SEPTEMBER 2012 VOL. 2 ISSUE 9

# LTC PROFESSIONAL

NEWS AND VIEWS YOU CAN REALLY USE

## THE ADELMAN ADVANTAGE

*by Rebecca Adelman*

### Elder Justice Act – *More* About What You Need to Know About Reporting Reasonable Suspicion of a Crime

**In the November 2011 *LTC Professional*, this column focused on the Elder Justice Act and the significant feature for providers which imposes notification and reporting reasonable suspicions of crimes to State Agencies. The reporting obligations became effective March 23, 2011 and on June 17, 2011, CMS released supplemental guidance and updated the guidance on August 12, 2011 with a "Questions and Answers" document. In the January 2012 *LTC Professional* providers were encouraged to include as a new year's resolution an understanding of the EJA and reporting requirements. Shortly after publication of that newsletter, CMS revised the "Questions and Answers and Appendix One documents" again to provide additional clarification (CMS Ref. S&C: 11-30-NH REVISED 01.20.12). If you would like to reference past issues of the *LTC Professional* related to this topic, please email me and I'll send them along. For completeness and continued understanding about this provision, this column will provide an overview of the new questions and answers in the January 2012 revised CMS memorandum to be read in conjunction with the earlier versions and some commentary notes.**

**Facility Responsibilities**

***What is the difference between reporting incidents to the SA (State Agency) and reporting the suspicion of a crime to the SA and local law enforcement?***
Current regulation requires a facility to report incidents: §483.13(c)(2) and this requirement has not changed. Reporting the suspicion of a crime is the responsibility of "covered individuals." There may be instances where an occurrence will require both the facility to report the alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property and "covered individuals " must report the suspicion of a crime to the SA and to local law enforcement.

**Reporting Requirements**

***If a suspicion of a crime is reported by a covered individual, and the occurrence also meets the requirements for incident reporting, must the facility report the incident using the usual incident reporting mechanisms?*** Current regulation requires a facility to report incidents: §483.13(c)(2) and this requirement has not changed and the mechanics of complying with this regulation are the same as they have been. Reporting the suspicion of a crime is the responsibility of "covered individuals." There may be instances where an occurrence will require both the facility to report the alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property and "covered individuals " must report the suspicion of a crime to the SA and to local law enforcement.

***To what number or numbers is the suspicion of abuse reported? Are there different numbers for reporting when there has been serious injury?*** Reporting may be done by

*Adelman Advantage continued on page 3*

## KESSLER'S CORNER

*by Chip Kessler*

### The Power of Expectations

This month I'm going to share with you a "fact-of-life" that you're already more than likely aware of … yet if you don't do anything to prevent it from taking place on a regular basis it's going to doom your customer service efforts or at least severely cripple them in both the nursing facility and assisted living environments.

**Here it is: people (residents, family members, friends of residents, etc.) expect more of you than often it's humanly possible to give when it comes to the care your facility provides.** For the most part, it's not peoples' fault, except for those whose demands are so unreasonable that they could never be met even if you were able to clone yourself and fellow staff members so your workforce suddenly doubled or tripled in size. I underlined the key word in this paragraph because it is the centerpiece of what you are dealing with- expectations.

Residents and families usually have a picture in their minds of what you and your fellow staff members should be and should do regarding the amount of attention you give to residents. People generally base this on what their past experiences have been in a healthcare setting- namely a doctor's office or a hospital.

*Kessler's Corner continued on page 3*

# Crisis Communication in Long Term Care

*Rick Houze, Senior Vice President, Wells Fargo Insurance Services USA, Inc.*

As we all know, effective communication is essential in building and maintaining any good relationship. The health care provider, resident, family and community relationship is built on trust and honesty. Candid communication positively effects resident outcomes, satisfaction, and often reduces the likelihood of a professional liability loss. An adverse medical event in and of itself does not always result in a lawsuit. However, an adverse medical event, coupled with ineffective, or no communication, most certainly increases the chances of legal action against the health care provider. Effective communication with the media definitely affects public perception of an organization. Preparation, coordination, candor and follow through are essential components of an effective communication strategy.

Crisis communication professionals often preach that an organization's reputation is its most valuable asset. When that reputation comes under attack, protecting and defending it becomes the highest priority. This is particularly true in today's 24 hour news cycle, fueled by government regulations and investigations, lawsuits and "gotcha journalism". Whenever crisis events happen, the media firestorm can quickly overwhelm the ability of an organization to effectively respond to the demands of the crisis. To emerge from this event with its reputation intact, an organization must anticipate every move and respond effectively, immediately and with sincere confidence.

This article is primarily focused on Crisis Communication rather than Crisis Management. However, every organization should have a Crisis Management plan in place which includes a Crisis Management Task Force. This team's duties should include:

- Identification of major risks and strategies to address hazards, calm fears, minimize loss and expedite recovery
- Create a crisis plan that enhances access to senior leaders and reinforce the chain of command.
- Conduct simulations to rehearse drills and discover areas in need of improvement.
- Develop a data base of emergency contacts and resources that is accessible from remote locations.

An effective Crisis Communication Management plan should included the following key items:

**Appoint a capable spokesperson**—The crisis management team should designate a primary spokesperson and an emergency backup, both of whom are authorized to speak on behalf of the organization. All external communication should go through the dedicated spokesperson. The best person for this position may not necessarily be the owner or administrator as they may have alternate duties.

The spokesperson should:

1. Be of sufficient rank in the organization to serve as an authoritative and credible source.
2. Accessible on a 24 hour basis during the entire crisis.
3. Knowledgeable on medical and legal issues, with ready access to in-house and outside consultants including a board member.
4. Verbally adept with strong listening skills.
5. Temperamentally suitable with a confident and professional demeanor and the ability to address difficult situations calmly.

**Draft a general response template -** By preparing a template to use for all responses and messages, the team and spokesperson ensure the messages and responses consistently reflect the four key areas of a crisis action plan.

1. Full investigation of the events
2. Thorough review of the facts
3. Accurate and timely communications of the findings.
4. Prompt and decisive action plan to address the issues that have come to light.

Such a strategy coveys the message that the organizational leaders remain in control even during challenging circumstances.

**Educate staff**—Employees should be aware of, and familiar with, the organization's crisis communication policy. Instruct staff members to firmly but politely refer all questions to the authorized spokesperson.

**Establish notification system**—It is absolutely essential, prior to a crisis, that you establish a notification system to reach staff members to advise them of the situation. For a long time the old fashioned phone tree was the only method by which messages could be relayed. Today there are multiple vendors that provide automated systems that can be set up to contact staff members in your pre-arranged data base. These systems will continue to attempt to reach the employee until they confirm that the message has been received. Many such systems also allow you to house emergency policies and procedures, crisis management documents and business continuity plans, accessible by any computer. Many lessons were learned as a result of Hurricane Katrina. One was that crisis and emergency communication was an area that requires improvement. Another is the assumption that existing

*Crisis Communication continued on page 3*

*Adelman Advantage continued from page 1*

telephone or by fax within the specified timeframes of the law. Unless otherwise specified, the SA contact number is the SA that conducts the Medicare and Medicaid certification Surveys. **NOTE:** It is important for providers to keep in mind that the time frames for reporting the suspicion of a crime are different and more stringent than time frames related to reporting an incident.

***If our State mandated Resource Management Plan requires staff make a direct report to one of three designated staff, does this preclude that requirement or may we assist staff in making the required reports to the SA and Law Enforcement?*** Covered individuals would still have an independent obligation to report the suspicion of a crime directly to local law enforcement and the SA. You also may assist staff in making reports to the SA and to law enforcement. **NOTE:** In order to encourage reporting of the suspicion of a crime, providers should promote a culture of safety and performance improvement in the work environment. This includes freedom from fear of retaliation if an employee reports the suspicion of a crime, an open and just culture where feedback and communication are encouraged, and the ability for staff to speak up about problems or issues that they identify. **ALSO NOTE:** However, Federal regulations do require SNFs/NFs to ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency) (42 C.F.R. §483.13(c)(2)).

***Is abuse to be considered as part of this required reporting?*** Abuse should be considered under current health and safety standards. Under current requirements, abuse should always be reported; whether it rises to the level of a crime would depend on the specific situation. For example, sexual abuse would be considered a crime; physical assault that leads to physical injury would also be considered a crime. Other types of abuse should always be reported under health and safety standards but may not be considered a crime. **NOTE:** Federal regulations do require SNFs/NFs to ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency) (42 C.F.R. §483.13(c)(2)).

*Crisis Communication continued from page 2*

communication systems will still be in place in the event of a crisis.

---

In summary, failure to have an effective Crisis Management plan in place could have a significant financial impact on a healthcare organization. Such an event may affect the viability of your business as well as the availability of future insurance coverage and/ or policy premiums. The successful implementation of an effective Crisis Communication Management plan will most certainly help protect an organization's well earned reputation in the community they serve.

Rick Houze specializes in risk management and insurance solutions for the senior living industry. For help with your program, you can contact Rick by phone at (502) 326-4007 or by email at rick.houze@wellsfargo.com.

***Is it acceptable for a facility in its compliance policy to state that covered individuals may either (a) report reasonable suspicion of crime directly to the state survey agency and law enforcement, or (b) report reasonable suspicion of crime to the facility administrator who will then coordinate timely reporting to the state survey agency and law enforcement on behalf of all covered individuals who made the report to the administrator?***

Yes, covered individuals may (a) report reasonable suspicion of crime directly to the SA and law enforcement, and/or (b) report reasonable suspicion of crime to the facility administrator who will then coordinate timely reporting to the state survey agency and law enforcement on behalf of all covered individuals who made the report to the administrator. **NOTE:** Reporting to the *facility administrator* is a significant change from the initial guidance. Reporting to the administrator would suffice if an individual has clear assurance that the administrator is reporting it. Reports should be documented and the administrator should keep a record of the documentation. Everyone who saw a possible crime has the obligation to report it. The administrator could coordinate the reports submitted, but each person has to report. In addition, facilities cannot prohibit or circumscribe reporting directly to law enforcement even if they have a coordinated internal system.

Complying with the notification and reporting requirements and fulfilling our responsibilities under the EJA should be included in all cultural, educational and operational programs. Next month, we will continue our overview of the CMS revised "Questions and Answers and Appendix One Documents", completing Facility Reporting Requirements and concluding with State Agency's Requirements.

*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 also provides medico-legal consulting services and educational programming to the healthcare industry. She is licensed in Tennessee, Mississippi, Arkansas and Illinois. rebecca@adelmanfirm.com.*

*Kessler's Corner continued from page 1*

Let's look at this for a moment. When you go to the doctor, usually you first see a nurse who is right by your side and then the doctor shows up. In the hospital there are usually a number of nurses on duty at a given time, plus your doctor more than likely stops by on a daily basis.

Then there's the nursing home and the assisted living facility. The staffing ratio, nurse- to-resident is less than in a hospital and never just one nurse specifically assigned to one patient as you find in many doctors' offices. Speaking of the physician, you only occasionally see him or her in a nursing home or assisted living community.

So there you have it. People enter your building with expectations based on prior experiences, none of which are usually assisted living or nursing facility related … and you're "expected" to live up to what folks have come into contact with in the past. Good luck with that!

The question is: what are you supposed to do about it? I'll have the answer for you in next month's issue!

*Chip Kessler is General Manager of Extended Care Products, Inc. and has personally developed or been directly involved for the last 10 years in the creation of both family education programs on the care and services provided in the assisted living and nursing facility settings, plus customer service staff training and development programs for those working in these healthcare venues. More information can be found at www.extendedcareproducts.com.*

# *LTC Professional* Not Coming Addressed to You Personally?

We want to make sure you are personally getting this newsletter each month, not just have it forwarded to you because you're now holding down the position of a predecessor! Let us know you now are on the job. E-mail your name, facility/company name and address to chip@ecpnews.net & we'll update our records. Just put LTC Professional on the e-mail subject line and we'll take care of the rest.

LTC PROFESSIONAL
P.O. Box 4852
Johnson City, TN 37604

PRSRT STD
US POSTAGE
PAID
MWI