

Risk Management for Assisted Living Nurses and Facilities

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Learning Objectives

*By the end of the session, participants
will be able to:*

- Objective 1: Understand the basics of risk management
- Objective 2: Identify common lawsuits
- Objective 3: Identify common mistakes that can lead to lawsuits
- Objective 4: Discuss Arbitration Agreements

Common Lawsuits

- Falls
- Abuse
 - Physical
 - Sexual
- Elopement/Wandering
- Failure to Supervise
- Wrongful Death
- Changes in condition
- Medication Errors
- Corporate Negligence
- Wound issues

Mistakes That Lead to Lawsuits

- “Rubber stamp” physician orders
- Lack of communication during transfers between facilities; i.e. hospital to ALF or nursing home
- Not documenting discussions with staff/physicians and residents/families
- Not documenting that lab results are sent and reviewed
- Not ensuring that orders are implemented and documented in the correct portions of the chart
- Poor documentation on MARs and TARs
- Records issues

Alzheimer’s Residents: A Growing Trend in Litigation

- Is the resident appropriate for Assisted Living?
- Blurring of lines between an AL and a NH resident
- Does the family understand the natural progression of the disease?
- Is the family prepared for the behaviors that often occur with the disease?
- Are educational materials provided?
- Are conversations/information provided to families documented?
 - Doctor has the conversation, but its not documented

Alzheimer’s/Dementia Units

- “Locked in” units
 - Keypad access
- Large common areas
- Activities to provide cognitive stimulation
- Close supervision
- Elopement/Wandering risks
 - Wander Guards
 - Alarmed doors

Plaintiff's Litigation Tactics

- Corporate theories of liability
 - Attack the corporation
 - Focus on staffing
 - N.J.A.C §8:36-5.6(c)
 - Lack of policies and procedures
 - Violation of policies and procedures
 - Lack of physician oversight
 - Failure to follow federal and state regulations
 - Failure to provide necessary resources to the facility
 - State surveys

Staffing

- N.J.A.C. §8:36-5.6(c)
 - The staffing level in this chapter is minimum only and the assisted living residence, comprehensive personal care, or assisted living program shall employ staff in sufficient number and with sufficient ability and training to provide the basic resident care, assistance, and supervision required, based on an assessment of the acuity of residents' needs.

Plaintiff's Litigation Tactics

- "Split the Defense"
- Attending physician v. staff
- Nurses v. CNAs
- Disgruntled former employees
 - complaints about staffing
 - inadequate resources to do their jobs
 - Plaintiff's attorneys hire investigators to locate former employees

Plaintiff's Litigation Tactics

- Policies and Procedures
 - Argue facility violated its own standards
- What is being marketed to families?
 - Does the facility meet its marketing promises?
 - Are families given unrealistic expectations?
 - Are families provided explanations of staffing, physician visits and limitations of services?
 - Is there communication with resident and/or family about medical condition?
 - Does resident/family understand the role of an ALF?
 - Is this understanding documented?

Risk Management

- Providing good care
- Hiring/retaining competent and caring staff
 - Orientation for new staff
 - Annual performance reviews
- Knowing what mistakes are made that lead to lawsuits
 - In-Services
- Good documentation and family relations
- Explaining conditions and difficult medical issues to the resident and family in a way that creates trust and realistic expectations

ALFs v. SNFs

- Is there really a distinction between ALFs and skilled nursing facilities?
- NJ Resident Rights Statute - SNFs
- How many times is the term "care" used in lawsuits?
- What does public expect assisted living facilities to provide to residents?
 - What would a jury think?
 - Do residents/families realize the staffing requirements?

Perceptions and Lawsuits

- Families and attorneys may have a different view of the role of the ALF
- Community perception of an ALF
 - Jurors
- Documentation is crucial
- Don't expect that just explaining the resident's condition or residency will avoid a lawsuit
- Build relationships with residents/families

Deposition of an Executive Director

- Regulations – Standard of Care?
- Staffing
- Surveys
- Policies and procedures
- Corporate Structure and Reporting to "Corporate"
- Budgeting
- Hiring and Firing of Staff
- Bonuses
- Documentation
- In-Services and Staff Orientation
- Involvement in Resident Care/Resident Interaction

Arbitration Agreements

- A Contract that requires all disputes between a resident and a long term care facility to be resolved through binding arbitration before a neutral arbitrator as opposed to a judicial forum
- Federal Arbitration Act
- State Arbitration Acts and Statutes
- Provided/explained to resident/family upon admission

Arbitration Agreements

- Places fact finding and decision making powers in the hands of professional attorney/arbitrator as opposed to a lay jury
- Limits discovery, witnesses, experts and other procedures
- Valid arbitration agreements remove a case from the court's jurisdiction

Challenges to Enforceability

- An agreement is procedurally unconscionable if its terms were accepted by the weaker party with no reasonable choice, as in a contract of adhesion
 - i.e. Must sign agreement in order to receive care
- An agreement is substantively unconscionable if its terms unreasonably favor the other party
 - i.e. limitations on damages; restrictions on discovery

Conclusion

■ Two things to remember:

- 1) Documentation; and
- 2) Communication.

THANK YOU!
QUESTIONS?
