

Nursing & Assisted Living Facility Professional

“NEWS AND VIEWS YOU CAN REALLY USE”

DECEMBER 2019
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SENT EACH MONTH TO YOU AS A MEMBER OF THE HEALTHCARE HEROES

THE ADELMAN ADVANTAGE by Rebecca Adelman

Reflecting Back on 2019 and Looking Ahead to 2020



We're wrapping up 2019 with a bow and nine years of *The Adelman Advantage* and our wonderful friendship and partnership with Chip Kessler and Extended Care Products. If you haven't visited www.extendedcareproducts.com in a while, please take a few minutes and explore the multitude of long-term care education, and risk management programs for professionals. I am so grateful for the opportunity to

collaborate on relevant content to our industry through this platform and for my relationships with you all.

To close out the year, let's take a look back at the highlights from 2019 and ways to bring continued risk mitigation, best practices and innovation into 2020.

Nursing Homes MUST Verify - OIG's February 2019 Report

The DHHS and OIG report "**CMS GUIDANCE TO STATE SURVEY AGENCIES ON VERIFYING CORRECTION OF DEFICIENCIES NEEDS TO BE IMPROVED TO HELP ENSURE THE HEALTH AND SAFETY OF NURSING HOME RESIDENTS**" confirms that the survey and certification process is, at present, extremely burdensome. We can expect that with the OIG reports and recommendations as well as CMS' comments, SAs will increase the levels of investigation, documentation and become increasingly punitive with citations and the verification of compliance. As a proactive measure, properly document and retain documentation and prepare detailed plans of correction with support to minimize the opportunity for the SAs to reject a Plan of Correction. Understanding the need for verification and the impact of failing to comply with care standards, these interests can be protected without the continued enhancements of regulations by CMS and its SAs. Without much choice but to cooperate with the SAs and provide the needed information if there are deficiencies cited at your community, do your best to thoroughly document the needed information we know the SAs will need to verify and Plan of Correction.

HIPAA Guidance -What You Need To Know About Access

A frequent HIPAA issue that arises in health care litigation is the individual's right to access health information and the associated legal and regulatory considerations. Here are some considerations:

In responding to a request for access, a covered entity is not required to create new information, such as explanatory materials or analyses that do not already exist in the designated record set.

A nursing home or hospital's peer review files or practitioner or provider performance evaluations, or a health plan's quality control records that are used to improve customer service or formulary development records, may be generated from and include an individual's PHI but might not be in the covered entity's designated record set and subject to access by the individual.

An individual's personal representative (generally, a person with authority under State law to make health care decisions for the individual—Power of Attorney, Power of Attorney for Healthcare, Conservator, Surrogate) also has the right to access PHI about the individual in a designated record set.

If the individual requests electronic access to PHI that the covered entity maintains electronically, the covered entity must provide the individual with access to the information in the requested electronic form and format, if it is readily producible in that form and format, or if not, in an agreed upon alternative, readable electronic format.

The fee may include only the cost of: (1) labor for copying; (2) the supplies for creating the paper copy or electronic media (e.g., CD or USB drive); (3) postage; and (4) preparation of an explanation or summary of the PHI, if agreed to by the individual. The fee may not include costs associated with verification; documentation; searching for and retrieving the PHI; maintaining systems; recouping capital for data access, storage, or infrastructure; or other costs not listed above even if such costs are authorized by State law.

Professional Liability Insurance Essentials in the Senior Living Marketplace

Following are essential policies to consider for skilled nursing facilities:

- Medical Professional Liability (Claims Made & Occurrence)
- Medical Malpractice for Physicians and Other Providers
- Commercial General Liability and Property
- Miscellaneous Medical E&O
- Primary and Excess Limits

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- Hired and Non-owned Auto
- Sexual Misconduct/Abuse

- Employee Benefits
- Employment Practices
- Punitive Damages Coverage
- Resident Evacuation Expenses
- Crisis Communication/PR Expense
- Cyber/Privacy Liability
- Civil Fines and Penalties
- Medical Billing E&O and Regulatory Coverage
- Management Liability (D&O, EPL, Fiduciary)
- Worker's Compensation
- Additional Insured Coverage
- Vicarious Medical Liability

Nursing facilities seek insurance coverage through traditional insurance providers. There are additional coverage programs that include alternative risk transfer programs such as surplus line carriers; captives; and risk retention groups (RRGs). A surplus line carrier is unregulated and handle risks that admitted carriers are unwilling to write and although recognized as an insurance carrier, is licensed in another state

HIPAA Compliant Text Messaging – Best Practices and Policies

Consider the following best practices to have in place before allowing text messages to be sent or received by providers who work in your organization:

Ensure all mobile devices are secure: The first priority must be to ensure the security of every device used to send and receive mobile text messages that contain PHI. Identify all the mobile devices that providers are using within the organization and how you are keeping track of them. Your healthcare organization should have a policy that either forbids the use of personal mobile devices for work-related reasons, or which requires those mobile devices to be securely encrypted by your facility prior to being used for text messaging. Mobile encryption software is critical to reduce the risks associated with sending text messages on mobile devices, particularly when it comes to preventing unauthorized users from accessing a patient's healthcare or financial information.

Establish texting policies: In addition to encryption standards, it's important to set guidelines for the type of healthcare information that may be shared via secure text message, who should send and receive such texts, and on which mobile devices.

Educate staff about your texting policies: Because violations of secure text message policies or the inability to put the safeguards in place can compromise patient safety, it is important that all

healthcare staff involved with sending or receiving text messages be trained on texting policies, the types of content used in text messages and how to ensure that text messages containing healthcare information are sent securely.

Use a third-party, HIPAA-proof, secure texting solution: Engage secure text messaging applications and technology that enables secure, encrypted communication between doctors, nurses and other healthcare providers. It should connect your organization with healthcare workers inside and outside of your facility – even if they aren't part of your organization.

Establish a policy on whether to allow providers to text patients: Patients are unlikely to have encrypted mobile devices, so a text sent to a patient may not be secure based on the patient leaving the mobile device unattended. As a result, the text message could be viewed by someone other than the recipient, and the provider might unwittingly compromise the patient's privacy.

Communicate your policy to patients: Whether or not patient communication is part of your texting policy, be sure to inform patients about how their healthcare information will be used. The texting policy can be part of the HIPAA acknowledgment that patients sign, and it is also the chance to let patients know that the healthcare provider takes patient security seriously and that only secure, encrypted text messages will be sent.

Ownership of messages: It's important to make clear that all messages transmitted by employees of your healthcare organization are the property of your organization and not of the individual providers who are sending receiving the messages.

Segregate healthcare texting from personal texting: In healthcare environments, it can be a critical problem. Anyone can pick up a nurse's phone and read his personal text messages. Healthcare-related text messages and communications have to be kept separate from personal messages.

Require special authorization and authentication for accessing messages: There's no use keeping healthcare and personal messages in different places unless the healthcare messages are secured with strong authentication requirements. Users should be enrolled in their organization's secure text messaging service through a personal invitation process, and their access to messages should be password-protected. These measures ensure that messages are read by the people they are sent to: not their friends, kids, or colleagues. This is a key element of HIPAA's Security Rule.

Cannabis In Senior Housing - What You Need To Know (At Least For Now!)

Derived from our work with healthcare clients and the various senior housing communities that have created and implemented marijuana use policies and procedures (note that there will be different policies for each senior housing setting), here are a few takeaways:

1. Complete an initial assessment of all existing policies and procedures (including employment/HR policies) and determine what impact implementation of a marijuana policy may have on other policies for possible revisions.
2. Provide education materials, state and federal guidelines information to residents, families, those who will be administering/delivering to the resident and expectations management.

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Gratitude and Hope - This Year and Next



Here we are, at the end of another year. I've been thinking about 2019 and all the changes in our world of nursing homes. This year is the culmination of the largest change to the requirements of participation in the history of long term care. The alphabet soup of acronyms of payment models, billing codes, oversight agencies, medical conditions, and measurement categories borders on the absurd. I find myself wondering what would

compel a person to work in this space. And, I am grateful that so many do! I think we can all agree that sometimes, working in a nursing home can be a thankless job, no matter your role. And, it can also be fun, joyful and rewarding.

I worry that staff are not regularly acknowledged and appreciated, that they come to work and give of themselves each day, only to go home without a word of thanks or really knowing the impact they had in their space. Similar to last year, the December article will be one of appreciation and thanksgiving, highlighting what makes this work wonderful and drives us to do it every day, whatever our role.

My husband and I were making our way through downtown Tucson to attend a play when we found ourselves waiting for a walk signal to cross a busy street. Also waiting were two other couples and by simply the close proximity of all waiting together, I couldn't help but overhear snippets of their conversation. One of the young women said something that stuck with me. Before I share what I heard, please keep in mind that I don't know the context in which she was speaking, and can only appreciate my interpretation and reaction. What she said was, "I'm just a nurse." Whether the statement was meant to be self-deprecating or perhaps an acknowledgment that the issue they were discussing extended beyond her particular scope or training, I think there is a bigger issue to address.

Anyone working in healthcare is not "just" anything. Whatever the role, title, job, experience or training, we're all important. Of the thousands of details that coalesce into running a wonderful facility with engaged, competent and compassionate staff that provide great care to residents and families, it takes every single one of us to be successful. Whether

you are a manager, a director or one part of the team from any department or discipline, *you are important.*

Sometimes when I give presentations on topics like communication, I encourage participants to do something when they return to their facility, ask staff a simple question – "If your department didn't exist, what would happen to the organization?" Dig deep and really consider the question, then, list all the contributions that your department makes. Think outside job descriptions and facility policies. No contribution or task is too small!

If you no longer had a central supply department? Or, if the housekeeping department ceased to exist? Obviously, departments won't just disappear, but the exercise is worthwhile to help us identify, acknowledge and appreciate the multitude of tasks that each department, each person, contributes. Ask each person in your facility to make their own list and then give them the opportunity to share at staff meetings. And, if you hear someone in your facility say they are "just" their role or job, please speak up and affirm that they are so much more.

Thank you, everyone, for all the kindnesses showered upon the residents, patients and families that are part of your community. Thank you for the millions of hours dedicated to caring for people who need your expertise and help. Thank you for staying the course when the challenges along the way could easily deter. Thank you for your dedication, your humor, and your compassion.

I am hopeful. Hopeful that staff are not just surviving the challenges of working in a nursing home but thriving in whatever role they work, whatever facility, in whatever town or city. I am hopeful for more space in which to do our jobs, more breath and calmer days. I am hopeful for renewed spirits for everyone already working in nursing homes and for new staff that choose this wonderful work. I thank each one of you and am eager to see what 2020 brings for us all. May you have a peaceful, restful and joyful holiday season.

*NOTE: I used to organize an awards ceremony to honor nursing assistants. Each year I had the keynote speaker read a poem called "I'm Only a CNA: The Value of Being a Nursing Assistant." I just read it again and it will always be one of my favorites. Here's a link, <http://www.spiritlakeconsulting.com/SLC/sharedfiles/library/books/onlyaCNA.pdf>.

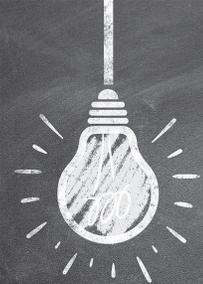
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3. Prohibit smoking marijuana at the community and create a policy that allows the use of marijuana in other forms.
4. Include the policy in the admissions process with an acknowledgement that the resident/personal representative have reviewed and understand the policy.
5. The Resident Assessment and Comprehensive Person-Centered Care Planning are keys to the success of a marijuana policy. Establishing the Baseline Care Plan implemented in Phase 2 of the Final Rule and proper interventions for clinical risks identified (falls, wandering, dysphagia etc...) will mitigate risks.
6. Incorporate policies related to wheelchair, scooter or other motorized devices into the marijuana policy (no driving while under the influence – similar to an alcohol policy).
7. Specifically create policies to include the administration and storage of marijuana.
8. Consider Negotiated Risk Agreements if they are enforceable in your state.
9. Carefully evaluate management contracts, leases and loans for any impact marijuana use at the facility may have on the rights and obligations of the parties.
10. Understand the employment laws in your state and the federal laws as they relate to the use of marijuana in the workplace. The Americans with Disabilities Act (ADA), The Drug Free Workplace Act, The Federal Employees' Compensation Act (FECA) (Worker's Compensation), and The Family and Medical Leave Act (FMLA) among other federal laws and state statutes and regulations have a direct impact on employment decisions.

“The 4 Outs” – Active Shooter/Armed Intruder Preparedness (co-author Steve Wilder, president and Chief Operations Officer of security consulting firm Sorensen, Wilder & Associates)

Senior living, like all disciplines in healthcare, presents unique challenges. Unlike manufacturing or retailing where each individual is responsible for themselves, in a senior living facility we are responsible for ourselves and for others who cannot



PLEASE SAVE THE DATES OF April 22-23, 2020 for the 8th annual National Long-Term Defense Summit!

2019 was amazing and look forward to education, networking and fun in New York City in 2020! You'll love The Parker Hotel and the penthouse Estrela conference room with 360 degree views of the city and Central Park! Please plan to join us!!!! For more information, please contact me at rebecca@adelmanfirm.com.

take care of themselves. Our challenges are unique, and our plan must reflect that. In an environment where each person only has to worry about themselves, the **RUN-HIDE-FIGHT** program by the United States Department of Homeland Security should be considered the program of choice. That said, in the senior living environment, we have to include considerations for those who cannot take care of themselves, especially those in rooms where doors cannot be locked. For these facilities, **THE 4 OUTS** has become the model program for the industry.

THE 4 OUTS program bears a striking resemblance to **RUN-HIDE-FIGHT**, with considerations built in to protect those who are not able to exit the building and are not able to secure themselves in a locked room. Each of the 4 Outs (Get Out; Hide Out; Keep Out; Take Out) remains focused on both the staff member and the resident.

Thank you again for sharing these many years with me and my firm and Chip and the team at ECP. Stay tuned for more in store for 2020!

Rebecca Adelman is an entrepreneur, influencer, thought leader and founder of Adelman Law Firm, a Women's Business Enterprise National Council (WBENC) certified Women Business Enterprise (WBE) established in 2001. For nearly 30 years, Rebecca has concentrated her practice in insurance defense and business litigation. The firm's practice extends through the Tri-States of Arkansas, Mississippi and Tennessee. Rebecca's insurance defense practice includes representation of insurance companies and long-term care providers and their insurers, both regionally and nationally. She also provides consulting services and educational programming to healthcare professionals and business associates. She has active practices in the areas of general liability, professional liability, premises, and employment law. She is a listed mediator serving all areas of business and healthcare litigation. Contact Rebecca at rebecca@adelmanfirm.com and visit www.adelmanfirm.com and www.rebeccaadelman.com.



Kessler's Corner

By Chip Kessler

Well another year is about to close! Hopefully 2019 has been one you can look back on with some wonderful memories. As this publication concludes its 9th year, I'm grateful to the fabulous people who give their time and talents to make it all possible. To Rebecca Adelman, who has been here from the start, your continued contributions serve as the foundation of this newsletter. Your valuable insights and ability to share your expertise with our readers has earned my lasting admiration. To Paige Hector, you have become a valuable mainstay for the past several years now. Your articles highlight your wisdom and guidance to those working in the caregiving profession, and are truly treasured. To Manning McGraw, Joel VanEaton and the folks at Broad River Rehab, the monthly columns you have graced our readers with show why your company has rapidly risen through the ranks to become the unquestioned leader in your field. To the person whose behind the scenes effort each month put it all together, a big thank you to Lori Wilhoit for the graphic

design and layout expertise you bless us with. Let me also give a well-deserved tip of the cap to the outstanding staff at Mail Works here in Johnson City, TN who have done such a great job of printing and mailing out this newsletter for your hopeful enjoyment. As well, my sincere thanks to you our reader for all the kind comments you have made about what we bring you here in print.



Broad River Rehab, “A knowledgeable and compassionate Partner”

WHAT ARE YOU THANKFUL FOR?

By: Joel VanEaton, BSN, RN, RAC-CT MT VP of Compliance and Regulatory Affairs

As we approach the holidays, it’s easy to get caught up in the rush of the season. It’s easy to lose sight of the reason we have such a time of year to begin with. It is hard to step back and take a breather and realize that in reality we have much to be grateful for. Try this list on for size:

1. We work in the best industry in the whole world. Where else can you go to work and know that you are having a significant, lasting impact not only of the people you work with n=but of the patients you serve. Nothing you do in this profession goes unnoticed. You may not get employee of the month, but the care you provide for the patients you serve is always noticed and appreciated. My father was in a SNF last summer. He enjoyed his time there very much and told me that he missed the family that he had made while he was there. I’ll bet the staff at that facility don’t realize what a positive impact they had on him. But they did.

2. We work with the best people in the healthcare industry. I used to think that I would never work in the long-term care industry. When I was in school an as I was working acute care, I imagined that I would spend my career in the fast-paced world of the ER or some other adrenaline pumping atmosphere. But as life would have it through various circumstances, I ended up as an MDS coordinator. Through that experience and my now 20+ year career in healthcare, I have come to realize that I would rather work in LTC than any other segment. The people who have dedicated their careers to care for this population are among the most gracious and compassionate people I know. I can’t imagine spending my career with anyone else.

3. We work with the best patients in healthcare. Every day we get to take care of those who, in many cases, took care of us. The generation that came before us brought us up. They sacrificed and gave us our homes, the country we live in, the music we listen to, the career path we took, the families we love. We get to go to work every day and say thank you to the folks that made our pathways possible by caring for them in a thousand different ways, often routinely as we go about our day. Toward the end of her life my mother was also in and out of skilled nursing facilities and many times she would tell me of the staff that made her stay a pleasant one and how she enjoyed getting to know her care givers. She was truly care for, and most of the time by nature of the job most of her caregivers were just doing because that’s what they did and who they were.

So, I’m thankful this holiday season for the industry that took me in and gave me a career, the people with who I routinely rub elbows and for the patients that I serve. It is a wonderful life. I hope as you reflect on what it is that you do each day, you will also come away with a renewed sense of gratitude and joy in what you do every day. Your hands, your feet, your laughter, your joy, your hope, your care, are all what make those you care for thankful as well.

Broad River Rehab would love to talk to you more about our company and show you why we are a Knowledgeable and Compassionate Partner. Check us out at www.broadriverrehab.com click the contact link <https://www.broadriverrehab.com/contact-us> and let us know you’d like to talk. Got a tough PDPM or other reimbursement/MDS question?

Ask an Expert at <https://www.broadriverrehab.com/expert>

Winter Fun Facts

The English word “winter” comes from the Proto-Indo-European word “wend,” which stands for water.

In the Northern Hemisphere winter lasts from the Winter Solstice (varying between 20 and 22 December) to the Vernal Equinox (varying between 19 and 21 March). In the Southern Hemisphere, winter lasts from June until September.

The 1st day of winter 2019 in Northern Hemisphere will be on Sunday, December 22nd. And the last day of winter will be on Friday, March 20th 2020.

Guinness World Records lists the largest snowflakes as having fallen during a storm in January 1887 at Fort Keogh, in Montana. A rancher nearby, the book says, called them “larger than milk pans” and measured one at 38 centimeters (15 inches) wide.

Chionophobia is the extreme dislike or fear of snow. The word originates from Greek chion meaning snow and phobos meaning fear, aversion or dread. People with Chionophobia often understand that their fear is unfounded and weird. However, they are unable to control it.



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.

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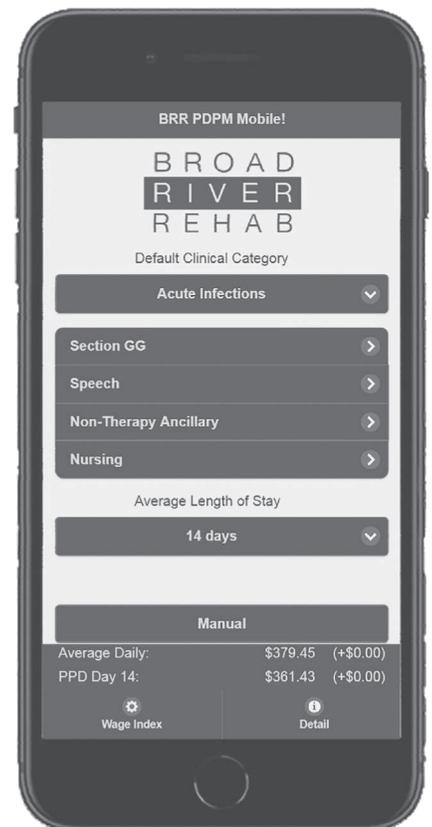
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Have you seen our Mobile PDPM **Navigator**?

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