can be shared on Capitol Hill and elsewhere (possibly AHCA publications, etc.). Include the first name, city and state in the story. Click [here](#) for an example entry. Here is a [link](#) to the form to have the individual sign their consent to share their story. Send your story by **April 18th** to Karen Miller at [kmiller@lnha.org](mailto:kmiller@lnha.org).

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## Study: End-of-Life Discussions in Nursing Facilities Improve Outcomes

A relatively low number of nursing facility residents participate in end-of-life discussions, despite the potential they have to improve outcomes, according to a study in the March issue of [Age and Ageing](#).

A study of nearly 80 French nursing facilities found that a minority of the residents — 21.7% of those who died within the study period — discussed end-of-life issues with family members and facility staff. The study was conducted between October 2013 and May 2014, with 674 residents from the sample facilities dying in that timespan. The end-of-life discussions tracked by the researchers included talks about the course and prognosis of a resident's disease, the approaching end of life, the possibility of stopping treatments, options for palliative care, psychological issues, and spiritual or existential problems.

Results of the study showed no discussions on any end-of-life topics were held with 32.8% of residents or their families prior to the resident's death. Older residents, and those with severe dementia, were less likely to have discussed more than three of the six end-of-life topics, compared to residents without dementia. In their last months of life, residents who discussed three or more end-of-life topics with physicians were less likely to die in a hospital, more likely to appoint a surrogate or representative, and more likely to choose to withdraw life-prolonging medical treatments, researchers found.

Those results highlight the need for nursing facility physicians to have end-of-life conversations with residents, researchers said, although those conversations may be challenging to initiate with very old residents, or those with dementia.

"In our opinion, this study raises an interesting paradox: It suggests that the more difficulties older persons may have in understanding what is said to them regarding the end of life, the less likely nursing facility physicians are to communicate with them," wrote lead researcher Lucas Morin, a doctoral student at the Aging Research Center at Stockholm University. "For clinicians, the most obvious (and probably most difficult) challenge will be to find the appropriate balance between the need for more patient-centered dialogue and the pressure on professionals' time." *Reprinted from McKnight's News.*

## Department of Labor Issues New “Persuader” Regulations Expanding Employers’ Reporting Obligations Under LMRDA

# Ogletree Deakins

On March 24, 2016, the U.S. Department of Labor (DOL) published new regulations expanding the obligations of employers and lawyers to report certain information to the DOL under the Labor Management Reporting and Disclosure Act of 1959 (LMRDA).

Lawyers (or labor relations consultants) will now have to report any engagement whose object is to directly or indirectly persuade employees concerning their rights to organize a union or bargain collectively. This is a change to a long-standing rule that has been in place for nearly 50 years.

Until now, neither employers nor lawyers were required to report such engagements, provided that the lawyers communicated only with management. This is what has been known traditionally as the “advice exception” to the reporting rules.

The DOL is now abandoning its long-held bright-line rule. Under this new interpretation, a lawyer’s services will be reportable activity even if there is no direct contact between the lawyer and employees of the employer, if the object of the services is to directly or indirectly “persuade” employees.

In such a case, both the law firm and the employer will have to file reports with the DOL. Lawyers will be required to file a report with the DOL within 30 days after being engaged by the client to provide “persuader” services. The report they must make is known as the LM-20 Agreement and Activities Report, and it must identify (among other things) the name of the client, the terms of the engagement, the scope of services to be provided, and the group of employees and union involved, if any. The law firm will also be required to file an annual report at the end of its fiscal year, supplying data on its receipts and disbursements related to providing “labor relations advice or services.”

The employer will also have to file its own report. The employer’s report must be filed on Form LM-10 within 90 days of the end of the employer’s fiscal year. It must disclose:

1. the date of each reportable arrangement and the date and amount of each transaction made pursuant to that arrangement;
2. the name, address, and position of the person with whom the agreement or transaction was made; and
3. “a full explanation of the circumstances of all payments made, including the terms of any agreement or understanding pursuant to which they were made.” This includes attaching a copy of any written agreement between the employer and the persuader.

The LM-10 must be signed by the president and treasurer (or corresponding principal officers) of the employer.

The new regulations are scheduled to take effect on April 25, 2016, and will apply to arrangements, agreements, and payments made on or after July 1, 2016. It is likely, however, that lawsuits will be filed before then challenging the enforceability of these new regulations. It is possible that a stay could be enacted in one or more of those lawsuits that will delay the implementation of the regulations, and employers should monitor developments relating to these regulations to determine if or when they will have any reporting obligations.



Author: [John T. Merrell](#) is an attorney in the Ogletree Deakins’ Greenville, South Carolina office. Mr. Merrell represents management in all aspects of labor and employment law. Ogletree Deakins’ [Traditional Labor Relations Practice Group](#) will provide updates on these regulations as they develop on the [Traditional Labor Relations blog](#).

## LNHA's Upcoming Events and Save the Dates!



New events have been added to the [News and Events web page](#) and to the online calendar. To register for an event, visit [www.lnha.org](http://www.lnha.org) and click the calendar icon on the home page and select the appropriate event.

### UPCOMING EVENTS:

- May 3-4: LNHA Spring Conference, Baton Rouge

### SAVE THE DATES:

- June: Social Service Director Workshop
- August: Director of Nursing Boot Camp



### LNHA Facilities Earn Deficiency-Free Survey

LNHA congratulates two facilities for achieving a deficiency-free annual survey.

- Morgan City Health Care Center, Morgan City
- St. Frances Nursing & Rehab, Oberlin

LNHA appreciates your hard work, compassionate care and unyielding commitment to provide quality services to your community.

If your facility achieves a deficiency-free annual survey and would like to be recognized in the *Lagniappe* newsletter, contact Karen Miller at [kmiller@lnha.org](mailto:kmiller@lnha.org).



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