

# Nursing & Assisted Living Facility Professional

HAPPY HOLIDAYS!

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“NEWS AND VIEWS YOU CAN REALLY USE”

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

## THE HAT ADVANTAGE by Rebecca Adelman

### HAT HEALTHCARE HIGHLIGHTS *Goal-Setting for 2016*



Happy Holidays and best wishes for a Happy New Year from the Hagwood Adelman Tipton (HAT) team! For the past five years, the *Nursing & Assisted Living Facility Professional* (NAL Professional) has been bringing to you valuable industry insights and information and we look forward to sharing 2016 with

you! Look ahead to new educational offerings. Also, please join us in New York City, April 1, 2016 for the fourth annual HAT sponsored forum - [Litigation Risk and Defense Strategies for Long-Term Care & Assisted Living Providers, Insurers, and Brokers Conference](http://events.constantcontact.com/register/event?llr=yf dhv8lab&oeidk=a07ebrik5t2695d5102). For more information and how to register, please visit the conference website at <http://events.constantcontact.com/register/event?llr=yf dhv8lab&oeidk=a07ebrik5t2695d5102>

A special note of gratitude to Chip Kessler with Extended Care Products for his fearless leadership these past five past years. I am proud to partner with Chip and the contributors to the NAL Professional and I appreciate the opportunity to offer a monthly contribution to the effort. Chip continues to develop industry resources and innovative solutions to the many challenges we face in long-term care. I know that this publication has become an industry standard and provides the means for us to communicate risk and litigation issues as well as recommendations and action plans. Thank you.

We are living in uncertain times and there have been tragic events leading to the year's end. Let's turn our attention together to the hope of a positive future and commit our work with quality and organizational strategies that include the following values:

#### **Beneficiaries and Consumers Come First**

**Public Service**

**Integrity**

**Accountability**

**Teamwork**

**External Collaboration**

**Innovation**

**Excellence**

**Respect**

To assist in goal-setting for 2016, following are 2015 HAT Advantage highlights:

#### **Reporting Allegations of Abuse or Neglect – OIG Overview and Recommendations**

- Ensure nursing facilities maintain policies related to reporting allegations of abuse or neglect: The OIG recommends that CMS update guidance that clearly describes the reporting regulations that should be established in facilities written policies for reporting allegations of abuse or neglect and the subsequent investigation results.
- Ensure nursing facilities comply with their responsibilities under the Elder Justice Act (Section 1150B of the Social Security Act (SSA): The OIG recommends that CMS develop shared reporting templates including customizable templates of annual notification letters to covered individuals and poster material describing employees' rights to file a complaint. Further, the OIG suggested reissued guidance that recommends nursing facilities maintain adequate documentation to support that they notify covered entities.
- Ensure nursing facilities report allegations of abuse or neglect and investigation results in a timely manner to appropriate individuals as required: The OIG recommends that CMS reissue guidance that clearly describes the time frames and appropriate individuals which allegations of abuse or neglect in the subsequent investigation results could be reported.

**HAT Advantage Highlight** - Recommend all policies and procedures be evaluated and updated consistent with the applicable federal regulations and that nursing facilities provide training and in-service for identification and reporting of abuse and neglect. A review of the December 16, 2004 CMS clarification of these regulations is helpful. They can be found at <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/downloads/SCLetter05-09.pdf>.

#### **What's in Store for 2016? – Ask the OIG**

- Five areas of focus included

*Continued on page 4*



# Pathway to Rehabilitation Excellence

By Sheila G. Capitosti,  
RN-BC, NHA, MHSA

VP Clinical and Compliance Services

## STOP THE MADNESS!!

Have you ever sat back and really looked at what is going on around you? In this case I am referring to the work setting and things like policies and procedures or processes that folks have been doing and when questioned as to why, the response is "Well we have always done it this way" or "We were told to do it this way".

In reality what once may have made sense or been implemented for a very legitimate reason has become obsolete because new issues have occurred or new regulations have been promulgated, etc. This is especially true in health care and yet I find myself identifying areas constantly where we work harder but not necessarily smarter.

So I am on a mission to challenge people to employ critical thinking when they are faced with challenges and ponder how they can use these skills to problem solve.

**Critical thinking is the ability to think clearly and rationally about what to do.** It includes the ability to engage in reflective and independent thinking. Someone with critical thinking skills is able to do the following:

- Understand the logical connections between ideas
- Identify, construct and evaluate arguments
- Detect inconsistencies and common mistakes in reasoning
- Solve problems systematically
- Identify the relevance and importance of ideas
- Reflect on the justification of one's own beliefs and values

With as many problems as we are all faced with in our work and life, it seems as if there is never enough time to solve each one without dealing with some adversity along the way. Problems keep mounting so fast that we find ourselves taking short cuts to temporarily alleviate the tension points – so we can move onto the next problem. In the process, we fail to solve the core of each problem we are dealing with; thus we continuously get caught in the trap of a never-ending cycle that makes it difficult to find any real resolutions.

The best problem solvers have the patience to step back and see the problem at-hand through broadened observation. They see around, beneath and beyond the problem itself and approach

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a problem as an opportunity, which can be a strategic enabler for continuous improvement. Leaders who lack this wisdom approach problems with linear vision – thus only seeing the problem that lies directly in front of them and blocking the possibilities that lie within the problem. As such, they never see the totality of what the problem represents; that it can actually serve as an enabler to improve existing best practices, protocols and standard operating procedures for growing and competing in the marketplace.

You know that you have great leadership in your organization when problem solving becomes a seamless process that enables the people and the organization to grow and get better. If problem solving creates chaos, you may have a serious leadership deficiency.

Problem solving is the greatest enabler for growth and opportunity. This is why they say failure serves as the greatest lesson in business and in life. Be the leader that shows maturity, acts courageously, and requires accountability.

For more information, please contact Sheila Capitosti, VP Clinical and Compliance Services, Functional Pathways at [scapitosti@fprehab.com](mailto:scapitosti@fprehab.com) or call 888-531-2204. You can also discover more at [www.functionalpathways.com](http://www.functionalpathways.com)

**COMING SOON:**

# THE HEALTHCARE HEROES!

# Getting on the Same Page

by Paige Hector, LMSW

## Vetted Providers: Too Far Fetched for the SNF?



In many ways, nursing homes and hospitals are not so dissimilar. It's often said that the acute care patients of yesterday are the post-acute care patients of today. The acuity of patients and residents in nursing homes is remarkable and requires providers with specific skill sets, training and competencies unique to that setting, just as providers must demonstrate to practice in a hospital, ambulatory clinic or inpatient hospice unit. Unfortunately, many nursing homes miss the mark when it comes to their

medical staff. Yes, I am calling them staff, even if they are not employed by the nursing home.

People who live in nursing homes are some of the most frail and vulnerable adults in our communities. For a variety of reasons, they can no longer reside in the community and need daily assistance for ADLs, medication management, eating, and just day-to-day living, perhaps including the safety of a secured unit. They typically have multiple co-morbid diagnoses, sometimes with complicated behavioral manifestations, medication regimens and psychosocial needs. Managing these complex components requires a provider with distinct training, competencies and skills.

Here's a common scenario in the nursing home. A provider (I'm going to focus on physicians), approaches the nursing home and declares the intention of seeing patients in that facility. Often, there is little to no vetting of that provider and he or she is simply placed in the rotation to receive patients. Within a very short time, the physician is being assigned new patients. Why is it so easy for a new provider to gain access to patients and residents in this setting?

Geriatrics is a medical specialty just like pulmonology, family medicine, neurosurgery, and cardiology to name a few. If you were diagnosed with pancreatic cancer, would you enlist a pulmonologist to head up your care? If you need a provider for your 85 year old father, would you select a family medicine or internal medicine provider without geriatric training? Consider your spouse, your partner, or your parent who needs long term care or short term rehabilitative services in the nursing home. Would you want a physician taking care of you or your family member who may not be trained or even qualified to provide the necessary care for that setting?

In the hospital, a physician must undergo an extensive process

to obtain privileges. While organizations may vary slightly, there is a general set of tasks that must be achieved before a provider is granted privilege. The process usually starts with a request by the physician which is followed by an application that is reviewed by medical staff services and physicians in leadership positions. Matters such as training, education, fellowships, practice experience are evaluated, references are checked, malpractice insurance verified, and then eventually a recommendation is made to the medical staff. Only after all these steps are successfully accomplished is the physician granted privileges. If the standards for that hospital, for that specialty, for that level of care are not met, privileges are denied. In short, the process to gain access to patients in the hospital is anything but simple.

Why are nursing homes different? Why are the standards lower?

They shouldn't be.

Nursing homes should use the same vetting process as hospitals; but just because someone has been privileged in a hospital is neither adequate nor sufficient reason to assign those same privileges to practice in a different venue called the skilled nursing facility. A vetting process would add depth and expertise to the nursing home and the facility will become known for its outstanding medical providers.

I am of the opinion that it truly is a privilege to take care of the most vulnerable people in the nursing home. But, until we – the nursing facility, the industry, the payer sources, the families, the residents – start questioning our currently dysfunctional system and demanding more, the standardization that is required to attempt to ensure quality care may never happen.

NOTES: For facilities with JCAHO accreditation, there is a credentialing process at the time of application and every two years. I did a quick check of JCAHO accredited facilities in my state and found 17 (<http://www.qualitycheck.org/consumer/SearchQCR.aspx>). And, the Centers for Medicare and Medicaid (CMS) has proposed a physician credentialing regulation for LTC facilities although the operationalization will be at the discretion of each facility.

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- Questionable billing patterns for Part B services
- State agency verification of deficiency corrections
- Procedures and costs for national background checks
- Hospitalizations of nursing home residents for preventable conditions
- Medicare part A billing for skilled nursing facilities

The OIG 2015 work plan also included review of hospice services to Medicare beneficiaries in assisted living facilities.

**HAT Advantage Highlight** - Recommend that providers review the OIG work plan and strategic plan 2014-2018 and identify compliance risk areas for your organizations.

#### **Don't Wish Upon a Falling Star or Nursing Home Compare 3.0**

- What are the NHC 3.0 revisions? CMS completed the following actions
  - Add 2 Quality Measures (QMs): for antipsychotic medication use. One measure is for short-stay residents when a nursing home begins use of antipsychotics for people without diagnoses of schizophrenia, Huntington's disease, or Tourette syndrome, and a second measure reflects continued use of such medications for long-stay nursing home residents without diagnoses of schizophrenia, Huntington's disease, or Tourette syndrome.
  - Raise Performance Expectations: by raising the standards for nursing homes to achieve a high rating on all publicly reported measures in the Quality Measures category on the website.
  - Adjust Staffing Algorithms: to more accurately reflect staffing levels. Nursing homes must earn 4-stars on either the individual Registered Nurse (RN) only or the staffing categories to receive 4-stars on the Overall staffing rating and can have no less than a 3-star rating on any of those dimensions.
  - Expand Targeted Surveys: a plan for State Survey Agencies to conduct specialized, onsite surveys of a sample of nursing homes across the U.S. that assess adequacy of resident assessments and the accuracy of information reported to CMS that is used in calculating quality measures used in the rating system.

**HAT Advantage Highlight** - Ratings reflect CMS raised the bar for performance that should be recognized as high quality and anticipates nursing homes will make quality improvements to achieve these higher standards.

#### **Legislation and Long-Term Care Litigation - Help is on the Way**

- Liability costs for long-term care providers are expected to increase by five percent and claims frequency is expected to rise, according to an analysis released recently by the American Health Care Association (AHCA) and Aon Global Risk Consulting.
- Many states are addressing legislation to support the healthcare industry and the continued crisis of rising litigation related costs.

**HAT Advantage Highlight** - Take time to learn about cases and legislation in your states by contacting the state health care association and me, as well. It is critical that the industry continues to respond to the rising costs in healthcare litigation and create the strong cooperative coalitions that continue to provide the necessary legal and legislative strategies.

#### **Health Care Boards – Compliance Plan Oversight Resource from the OIG and Industry Leaders - Risks, Responsibilities, and Reporting**

On April 20, 2015, the United States Department of Health and Human Services (HHS) Office of the Inspector General (OIG) in collaboration with the American Health Lawyers Association (AHLA), the Association of Healthcare Internal Auditors (AHIA), and the Health Care Compliance Association (HCCA) released a joint educational resource to assist governing boards of health care organizations, titled "Practical Guidance for Health Care Governing Boards on Compliance and Oversight".

This first-of-a-kind joint educational resource provides boards with practical tools and tips as they work to effectuate their oversight role of their organizations' compliance with State and Federal laws that regulate the health care industry.

- Board must act in good faith in the exercise of its oversight responsibility for its organization, including making inquiries to ensure
  - Corporate information and reporting system exists
  - Reporting system is adequate to assure the board that appropriate information relating to compliance with applicable laws will come to its attention timely
- Boards are encouraged to use widely recognized public compliance resources as benchmarks for their organizations
- Boards should develop a formal plan to stay abreast of the ever-changing regulatory landscape and operating environment.

The 2015 Guidance focuses on four areas relating to board oversight and review of compliance program:

1. Roles of, and relationships between, the organization's audit, compliance, and legal departments
2. Mechanism and process for issue-reporting within an organization
3. Approach to identifying regulatory risk
4. Methods of encouraging enterprise-wide accountability for achievement of compliance goals and objectives

#### **HAT Advantage Highlight -**

1. Be Proactive
2. Define Functional Roles and Relationships
3. Set and Enforce Expectations for Reporting
4. Implement a Strong Process for Identifying and Addressing Potential Risk Areas
5. Encourage Accountability and Compliance

#### **Changing the Rules for Better or for Worse - LTC Regulatory Reform**

The Medicare and Medicaid rules and regulations governing long-term

care facilities announced major changes “to improve the care and safety of the nearly 1.5 million residents in the more than 15,000 long-term care facilities or nursing homes that participate in the Medicare and Medicaid programs.” The changes include:

- Making sure that nursing home staff is properly trained on caring for residents with dementia and in preventing elder abuse.
- Ensuring that nursing homes consider the health of residents when deciding on the kinds and levels of staffing a facility needs to properly take care of its residents.
- Ensuring that staff members have the right skill sets and competencies to provide person-centered care to residents. The care plan developed will take the resident’s goals of care and preferences into consideration.
- Improving care planning, including discharge planning for all residents with involvement of the facility’s interdisciplinary team and consideration of the caregiver’s capacity, giving residents information they need for follow-up, and ensuring that instructions are transmitted to any receiving facilities or services.
- Allowing dietitians and therapy providers the authority to write orders in their areas of expertise when a physician delegates the responsibility and state licensing laws allow.
- Requiring nursing homes to provide greater food choice for residents while also giving flexibility for nursing homes.
- Updating the nursing home’s infection prevention and control program, including requiring an infection prevention and control officer, and an antibiotic stewardship program that includes antibiotic use protocols and a system to monitor antibiotic use.
- Addressing rights of nursing home residents, including placing limits on when and how binding arbitration agreements may be used.

**HAT Advantage Highlight** - Be proactive by enlisting our professional staff to review and update systems now will move you closer to successful compliance later and reduced risk. Consider the following:

- Comprehensive Person-Centered Care Planning • NEW SECTION (§483.21)
- Quality Assurance and Performance Improvement (QAPI) - NEW SECTION (§483.75)
- Facility Assessment - NEW REQUIREMENT (Found in Administration) (§483.70)
- Compliance and Ethics Program - NEW SECTION (§483.85)
- Training Requirements - NEW SECTION (§483.21)

**HAT Advantage Highlight** - 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.

### **Grit and Growth Mindset in Senior Care Services – What’s Your Score?**

In recent years, scholars, practitioners, and the lay public have grown increasingly interested in measuring and changing attributes other than cognitive. These so-called noncognitive qualities are

diverse and collectively facilitate goal-directed effort (e.g., grit, self-control, growth mind-set), healthy social relationships (e.g., gratitude, emotional intelligence, social belonging), and sound judgment and decision making (e.g., curiosity, open-mindedness). Angela Duckworth, assistant professor at the University of Pennsylvania, focuses her research on a personality trait she calls “grit.” She defines grit as “perseverance and passion for long-term goals.” Her research finds that as a trait, grit had better predictability for success than IQ.

Attributes of the building blocks of grit:

- A clear goal
- Determination despite others' doubts
- Self-confidence about figuring it out
- Humility about knowing it doesn't come easy
- Persistence despite fear
- Patience to handle the small obstacles that obscure the path
- A code of ethics to live by
- Flexibility in the face of roadblocks
- A capacity for human connection and collaboration
- A recognition that accepting help does not equate to weakness
- A focus and appreciation of each step in the journey
- An appreciation of other people's grit
- A loyalty that never sacrifices connections along the way
- An inner strength to help propel you to your goal

### **HAT Advantage Highlight -**

Understand and teach that frustration and confusion are signs of progress

- Praise effort
- Trust your gut
- Be resilient
- Trust your gut
- Be inventive and creative again and again
- Commit to your purpose
- Growth-Mindset

From our team to yours, we wish you peace of mind, prosperity through the year, happiness that multiplies, health for you and yours, fun around every corner, energy to chase your dreams, and joy to fill your holidays! See you next year!

*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](mailto:radelman@hatlawfirm.com)*

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