

LESSONS FROM NURSING HOME CITATIONS AND LITIGATION

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Overview

As I travel the country, I cannot help but notice the large billboards beckoning anyone with an elderly loved one in a nursing home to beware of mistreatment, abuse and neglect by caregivers. Equally persuasive are the frequent television and radio advertisements all bringing attention to the possibility of elder abuse in nursing homes.

It is true that OBRA '87 was necessary to reform regulations governing nursing homes and to ensure the rights of the "frail elderly" are protected. Subsequent amendments have served to strengthen the statutory framework of federal and state regulations however there is still much debate regarding whether or not there is evidenced-based sustained improvement in the quality of care provided in nursing homes.

Public Perception

Many caregivers have a vested interest in elder care and pride themselves in advancing the causes of the elderly. Considering how difficult it must be for anyone to place their loved one in an alternate setting, such as a nursing home, it is clear there has to be some degree of trust in the caregivers. Often, family members have remarked that when a particular caregiver is on duty, they know their loved one is in good hands so he or she does not have to worry. This peace of mind should be the sentiment of every family member; however, unfortunately, it is not the reality. Sadly, nationwide there are still caregivers who provide less than quality care and services, and some who unfortunately are abusive to the elders they have a duty to protect. The ill-will of a few often overshadows the compassion of a majority of dedicated nursing home employees and leaves many to wonder what type of screening and training is done prior to hiring direct care staff.

There also is the perception of corporate greed by some providers, yet there are many stories of providers who continue to fight unrelentingly for the well-being of their residents. Many nursing homes will take challenging residents who otherwise would remain in the acute care setting, and at times, in shelters without the benefit of needed continuous medical supervision. Yet, there are risks and ultimately negative outcomes that become the focus of regulatory citations and/or legal action.

The general public perception is that residents with violent and even criminal history do not belong in nursing homes and that these often younger individuals should not be integrated with the elderly. The shift in the level of acuity of residents being admitted to nursing homes and staffing challenges directly impacts the level and quality of care provided and these factors continue to be fertile ground for citation and litigation. How should you as providers and caregivers prepare for and manage the challenges inherent in elder care?

Challenges

As the number of nursing home residents with varying stages of Dementia continues to rise, there also may be an increase in resident-to-resident injuries and staff fatigue that may lead to staff-to-resident abuse. Then, there is the concern of younger patients in nursing homes, some of whom have some form of behavior issues often stemming from mental illness, and drug and alcohol addiction. What process does your facility use to screen residents for admission? Who makes the decision which resident to accept? Do you relax your screening process when the census is low? Do you have programs and services in place to adequately manage residents with behavior issues? How about staffing levels? Is your staff adequately prepared to deal with the challenging behaviors of these residents?

Regulatory and Liability Lessons

Staff fatigue, low staffing levels, lack of consistent staff training, difficult resident behaviors, and the staff's failure to follow the resident's care plan may each result in harm to residents and caregivers. The following are examples of such outcomes:

- One caregiver "just lost it" and hit a confused resident in the face. The resident suffered multiple facial fractures.
- Another caregiver left the side-rails down "for not even two minutes to get some water at the sink" located in the resident's room. The high fall risk resident fell and sustained a subdural hematoma – subsequently dying during surgery. The care plan clearly stated "High risk for fall -- do not leave unattended."
- The always conscientious staff member who wants to get all his/her residents up and out of bed and does not wait for a co-worker to provide assistance. The resident falls and sustains a debilitating hip fracture. The care plan clearly states, "Two-person assist with transfer."
- The younger resident with known multiple episodes of assaultive behaviors shoved the older resident into the wall and began to beat him. The staff intervened minutes later. The older resident ended up in a coma due to severe head injuries and died.
- The resident with progressive Dementia constantly tried to get out of bed independently, although he needed extensive assistance for transfer. A review of the MDS shows cognitive decline, including forgetfulness. The nurse's notes states, "Reminded resident to use call bell however he refuses." The care plan did not show revisions to the interventions, despite knowledge of the resident's multiple attempts at unsafe transfer.
- The care plan for a resident known to be at high risk for falls had an intervention for bed sensor and chair alarm. The resident subsequently fell out of bed. The investigation revealed that the bed sensor alarm did not sound because it was turned off.
- The oncoming staff found a resident "soaked in urine all the way up to the neck." There were visible dark rings both on the diaper and the bed linen. The employee wrote in her statement, "Worked short and I could not get to all the residents on my assignment."

Sadly there are a lot more stories like these and on the surface they appear horrible and uncaring. The general consensus is that the staff should know better, they should be fired, or their license or certifications revoked or that the facility needs to hire more help or a facility

shouldn't accept residents that they cannot care for. There is a lot of blame to go around however, has anyone stopped to determine the root cause of some of these negative outcomes? Were there warning signs that were missed? Are there proactive approaches that can be taken instead of ultimately a reactionary response?

Proactive, Collaborative approach

According to the Interpretive Guidelines for Long Term Care Survey §483.10:

All residents in long-term care facilities **have rights guaranteed** to them under Federal and State law...A facility **must** promote the exercise of rights for each resident, including any who face barriers (such as communication problems, hearing problems and cognition limits) in the exercise of these rights.

Should providers and direct care staff view these guarantees as unconditional and do they understand the inherent risks? Are there foreseeable risks that may be averted? Think about the possible approaches for mitigating adverse outcomes.

Here are a few proactive steps. These are suggestions and the reader is encouraged to add or delete based on the specific needs of his or her nursing home.

- Enforce a culture of “Zero Tolerance” for mistreatment, neglect or abuse, including injuries of unknown origin.
- Establish a consistently thorough pre-hire process that is followed by all hiring managers.
- Orient all new hires to your expectations and hold them accountable. Communicating your organization’s philosophy starts during the job interview, continues during the orientation phase and should be reinforced and demonstrated on a daily basis.
- Establish a clearly defined new hire orientation process and follow it.
- Provide adequate orientation and evaluate the new hire according to your HR policy.
- Do not rush new hire orientation, instead be systematic and have a process for peer review as an avenue for objective assessment of new hire performance.
- Do not be afraid to terminate new hires in the orientation phase. If you miss the opportunity, you may be stuck with a poor performer for a very long time. Entry level employees should have the basic theoretical and practical knowledge of their job function that will be enhanced with experience over time, so take care not to confuse “being new” with incompetence.
- Get all your employees on the same page regardless of job function. This can be done by small group meetings, department specific meetings and monthly all staff meeting. Allow time on your agenda for employee questions and provide feedback.
- Offer Wellness and EAP programs to encourage healthy living and assist employees with personal challenges. Employees cannot just “check their problems at the door.” The reality is that some employees do have real problems that they may not necessarily want to share with you, their supervisor.

- Reward top performers. Rewarding top performers does not necessarily mean giving a pay increase. Instead, find creative ways, such as plaques, establishing a “Recognition Wall” or writing a “thank you” note.
- Establish ongoing education to ensure your employees have up-to-date information on regulations and job specific requirements.
- Manage by “walking around” that is, conduct rounds several times per day. Don’t wait for your staff to seek you out, instead be readily available.
- Try to meet and greet each resident and his or her family at, or soon after admission. Often this initial meeting sets the tone for the duration of the resident’s stay.
- Consider establishing a Family Council and encourage family members to be involved.
- Be sure to follow-up on resident council concerns and document approaches taken toward resolution.
- Take time to reflect on your own feelings and know when to call your own “time out.” Simply put, take care of yourself so that you can take care of your staff and residents.

Conclusion

Do not wait for the regulatory agencies to come in and identify problems in your facility. Instead, make quality resident care a priority and get your entire staff involved in the Quality Assurance Performance Improvement (QAPI) process.

With the high acuity of residents residing in nursing homes, the increasing number of residents with challenging behaviors and problems with inadequate staffing, nursing home litigation will continue. Although arbitration and limits on award for damages may prove to soften the impact.

Providers and direct care staff need to develop innovative ways to work with residents and those involved to balance their needs and desires with the accompanying risks. Simultaneously, ensure that you provide staff training and the resources necessary to advance quality elder care within your nursing home.

I long for the day when the lens shift and I see more billboards that attest to the care and dedication of nursing home providers and direct care staff.