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LTC PROFESSIONAL

NEWS AND VIEWS YOU CAN REALLY USE

THE ADELMAN ADVANTAGE

by Rebecca Adelman

Policies and Procedures: Perfection or Purpose? Part I

It has long been understood that the quality of care delivery is often pegged to the quality of oversight and guidance. A foundational component of oversight and guidance is the policies and procedures (P&P) developed and disseminated. These P&P are not only designed to provide objectives in a multitude of areas, but often establish the precise methodology to achieve those objectives. But, what if the objectives are not achieved in a given circumstance? Further, what if there is not, unfortunately, compliance precisely to the methodologies in the P&P? What if, in the desire to provide optimal care, P&P seek to achieve a utopian level of performance that is unattainable? In designing P&P, it should be recognized from the outset that if your long-term care facility or assisted living community is involved in a lawsuit, resident care P&P are one of the most effective weapons that Plaintiff's attorneys use to try and establish that facilities and individual nursing and other staff delivered substandard care. In this two part article (Part II will appear in the December issue), we will explore the use of P&P in litigation and provide some suggested approaches when considering the design and implementation of P&P by employing language that cannot be so readily seized upon by plaintiff's attorneys. Thanks to my collaborator, Steven Weiner, a partner at Kaufman Borgeest & Ryan LLP and long term care/assisted living defense attorney, for his valuable contributions to this article.

Who is Responsible? Per the Federal Regulations, in the long-term care setting, the **Medical Director** is responsible for the implementation of resident care policies and must guide, approve and help oversee implementation. The **Facility's Governing Body** (typically the Board of Directors) is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and the **Facility** is responsible for obtaining the Medical Director's ongoing guidance in the development and implementation of resident care policies, including review and revision of existing polices. The requirements for Assisted Living communities vary from state to state although every state requires that an AL have a written statement of P&P outlining the responsibilities to the residents. Thus, the comments discussed herein are equally applicable in an AL setting.

What Records and P&P? Generally speaking, there seems no end to the amount of P&P that might be generated**.** In addition to resident care P&P that cover any number of conditions, skilled facilities must also maintain information such as **Accident and Incident records, Personnel policies, Nursing service policies and procedures manual, Service policies and procedures (i.e., activities, rehab), Medical policies, including any bylaws, rules and regulations adopted by the nursing home.** These same types of records are requested from Plaintiff's attorneys in lawsuits and, absent a quality assurance protection, which typically does not apply to the policies themselves, such documents must be produced. P&P in long term care are typically comprehensive, overlapping and voluminous, creating opportunities for Plaintiff's attorneys to point at failures in compliance or otherwise supporting that they are confusing and reflect a facility that is poorly managed.

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KESSLER'S CORNER

by Chip Kessler

A Time For Thanks

It's hard to believe however we're just a few weeks away from the ending of another year and the start of a new one. Where does the time go? I find this question ever more interesting as I age because as the saying goes, "time does fly" especially when each new set of 12 months signifies another year older for yours truly!

I don't have to tell you that as we enter November, the final two months of the year are a whirlwind of activity for both assisted living and nursing facilities. It begins this month with Thanksgiving and takes you into the December calendar of Christmas, Hanukkah and/or Kwanzaa celebrations. Then it's "Happy New Year" signifying January is here and you don't have time to turn around and take a breath!

That's why I wanted to send my message of Seasons Greetings ahead of time, hopefully when you still have a few moments to reflect. Plus I wanted to say thank you for making the *LTC Professional Newsletter* such a welcome addition to your reading list. I fully realize how much we're bombarded with any number of things to review and to get so many nice comments about what we provide, and the many requests received to be added to our mailing list is very humbling. For this, I know

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The Time Is Now To Shore Up Readmission Rates

by

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Hospital readmissions have been a hot topic in the healthcare industry for some time now. Everyone agrees that hospitalizing nursing facility residents can disrupt continuity of care, diminish quality of life and consume a sizeable portion of Medicare spending.

Readmission rates are a key component to several health care initiatives including Accountable Care Organizations, Bundled Payment Programs, and Value-Based Purchasing Programs to name a few. In addition hospitals are being penalized for readmissions for patients with Acute Myocardial Infarction, Congestive Heart Failure and Pneumonia under provisions of the Affordable Care Act which establishes the Hospital Readmissions Reduction Program and requires CMS to reduce payments to IPPS hospitals with excess readmissions, effective for discharges beginning on October 1, 2012.

So it is easy to understand why Skilled Nursing Facility's readmission rates will become a key indicator that hospitals will use to measure SNF performance. Given that nursing facility residents are generally hospitalized in response to a confluence of factors, what can be done to lower readmission rates?

The first step is to identify residents within the skilled nursing facility who are at high risk for acute change of condition. Acute changes of condition are very common in long-term care facility residents. Some are unpredictable, but many can be anticipated by identifying risk factors such as pre-existing conditions, previous complications, or the course of a recent hospitalization. Newly admitted residents are considerably more vulnerable especially if they have had a recent hospitalization, acute illness or other event that may have disrupted their stability. It is important that risks for acute condition changes be identified upon or soon after admission or readmission, or after an acute illness or significant change in condition.

A change in a resident's condition may mean that he or she is at risk for readmission to the hospital. Action can be taken only if changes are recognized and reported, the earlier the better. Changes that are not reported can lead to serious negative outcomes, including medical complications, transfer to a hospital, or even death. In order to identify a change in condition and know when to report it, staff need to understand what is normal (baseline) for a particular resident's condition when he or she is first admitted into the nursing center. Armed with this information, staff will be able to identify medical and functional changes and decide which ones need to be reported to other members of the care team. The resident's recent history is also often relevant to acute change in condition risk. All hospital discharge information should be reviewed thoroughly and information should be actively sought from a variety of sources such as family members, hospital practitioners and staff that cared for the resident prior to admission to the nursing facility.

The second step is education of staff in relation to the recognition of an acute change of condition and identification of its nature, severity and causes. This is a key component that can enable staff to manage a resident at the facility and avoid transfer to a hospital or emergency room. Before education can begin, however, roles and responsibilities must be clearly defined for key staff members. Education modules should be developed that clearly address each staff member and their defined roles and responsibilities related to prevention of hospital readmissions. Educational tools and resources can be found to assist with development of education modules through Interact2 at http://interact2.net//

The third step is to identify the causes of acute change of condition and the feasibility of managing those residents in the skilled nursing facility. Tracking hospital readmissions can provide insight into the reasons residents are being readmitted to the hospital setting. These reasons can relate directly or indirectly to the resident's current condition or status. A root cause analysis of the common causes residents return to the hospital is the key to identification of capabilities that are needed to support testing and treatment of acute change of condition in the skilled facility setting. A facility may need to add additional staffing or services and strengthen staff competencies to manage the residents at risk for acute change of condition. Initiating conversations with local hospital referral systems to discuss how the skilled nursing facility can assist them to reduce their hospital readmissions can be another powerful way to identify areas that may need improvement in your organization while positioning the facility to be a leader in the continuum of care environment.

Managing residents with acute change of condition becomes **the fourth step** in reduction of hospital readmissions. Facility procedures for ensuring recognition of acute change of condition coupled with approaches for management of residents experiencing these changes is paramount to success. Care for residents at end of life is another area that should be evaluated. Palliative care when appropriate along with approaches for advanced care planning can greatly impact hospital readmission rates. Interact2 can also be a valuable resource in this area as well and offers tools to assist in management of these residents.

The fifth and final step to reducing hospital readmission rates at the skilled nursing facility is integrating unplanned hospital transfers into the facility's ongoing quality improvement programs and processes. This includes not only the root cause analysis to determine why unplanned hospital transfers are occurring but also the development of specific action plans to address the reasons with specific goals for reducing or eliminating the cause along with assigning responsibility and monitoring the effectiveness of action plans that are eliminated.

An effective hospital readmission reduction program will not only result in improved resident care outcomes but also position the skilled nursing facility for continued success in the community as hospitals begin to partner with facilities that understand their needs and can help them with their strategic patient care goals as well.

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my monthly colleague in these pages Rebecca Adelman, as well as all our other contributors' want to express our sincere gratitude. Speaking of these folks, I also want to thank them for making this publication such a wonderful success. Starting with Rebecca, and everyone else, you have my thanks because without your efforts we wouldn't have the kind of offering which has made such a positive difference in the lives of those who work in (or work with) our nation's nursing homes and assisted living facilities.

Also a very special thanks to the great people at Dart Chart Systems for their tremendous support of this newsletter. As I've mentioned before, I consult for several facilities which use this company's services and can personally attest that what Dart Chart delivers can't be beat!

Now to our caregivers and those who report for work each day in our healthcare facilities. Thank you for your outstanding efforts day after day. You do the kinds of things on the job that a great many people will not do or have the intestinal fortitude to do. I hope you realize what special people you are and are proud of the work you do on behalf of those citizens who can no longer completely care for themselves. So much of what you hear, read and see regarding the nursing home and assisted living profession is negative, however this is less than 1% of the true story. I want to remind you of this fact! You should hold your heads up high and be proud to say that you work in a nursing facility or assisted living community.

Very special thanks as well for those of you reading *LTC Professional,* who over the years, and in many cases, continue to be clients of Extended Care Products, Inc. As we finish 10 years of service in 2012, and look forward to our second decade, I'm pleased to mention that the combined number of family educational/risk management, customer service, marketing, care planning, MDS, family relationships, and crisis communications programs we've delivered to our nation's nursing and assisted living facilities is approaching 250,000 over this period. For this, I am humbled beyond words because our goal has always been to make the jobs easier and more efficient for our caregivers and those working in our healthcare venues.

It also gives me the thought that mere thanks for this isn't enough so with my great appreciation for the fantastic reception our programs and services have received, please check out the enclosed special page within this month's issue of *LTC Professional* as I want to give you the opportunity to invest in the featured programs listed at some special "Thanksgiving" Client Appreciation Savings through November 30th.

As we rapidly close out our second year of this publication next month, I can tell you that we're already looking ahead to some exciting offerings ahead for 2013, one in particular promises to be a super-spectacular event that Ms. Adelman and I are looking to do in the home of the "King of Rock-n-Roll" this Spring. More details on this to follow. In addition look for yet a branching out of *LTC Professional* to make you even more proficient on the job.

With best wishes for the rest of 2012 and a great 2013 ahead,
Chip

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Are P&P Standards of Care? P&P are approaches to care, procedures, techniques, treatments that are based on research and/or expert consensus and that are contained in current manuals, textbooks, or publications, or that are accepted, adopted or promulgated by recognized professional organizations or national accrediting bodies. Plaintiff's attorneys will seek to misuse P&P as "standards of care" and non-compliance as "deviations". Courts in several states have rejected the argument that internal policies and procedures constitute the standard of care but some states will allow P&P to form the basis of Plaintiff's expert's opinions as to the "standard of care". Indeed, in some situations, the failure to abide by a particular policy will be used to establish "negligence *per se*" (that is, negligence on its face). As the defense, we argue that the duty owed to a resident is that standard practiced in the community rather than the facility's internal P&P which serve as care guidance. It is also critical that P&P preserve that "nursing judgment" remain at the center of the delivery of good care and the defense develops this important clinical reality.

How Are They Used Against the Defense? In litigation, the P&P are used against the defense at the depositions of owner's managers, administrators and nursing/caregiver staff. During examination of a nursing director, for example, consider the following line of questions from broad progressing to entrapment, whereby the "wrong" answer can only lead to the appearance of non-compliance.

Q: Are policy and procedures required? DON: Yes

Q: Given that they are required, would you agree they are required to be followed?

Q: Are P&P prepared with the expectation that staff will follow?

Q: Is it your expectation that P&P you promulgate will not be followed?

Q. Do you in-service staff that they need not follow P&P or that it is permissible to disregard? DON: ***If "No", leads to entrapment.***

Q. When preparing P&P, were they designed to be consistent with the standard of care at the time?

Q. Would you then agree that if the facility P&P was not followed that would be consistent with a departure from the standard of care?

If a policy creates no option for the caregiver or removes any aspect of caregiver judgment, most notably at the level of nursing staff, then the failure to comply may be used in the right circumstances as the "lynchpin" for establishing a breach of the standard of care.

Having described the nature and use of P&P in litigation in Part I, stay tuned for Part II for litigation risk reduction and best practices for P&P will be presented.

Rebecca Adelman, Esq. – Ms. Adelman is the Principal of Adelman Law Firm, PLLC in Memphis, Tennessee and has concentrated her practice in healthcare, and nursing home and medical malpractice defense litigation for the past 22 years. She recently announced formation of a new firm with members from the healthcare group at Wilkins Tipton, PA, www.wilkinstipton.com, effective January 1, 2013 to provide broader regional services to the healthcare industry. She also provides medico-legal consulting services and educational programming to the healthcare industry and is licensed in Tennessee, Mississippi, Arkansas and Illinois. The firm is of counsel to Quintairos, Prieto, Wood and Boyer, P.A., www.qpwblaw.com. You are welcome to contact Ms. Adelman at rebecca@adelmanfirm.com.

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