

**Draft Guidance to Surveyors, Attachment C, pp. 18-20**  
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**CMS Center for Medicaid and State Operations**  
**Survey & Certification Group**

*Reasonable Person Concept*

The absence of a reaction from a cognitively impaired resident who lacks the ability to understand and react to most stimuli, including those affected by the situation, does not make the deficiency any less serious. In this case, the survey team should use the “reasonable person” concept to determine the severity level of psychosocial outcome for that person.

CMS introduced the reasonable person concept in 1995 in Task 6E of the SOM, Appendix P. The reasonable person concept is described as follows:

In cases where residents are unable to speak for themselves, the survey team should assess how most people would react to the situation in question. For example, a female resident who is unable to express herself is wheeled down the hall in a wheelchair on the way to her shower with only a towel partially covering her body. The team will decide whether this incident is inappropriate because the resident is unable to express herself.

The Preceptor Manual further defines the reasonable person concept as follows:

There must be a standard, which can be used by all to achieve some uniformity and consistency in the application of regulations. The “reasonable person” standard has been used by our judicial system as a standard to apply principles on a consistent basis. Use of this standard will help evaluate the impact of deficiencies, such as resident rights, on such intangibles as self-esteem, dignity and comfort.

Who or what is the “reasonable person?” .... It is a standard used to measure conduct. The “reasonable person” is not:

- The resident being observed;
- Any other actual resident;
- The surveyor or any other surveyor; or
- Identified with any other actual person.

Rather, the “reasonable person” is:

- An abstract and hypothetical character who personifies a community ideal of reasonable and responsible behavior;
- A model of all proper qualities with only those human shortcomings and weaknesses which the community will tolerate;
- Prudent, careful, and always up to a standard; and
- Responds to institutional conduct in the manner of the ideal individual in the circumstances in which the resident has been observed and reacts more strenuously with the repetition of the same or similar conduct.