Nursing & Assisted Living Facility *Professional*

"NEWS AND VIEWS YOU CAN REALLY USE"

OCTOBER 2015
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SENT EACH MONTH TO YOU AS A MEMBER OF THE HEALTHCARE HEROES

THE HAT ADVANTAGE by Rebecca Adelman

CMS LTC REFORMS – BE PROACTIVE - TAKE STEPS NOW

Comment Period Extended to October 14, 2015

The healthcare industry has been focusing on comments (over 5,500 received) to the Centers for Medicare & Medicaid Services (CMS) since the proposed rule revising the requirements for participation of long-term care facilities was published on July 16, 2015 (Conditions of Participation or CoP). CMS extended the comment period another 30 days until October 14, 2015. CMS generally implements changes to regulatory requirements for survey and certification processes within 12 months of the final rule. CMS has anticipated that it may take longer to implement these changes to CoP. There has been extensive commentary on the time in which the LTC industry must implement the changes once they are finalized. The time is now, however, to take steps toward compliance with the revisions. Being proactive by enlisting our professional staff to review and update systems now will move you closer to successful compliance later and reduced risk. Consider moving forward with the following:

1. Comprehensive Person-Centered Care Planning – NEW SECTION (§483.21) – The individualized care plan is a central component to the CoP. Based on CMS's proposal, it is suggested facilities review the processes and technologies used to accept and admit residents. Also, collaborate with referring care providers and insure that all the relevant clinical and regulatory information is accessible to develop the care plan. Review the processes and technologies used for discharge planning and exchange information with subsequent care providers. In developing the revised care plan:

- Facilities must develop a baseline care plan for each resident within 48 hours of their admission, which includes the instructions for effective and person-centered care that meets professional standards

- Facilities must include as part of a resident's care plan any specialized or rehabilitation services based on Preadmission Screening and Resident Review (PASARR) recommendations. If a facility disagrees with the PASARR findings, it must indicate the reason in the resident's medical record

- Facilities must include a nurse aide, a member of the food and nutrition services staff, and a social worker in the interdisciplinary team

- Facilities must also note in the medical record if the resident and their representative should not be involved in the development of their care plan

- Facilities must implement discharge planning requirements mandated by the Improving Medicare Post-Acute Care Transformation Act (IMPACT) and consider quality, resource use, and other measures to inform and assist with the discharge planning process, while also accounting for the treatment preferences and goals of care of residents

- Facilities must include a reconciliation of all discharge medications with the resident's pre-admission medications (both prescribed and over-the-counter) in the discharge summary

- Facilities must add to the post discharge plan of care a summary what arrangements have been made for the resident's follow up care and any post-discharge medical and non-medical

2. Quality Assurance and Performance Improvement (QAPI) NEW SECTION (§ 483.75) – The CMS rule proposes that facilities develop, implement, and maintain an effective comprehensive, data-driven QAPI program that focuses on systems of care, outcomes of care and quality of life

- Facilities must adopt a systematic approach to quality improvement, using data to study and continually make improvements to operations and services

- Facilities' QAPI programs must address their full range of care and services (including those under contract) and reflect complexities and the unique care their provide

- Facilities must use the best available evidence to develop quality indicators and facility goals that incorporate processes known to promote good outcomes

- Facilities must have policies and procedures to obtain feedback from staff and residents that identify problems that are high-risk, high-volume or problem-prone

- Facilities must collect and use data from all departments

- Facilities must develop and monitor performance indicators;

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Pathway to Rehabilitation Excellence

Tina Jackson
VP of Human Resources

By Blue Health Solutions

THE HEALTH BENEFITS OF LAUGHTER AGAINST STRESS

It feels good to laugh. So good, in fact, the health benefits of laughter are always being explored. Whether it's a humorous movie or situation that does it, feeling a certain kind of joy has a noticeable reward to the body.

Laughing on a regular basis actually lowers anxiety due to physical changes in your body and studies are performed each year to determine why.

Your Feel-Good Hormones

When you laugh, you may notice that you take in deeper breaths. Because laughter enhances the intake of oxygen, it increases your heart rate, causing a release of hormones known as endorphins. These hormones induce feelings of happiness and satisfaction without you even having to do anything. This means if you're stressed, humor can elicit a feeling that is similar to your state of mind after exercise.

Your Stress Response

A good laugh also works to activate (and then cool down) what the Mayo Clinic refers to as your stress response. Laughter that speeds up your respiratory rate initially stimulates your heart, lungs and muscles, which has the same effect as feeling stressed. As your laughter slows down, however, your heart rate slows down with it, and you begin to feel relaxed while your body recovers. Because laughter stimulates circulation and then muscle relaxation, you may even notice a decrease in the physical symptoms of stress. Some people notice less tension and muscle soreness afterward.

Your Immune System

Although these responses relieve stress quickly, experiencing humor on a regular basis can curb anxiety in lasting ways as well. Amusing thoughts allow your body to release neuropeptides, which work to fight stress and ultimately boost your immune system. The reasons why they appear aren't completely understood, but studies have shown people with illnesses like heart disease can actually improve their health despite their condition. In some cases, per the University of Maryland, laughter may actually be the best medicine. Because stress gets in the way of personal care, humor can help keep you healthy.

Make It Funny

Although the health benefits of laughter are significant, there's no one way to incorporate it into your everyday. Instead, try to find the humor in small aspects of life. When the barista at your local coffee shop gets your name wrong even though you're there every morning, isn't that a little funny? It may take time to see the humor in frustrating situations, but adjusting your perspective can desensitize you to even your biggest stressors and significantly improve your attitude toward them.

For more information, please contact Tina Jackson at tjackson@fprehab.com or call 888-531-2204

NAL 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 NAL Professional on the e-mail subject line and we'll take care of the rest.

Getting on the Same Page

by Paige Hector, LMSW

Getting Beyond Blaming Staff: A Facility Example

0945 Brriinngg, brriinngg…… "Hello, this is Janet."
"It's Sue on unit 100. I'm sorry to bother you but Betty fell. It's bad."
"What happened?"
"She fell out of the Hoyer sling."

Administrators and Directors of Nurses, you've all had calls like this one, the calls that cause your heart to skip a beat and your pulse to shoot through the roof. As much as you don't like getting them, the staff hates making them. Betty may not be her real name but this is a real story. Betty has quadriplegia and two nurses aids were transferring her from her bed to her electric wheelchair using a Hoyer lift, which they've done dozens of times before, when she slipped out of the sling and crashed to the floor.

I chose this scenario as the topic for this month's newsletter because it demonstrates an oft missed crucial aspect of performance improvement. A knee jerk reaction to scenarios like these is to ask "Why" at least five times just to find out "Who." Who can take responsibility and get written up or even fired. Let me share the rest of this story and why I chose to write about it.

The physician happened to be in the facility at the time of the fall and immediately assessed Betty. It was clear that her shoulder was likely fractured and she was sent to the hospital. Indeed, it was fractured and she later returned to the facility in a sling and then later that day had to return to the hospital and was diagnosed with a concussion. The staff felt terrible. Betty felt terrible and now she was also terrified of transfers.

There is a good side to this story however.

I want to introduce the concept of three Levels of Fixes (*Fourth Generation Management* by Brian Joiner). The first Level Fix, Incident, is where the incident or accident gets an immediate reaction. Think of this level as "damage control and cleaning up the aftermath." Betty's condition was assessed and she received the proper medical care to tend to her immediate injury. Now, in many facilities, the process stops here. The nurses aids would be blamed for the outcome and likely reprimanded or fired. Think of the popular carnival game "Whack a Mole" where the club wielding gamer attempts to keep the moles in their holes by whacking them on the head when they pop up. Insane? Yep. The analogy of this type of insanity for a nursing home is embodied in this question, "If we fired everyone involved in this incident, could it happen again with other staff?" Be truthful and you'll see that the answer is usually a resounding "YES."

But, the facility in this story didn't react that way, they took the next step to a Level 2 Fix which examines the *process* that led to the incident. Incidents don't just happen in a vacuum. Usually, there is a sequence of events that lead up to the event. During the investigation, several important contributing factors came to light such as a sling that was too long, that is, the wrong size, for Betty. Additional processes that impacted this incident were that staff was not aware of what sling size was to be used for each resident and were interchanging the slings. Why were they doing that you might ask? There weren't enough slings in the facility and slings were not assigned to each resident. Furthermore, the labels on the slings were so worn from multiple washings, so it was impossible to tell the size or the date of purchase. And yet another problem was that the Hoyers routinely "acted up" and stalled. These are all process issues that culminated in a sad outcome for Betty.

Leadership might have stopped the investigation with just the one Hoyer involved in this incident but they looked beyond that one unit. And, it's a good thing they did as further investigation revealed that the manuals for the Hoyer lifts were not to be found in the facility nor had there been consistent, or documented, inspections of the machines. The Hoyers were taken out of circulation and immediately replaced with rentals at which time all staff was trained on the new machines.

Here's one of the most essential points of the story. Upon learning about the problems with Hoyer inspections and the overall safety program, they took their inquiry a HUGE step further and achieved a Level 3 Fix by asking these two crucial questions, "Is this the only process that causes harm to our residents?" and "Is there a problem how we are implementing the protocol?"

And, guess what? There were other opportunities for improvement that had they never asked those questions, would have gone unnoticed (or until there was an incident). They now have improved safety protocols for inspection and overall maintenance for all equipment including oxygen concentrators, IV administration machines and electric beds. By evaluating the entire SYSTEM of safety, they improved many processes.

Let's recap – leadership could have stopped at a Level 1 fix and simply fired the staff involved in the incident. They didn't. They could have stopped at a Level 2 fix when they bought new slings sized and labeled for each resident. They didn't. Instead they achieved the best improvement outcome possible by evaluating the entire system in which they work each day. They didn't succumb to a knee jerk reaction and make an already difficult situation more problematic. By improving the entire system involving a variety of equipment, they made their facility safer for their residents and safer for their staff. I wish I could personally thank each staff member at this facility!

Paige Hector is a clinical educator, who gives workshops and seminars across the country on diverse topics including clinical operations for the inter-professional team, meaningful use of data, advance care planning, refusal of care, documentation and care plans. She is skilled at inspiring staff to critically evaluate their own organizations and then gives them the resources and guidance to make necessary changes. Contact Paige at ***520-955-3387 or at*** *paigehector@gmail.com plus you more discover more about her at www.paigeahead.com*

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systematically track, investigate and analyze adverse events and implement preventive actions

- Facilities must engage in performance improvement activities and monitor success

- Facilities must conduct distinct Performance Improvement Projects (PIPs)

- Facilities must undertake a project that focuses on high-volume, high-risk or problem-prone areas identified through the data collection and analysis, at least annually

- Facilities would submit the QAPI plan at the first standard survey after one year from the final rule effective date; and at each subsequent standard survey upon request; documentation and evidence of ongoing implementation required upon request

3. Facility Assessment NEW REQUIREMENT (Found in Administration) (§483.70) - CMS establishes a new requirement for an annual facility assessment. Facilities should begin this process, which includes:

- Conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies

- Review and update that assessment, as necessary, and at least annually

- Review and update this assessment whenever there is, or the facility plans for, any change that would require a substantial modification to any part of this assessment

- Address the facility's resident population (number of residents, overall types of care and staff competencies required by the residents, and cultural aspects), resources equipment and overall personnel), and a facility-based and community-based risk assessment

4. Binding Arbitration Agreements (§483.75(n) – Arbitration agreements provide the resident and facility a more expeditious and cost effective procedure to resolve disputes. In future litigation, the plaintiff could use these provisions as a standard for the facility to meet in presenting the arbitration agreement. Furthermore, most courts evaluate these issues as factors in determining whether an arbitration agreement is enforceable. It is recommended that facilities implement an arbitration agreement or revise existing agreements. The proposed revisions add a provision regarding binding arbitration agreements.

- The facility must ensure that the agreement is explained to the resident or family in language that he or she understands and the resident must acknowledge that he or she understands (To satisfy this requirement, the facility should train staff to understand arbitration and implement an additional document into the admissions process which the resident must sign he or she understood the arbitration agreement)

- The agreement must be voluntary, provide for a neutral arbitrator and a convenient venue.

- The agreement must not be contingent for admission to the facility

- The agreement must not contain language that prohibits or discourages communication with Federal, State or Local officials

- The agreement may be signed by another individual if it is allowed by state law, the above provisions are met, and the individual has no interest in the facility.

5. Compliance and Ethics Program NEW SECTION (§483.85) - CMS proposes that operating organizations be required to develop, implement and maintain effective compliance and ethics standards, policies and procedures capable of reducing the prospect of criminal, civil, and administrative violations under the Social Security Act and these programs be reviewed annually. Facilities and policies must:

- Designate a compliance and ethics program contact

- Identify an alternate way to anonymously report suspected violations

- Describe disciplinary standards for staff, contractors and volunteers for violations

- Established written standards, policies, procedures

- Assignment high-level personnel assign with the responsibility for oversight of the compliance program

- Provide sufficient resources and authority for these individuals

- Carefully select individuals to whom they delegate substantial discretionary authority and exercise due diligence to prevent delegation to individuals with propensity for criminal, civil, administrative violations

- Have effective communication and mandatory training

- Ensure programs employ reasonable measures to achieve compliance with standards, policies and procedures (e.g., monitoring/auditing systems, to achieve compliance; consistent enforcement; appropriate response to correct and prevent future occurrences)

For operating organizations with five or more facilities, additional requirements for facilities are to:

- Provide a mandatory annual training program about the organization's compliance and ethics program

- Designate a compliance officer for whom the operating organization's compliance and ethics program is a major responsibility

- This person must report directly to the operating organization's governing body and cannot be subordinate to the general counsel, chief financial officer or chief operating officer

- Designate compliance liaisons at each facility

6. Training requirements NEW SECTION (§483.95) – Facilities will have to develop, implement, and maintain an effective training program for all new and existing staff. The rule retains a requirement that paid feeding assistants must successfully complete a state-approved training program for feeding assistants. Facilities now should review current training programs and include:

- Communication: Effective communications as a mandatory training for direct care personnel

- Resident Rights and Facility Responsibilities: Rights of the resident and the responsibilities of a facility to properly care for its residents as set forth in the regulations

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KESSLER'S CORNER

by Chip Kessler

Do You Know What You Are?

I used the term *Healthcare Hero* in last month's column when referring to the respect and admiration you deserve to receive for the work you do in the healthcare field. To briefly recap, I listed the following reasons why this is so …

1) You do a job that many could be trained to do however most don't have the heart and desire and will to do it.

2) For whatever reason, people who work in our nation's assisted living and nursing facilities, or for that matter people employed at companies that manage or own these facilities, just don't get the proper appreciation they are due.

3) There is still a stigma somewhat attached to nursing facilities and in some cases assisted living communities. Most of the publicity is negative, such as stories on alleged abuse or negligence against a resident; a fire in a building, or some such other off-putting situation. Because of this, it naturally follows that the people that work inside these facilities are also tainted

I concluded last month's column with the following statement about this lack of respect for the job you're doing: "It's something I really believe is a nationwide epidemic against the assisted living and nursing facility profession, and quite frankly the only people who can change this is you. And I'd like to help. It's why in the coming weeks and months I ask that you be ready for some exciting news on this subject, under the banner of *Healthcare Heroes.* Indeed in my opinion it's something you truly deserve to be called."

Now I'm ready to take the next step. In the very near future you're going to discover the beginning of a movement, if you will, with the title of *Healthcare Heroes*. I mention the term and it's a phrase I want you to keep in mind … actually I've tweaked it a bit to now be referred to as *The Healthcare Heroes*. This is going to be something offered to the nursing and assisted living profession plus those associated with management companies and ownership groups; in short the people in our nation that report for work every day with a mindset of helping those who reside in nursing and assisted living facilities.

While I'm not quite at liberty to say what T*he Healthcare Heroes* has in store for you I do want to share some of the very cornerstones that will be expounded on:

1) Specific Ways and Means for You to Feel Better About Yourself, and What You Are Doing to Make the Lives Brighter for People that Need a Helping Hand (i.e. the residents and families that you serve).

2) Inspiration From Others Out There Who Will Help Reinforce the Fact That Indeed Not Everyone Scoffs at the Job You Do, and Here Offers You the Respect You Deserve and Have Earned.

3) A Rallying Point to Grab Onto so That Even When Those Moments Occur Where Folks are Putting You Down or Showing Their Lack of Respect, You'll Be Able to Draw on That Inner Strength You Can Use to Say "I'm Worthy!"

Make no mistake about it, *The Healthcare Heroes* is coming and it's coming fast. A New Year is around the corner, as hard as it may be to believe … but believe this: your day of respect is coming as well. Get ready for *The Healthcare Heroes*.

Chip Kessler is General Manager of Extended Care Products. Over the last 14 years he's created, developed, and produced some 24 staff training and family education programs for our nation's nursing and assisted living facilities. Two of these programs alone have sold over 300,000 copies each. Discover more at ExtendedCareProducts.com or at 1-800-807-4553.

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- Abuse, Neglect, and Exploitation: Educate staff on activities that constitute abuse, neglect, exploitation, and misappropriation of resident property, and procedures for reporting these incidents

- QAPI & Infection Control: Mandatory training as a part of their QAPI and infection prevention and control programs that educate staff on the written standards, policies, and procedures for each program

- Compliance and Ethics: Operating organizations for each facility must include training as a part of their compliance and ethics program annually

- In-Service Training for Nurse Aides: Dementia management and resident abuse prevention training to be a part of 12 hours per year in-service training for nurse aides

- Behavioral Health Training: Behavioral health training to its entire staff, based on the facility assessment at § 483.70

Continued review and understanding of the proposed rule will allow your organizations to implement the final rule in more efficient ways having developed systems and processes now rather than later. Organizations can begin with a facility assessment and review and revisions of existing policies, procedures, programs and training. We are counseling our clients on all aspects of the proposed rule and facilitating the process of compliance. We welcome feedback on how your organization is being proactive and how we can all roll with these changes.

Rebecca Adelman, Esq. - Ms. Adelman, PLLC is a founding shareholder of Hagwood Adelman Tipton and practices in the Memphis, Tennessee office. She is the chair of the firm's Strategic Planning Committee and Women Rainmakers Mentoring Program. For 25 years, Rebecca has concentrated her practice in insurance defense litigation representing national insurance carriers and self-insureds with a concentration in healthcare law. Please feel free to contact her at radelman@hatlawfirm.com.

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

SAVE THE DATE

LITIGATION RISK AND DEFENSE STRATEGIES FOR LONG-TERM CARE & ASSISTED LIVING PROVIDERS, INSURERS AND BROKERS

April 1, 2016

in

NEW YORK CITY