

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850



Center for Medicaid and State Operations/Survey and Certification Group

MAR 24 2009

Ruta Kadonoff, Deputy Director
The Green House Project
2011 Crystal City Drive, Suite 800
Arlington, VA 22202

Dear Ms. Kadonoff:

Thank you for your letter regarding concerns related to the Centers for Medicare & Medicaid Services' revised interpretive guidance for nursing home surveyors at 42 CFR 483.35(i)(1)(2), F tag 371.

The interpretive guidance language describes "Unsafe food sources" as foods procured by the facility from sources that are not approved or considered satisfactory by Federal, State, or local authorities. Regulatory requirements are the facility compliance requirements and not intended to restrict the family or violate the residents' right to choose.

The language does not mean that the facility can procure home made items, not approved by an authoritative source, for resident consumption, even if "they have documented the food(s) served with the date when the item was served, name of person(s) providing the food, name of resident receiving the food, or having the resident sign a form stating that they have chosen to eat the food." Nor is the language intended to mean that certain food items not procured by the facility be "universally disallowed or that food items cannot be shared with other residents who choose to share the food."

The new guidance makes the distinction between foods procured by the facility and those procured by the residents, family members or friends for residents' consumption.

We hope that this clarifies any concerns regarding facility responsibilities when procuring foods for resident consumption. We will also share this guidance clarification with surveyors in a future transmittal (for F tag 371) to further reinforce that all residents have the right to accept food brought to the facility by any visitor(s) for any resident(s).