

# Nursing & Assisted Living Facility Professional

“NEWS AND VIEWS YOU CAN REALLY USE”

JUNE 2015

ISSUE 6, VOLUME 5

SENT EACH MONTH TO YOU AS A MEMBER OF THE HEALTHCARE HEROES

## THE HAT ADVANTAGE by Rebecca Adelman

### 2015 LITIGATION RISK AND DEFENSE STRATEGIES FOR LONG-TERM CARE & ASSISTED LIVING PROVIDERS, INSURERS AND BROKERS CONFERENCE – RECAP



Taking place on the opening weekend of the Memphis in May International Festival, the 2015 Litigation Risk and Defense Strategies for Long-Term Care & Assisted Living Providers, Insurers and Brokers Conference (Conference) held its third

annual event at The Peabody Hotel in Memphis, Tennessee, May 1, 2016. The educational conference brought together a diverse group of attendees and speakers, and based on feedback received, it's fair to conclude the conference was a success. Thank you to attendees, speakers, and sponsors – CRC Insurance Services, Inc., Pendulum, LLC, and Extended Care Products, for an exceptional program. The complimentary conference, designed to elevate the profile of risk management in long-term care and assisted living industry, was founded in 2013 by attorneys Thomas C. Cowan and J. Roslyn Lemmon of Cowan & Lemmon, LLP; Chastiti N. Horne of Ebanks Horne Rota Moos, LLP; Rebecca Adelman of Hagwood Adelman Tipton, PC; and Steven D. Weiner of Kaufman Borgeest & Ryan LLP. The litigation and risk management program provides educational and networking collaboration to invited professionals in the long-term care arena including administrators, clinical professionals, facility owners and operators, risk managers, and insurance agents and brokers.

The Conference kicked off with a Thursday evening reception, April 30, at The Peabody Hotel, sponsored by Rusty Hughes and CRC Insurance Services, Inc. A time of networking over dinner, at a downtown Memphis favorite, Dejavu, followed where connections and conversation were shared among sponsors, attendees, speakers, and hosts.

On Friday, May 1, the opening session featured Steven D. Weiner, Esq. of Kaufman Borgeest & Ryan who provided an overview of the legal and regulatory issues in the long-term care and assisted living industry. Topics included security breach risks, increased regulations and government standards in nursing home, assisted living and home health, recent case reports, and OIG Work Plans.

Ms. Kyontze Hughes-Toombs, Associate General Counsel with the Tennessee Department of Health, addressed the role of government and law enforcement agencies in health care investigations. One of the key features included creating an effective compliance program. This session identified examples of health industry issues that may result in internal investigations

including violations of laws/regulations, fraud, HIPAA privacy/security violations, patient abuse, safety violations, and violations of code/policies. Learning points include conducting internal investigations, properly assessing/evaluating complaints and allegation and appropriately responding to government contacts of interest. Ms. Hughes-Toombs provided guidance on avoiding simple regulatory issues developing into serious investigations with penalties.

Guest speakers throughout the full-day programming included Scott Trigg, Underwriting Manager with CRC Insurance Services, Inc.; Richard J. Henry, President of Pendulum; and Kay Wilkes, RN, LNC, of Kay Wilkes Consulting.

Mr. Trigg presented on the current marketplace of long term insurance including loss rate, claim frequency, and severity of claims. He highlighted risk in the healthcare industry as a result of financial uncertainty and various approaches to insurer considerations.

Mr. Henry presented The 2014 Pendulum Top Ten areas of concern in skilled nursing facilities and assisted living facilities. The list is based on data collected from professional liability risk assessments performed by Pendulum's risk management experts. Ms. Wilkes, with over 35 years of clinical experience in acute and long-term care, spoke on CMS guidelines relating to survey citations and penalties. Attendees increased understanding about the survey process and CMS guidelines. Compliance with the number of standards is decreasing and deficiencies are rising. Highlights of this program included understanding the mock survey process and staff involvement; common deficiencies in nursing home and assisted living and how to avoid them; evaluating clinical and operational records to insure compliance including chart audits; and understanding the survey process.

Additional sessions were presented by Conference Hosts as well as Jonathan D. Rubin, Esq. of Kaufman Borgeest & Ryan; Leah T. Therio, Esq. of Cowan & Lemmon; and Rebecca Mills, paralegal in the Memphis office of Hagwood Adelman Tipton.

I presented a program identifying plaintiff's strategies through depositions, expert disclosure and pleadings creating a pressure offensive in healthcare litigation. Case examples were presented demonstrating how documentation, assessment and other clinical and operational areas increase risk in litigation and challenges to the defense. Risk prevention solutions were offered specifically related to clinical documentation and communication amongst healthcare providers. Objectives included identifying challenges with producing from an Electronic Health Record. Changes and



## Medicare Denials: WHAT SKILLED NURSING FACILITIES SHOULD KNOW

*Gina Tomcsik  
Director of Compliance  
Privacy Officer  
Functional Pathways*

**“Money was never a big motivation for me, except as a way to keep score. The real excitement is playing the game.”**

**– Donald Trump**

Skilled Nursing Facilities strive for quality of care, quality of life, helping residents return to the community and providing compassion while helping those peacefully transition from this life. Our jobs are hard and the restrictions we have to work under are burdensome. So why do we do it? The real excitement for caregivers is helping those who can't help themselves!

Improper Medicare payments to skilled nursing facilities have increased from 4.8% to 7.7% between 2012 and 2013 due to the SNF's failure to obtain physician and NPPs certification and recertification statements? If the physician/NPP certification and recertification process isn't timely and doesn't provide all of the medical necessity statements by the physician/NPP justifying the need for the skilled level of care, SNFs will be at risk for improper payments when faced with an audit. Improper documentation practices will contribute to receiving a denial for medical necessity followed by facing the potential for the resident's entire skilled stay to be recouped.

Working through the appeal process takes an immense amount of time and attention to detail, not to mention resources to track and hike through the appeal process. Absence of a “clean claim” is most common reason for denials in Skilled Nursing Facilities. These oversights include missing modifiers, missing or inaccurate ICD-9 codes, improper coding, etc. Stopping the denials before they happen is the challenge we all face. In its FY 2014 Agency Financial Report, The Department of Health and Human Services reported an overall fee-for-service error rate of 12.7 percent, representing \$46.3 billion in improper payments. <sup>1</sup>

If an Additional Development Request (ADR) is made from the Medicare Contractor, ensure you have a denials/appeal team established in the SNF to tackle the layers of the process. Including all necessary documentation for the auditor to review is crucial. Stopping a denial at the ADR level will preserve payments and avoid denials which could negatively affect your cash flow and increase resources for appeals.

Did you know that claim denial rates are projected to increase by 100% to 200% in the early stages of coding ICD-10?<sup>2</sup> Your nursing staff and therapy provider must be committed to transparency and working together to ensuring the nursing and therapy documentation supports medical necessity and reflects the skills of a nurse and therapist.

<sup>1</sup>Connolly Healthcare: <http://www.connolly.com/healthcare/Pages/CMSRACProgram.aspx>

### VALUE IN COMMITMENT

We are committed to doing everything we can to improve the lives of our residents. Being a part of a pro-active, transparent, and seamless team is vital to the success of our future caregiving abilities.

<sup>2</sup>Claim Denials: 15 ways to fight back; Medical Economics; <http://medicaleconomics.modernmedicine.com/medical-economics/RC/claim-denials/claim-denials-15-ways-fight-back?page=full>

#### The Finale

Healthcare is a constantly changing world. Continue focusing on quality and value based service and at the same time, keep the dollars you rightfully deserve for the care provided. If you find you are constantly being reactive rather than proactive, stop the insanity and review systems. Continuing to do the same thing and expect different results is simply crazy.

#### The Signposts

Be Proactive!

Review nursing and therapy documentation frequently.

Ongoing training with nursing staff to accurately record ADLs.

Ongoing training with therapy staff to accurately record treatment provided.

Ensure all necessary documentation is consistently in place in the record.

#### The Takeaway

Establish a denial team in your facility

Commit to clean claim submission

Improve documentation quality

Demand compliance with an effective Triple Check Process

Therapy partnership and commitment a must!

Nursing/Facility Documentation Requirements	Therapy Documentation Requirements
Ensure documentation is in the medical record to support a medically necessary three day inpatient hospital stay.	Ensure your therapists are creating a complete plan of care/plan of treatment which includes the therapist's signature, professional credentials, and the date the plan was established
<b>ADR TIP: Make sure to include the discharge summary from the hospital when submitting ADR</b>	<b>ADR TIP: Submit all therapy documentation including orders and clarification orders that are <u>legibly signed and dated by the physician</u></b>
Ensure clinical staff effectively documents pertinent resident facts (resident condition, types of treatments provided, ADL flow sheets, physician notes)	Ensure therapists are documenting why the previous goals were not met or could not be met to support the modification of the plan
<b>ADR TIP: Review all medical diagnoses to ensure they are coded to the highest level possible for that code. This proactive review is completed during Triple Check process.</b>	<b>ADR TIP: Make sure to include supportive therapy documentation including individualized programs developed for the resident</b>
Ensure the skilled level of care is clearly documented by the physician to support the SNF admission and care is vital and necessary for the treatment of the resident's condition.	Make sure the therapists/assistants are clearly documenting to support the therapy minutes billed. Make sure the treatment minutes are clearly documented in the patients record; ensure time and untimed codes are billed appropriately
<b>ADR TIP: Accurate nursing ADL tracking is vital to accurate reporting of the acuity of care provided to the resident. Make sure all ADL documentation is provided when submitting an ADR packet to Medicare.</b>	<b>ADR TIP: Make sure to include all therapy service logs referencing units and minutes provided for the resident. The service logs support the RUG billed and Medicare cannot confirm the RUG billed without the therapy service logs.</b>



## KESSLER'S CORNER

by Chip Kessler

### “The Answer Is”

What do people in your region and community think about your nursing or assisted living facility? When you stop and give this question some thought, it can be pretty overwhelming because your reputation is everything. It can mean the difference between a strong or struggling census; it can also mean the difference between how your present residents and families view you and your fellow staff members.

Certainly there are things you can do locally to help create and maintain a great reputation, such as your building participating in a series of community and charitable causes. As well, staffs' personal customer service to residents and families, and those you serve talking about it with other family members and friends, can also go a long way towards molding a strong public image for your building.

In addition to getting new residents from your referral partners, equally as important is getting new residents via strong “word-of-mouth” advertising. This occurs when someone, wishing to get information about local healthcare options, asks around about which facility a person would recommend. Are you getting your fair share of new residents in this fashion? If not, then there's a definite need to amp up your facility's efforts in this regard ... and the sooner the better!

What people think and feel about your building is important. It's up to you to make sure that folks in your region think only the best, so that when the time comes to select a caregiving option, your facility is front and center.

*Chip Kessler, General Manager of Extended Care Products, has created programs to help our nation's assisted living and nursing facilities get positive publicity through local media, improve customer service, and to also do the very best job possible marketing and advertising your facility's care and services. Discover more at [www.extendedcareproducts.com](http://www.extendedcareproducts.com) or call 1-800-807-4553.*

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*The HAT Advantage continued from page 1*

what and how information may become evidence in litigation and dealing with medical records and the changing environment were topics covered.

Other topics discussed included risk management and prevention related to a lawsuit, Medicare reimbursement, medicals, and reporting; and the standard of care issues in the long-term care and assisted living facilities. New this year, was a panel discussion exploring the ethical and legal issues from the perspective of the provider and insurer.

The high level presentations and discussions provided at this year's conference provided attendees tools to identify and evaluate emerging trends in the senior housing and operations space and problem-solve risk and defense strategies at all levels of ownership and management. Conference surveys confirmed a rewarding and well-designed program and included request for an extended program.

After three years of southern hospitality, the Big Apple will host the 2016 Conference. Mark your calendar for March 31 and April 1 in New York City for the 2016 Litigation Risk and Defense Strategies for Long-Term Care & Assisted Living Provides, Insurers and Brokers Conference.

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