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SEPTEMBER 2020
ISSUE 9, VOLUME 10

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THE ADELMAN ADVANTAGE

by Rebecca Adelman

The Coronavirus Commission for Safety and Quality in Nursing Homes

Final Report – Now What?

Before exploring the September 2020 Final Report and recommendations of the COVID-19 Commission for Safety and Quality in Nursing Homes ("Commission"), some background is important. The Final Report can be found here:

https://sites.mitre.org/nhcovidcomm/wp-content/uploads/sites/14/2020/09/FINAL-REPORT-of-NH-Commission-Public-Release-Case-20-2378.pdf

How was the Commission Formed? Established by the House of Representatives on April 23, 2020, the Select Subcommittee on the Coronavirus Crisis is modeled after Senator Harry Truman's Special Committee to Investigate the National Defense Program, which oversaw defense spending as the entire nation mobilized for World War II. Then Centers for Medicare & Medicaid Services (CMS) tasked MITRE, the operator of the CMS Alliance to Modernize Healthcare (Health FFRDC), with an urgent assignment: **Convene a commission of experts to address safety and quality in nursing homes in relation to the public health emergency.** The main purpose of the independent Commission was to solicit lessons learned from the early days of the pandemic and recommendations for future actions to improve infection prevention and control measures, safety procedures, and the quality of life of residents within nursing homes.

What were the Commission's Objectives?

1. Identify best practices for facilities to enable rapid and effective identification and mitigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) transmission (and other infectious diseases) in nursing homes.
2. Recommend best practices as exemplars of rigorous infection control practices and facility resiliency that can serve as a framework for enhanced oversight and quality monitoring activities.
3. Identify best practices for improved care delivery and responsiveness to the needs of all nursing home residents in preparation for, during, and following an emergency.
4. Leverage new data sources to improve upon existing infection control policies, and enable coordinated actions across federal surveyors and contractors (as well as state and local entities) to mitigate the effects of SARS-CoV-2 and future emergencies.

Likewise, CMS asked for the Commission to focus its recommendations on actions within CMS's authority **and that could be undertaken immediately or within the six months following this report's delivery**.

What was the Commission's Organization, the Perspectives, and the Process to arrive at the Final Report? The 25 Commission members hailed from around the country with diverse expertise and viewpoints ranging from nursing home resident, consumer advocates, and nursing home owners and administrators to infectious disease experts, academicians, state authorities, and others. The Commission convened nine times between June 23 and August 19. The Commission used the four objectives provided by CMS and its collective knowledge of the nursing home system, to frame its discussions. Analysis of public input solicited via the Commission's website and discussion of relevant CMS and other federal actions to date also informed the Commission's work.

I am planning a webinar series to review the Commission recommendations and action plans and proactive strategies for claims and litigation risk mitigation. Stay tuned for more information. For this article, I am highlighting the key takeaways and principal recommendations.

Key Takeaways.

The Commission put forward **9 themes** and **27 principal recommendations**.

- **Immediate and near-term actions by CMS (through policy or regulations, alone and with others) are necessary**. The Commission and the public alike call on CMS to continue advocating on behalf of beneficiaries based on the following principles.
- **Residents and families must be able to connect in meaningful ways** to ensure the physical and mental well-being of the resident and to protect against neglect and abuse. To achieve positive outcomes, CMS must ensure nursing homes address this need and residents' other conditions while prioritizing rigorous infection control.
- **Nursing home staff must be kept safe and treated with respect in the workplace**, which requires access to the right training and equipment, along with

Continued on page 2

The Adelman Advantage continued from page 1

compensation that recognizes the risks they take, their dedication to resident safety, and the quality of the care they deliver.

- **Nursing home management and staff can be more effective if provided with streamlined communications, reporting capabilities, and access to funds** that will support myriad additional costs, and can reduce the trauma of some emergency measures by communicating policies in advance and providing advance notice when activated.
- **CMS should work with its partners to identify funding** sufficient to fully pay for each implemented recommendation.
- **CMS must begin now to take steps to solve longer-standing, systemic issues illuminated by the pandemic.** A systems focus on long-term care financing and accountability, facility design, workforce, governance/management, technology, and data will help ensure future nursing home safety and quality.

Principal Recommendations

Theme 1: Securing Testing & Screening Capabilities

- With federal, state, local, territorial, and tribal (SLTT) partners**, immediately develop and execute a national strategy for testing and delivering rapid turnaround of results** (i.e., results in less than 24 hours) in nursing homes, in combination with CDC recommended screening protocols. Allow nursing homes to tailor the strategy in partnership with federal and SLTT authorities.

Theme 2: Increasing PPE Supply and Use

- **Take responsibility for a collaborative process** with federal and SLTT partners to ensure nursing homes can procure and sustain a three-month supply of high-quality supplies of **Personal Protective Equipment (PPE)** and essential equipment.
- Work with federal partners, including CDC and FDA, **to create specific guidance on the use, decontamination, and reuse of PPE and essential equipment**.
- Collaborate with federal and SLTT partners **to provide guidance on training to all staff on proper use of PPE and equipment.**

Theme 3: Rethinking Cohorting Practices

- Update cohorting guidance to **balance resident and staff psychological safety and well-being with infection prevention and control**.
- Update cohorting guidance **to address differences in nursing home resources for cohorting.**

Theme 4: Prioritizing Visitation Activities

- Emphasize that visitation is a vital resident right. Update and release **consolidated, evidence-based guidance on safely increasing controlled, in person visitation prior to Phase 3 reopening**.
- Update and **release consolidated, evidence-based guidance on effectively planning for and implementing virtual visitation tools and techniques**.
- **Provide resources to help nursing homes assess and improve the mental health and psychosocial well-being of residents** during and after the pandemic.
- Assess, streamline, and **increase the accessibility of COVID-19-related directives, guidance, and resources on visitation** into a single source.

Theme 5: Supporting Nursing Home Communications with Residents and Families

- **Increase specificity and expand breadth of guidance on communications between nursing homes, residents, and families.**

Continued on page 3

Health Affairs, *Severe Staffing And Personal Protective Equipment Shortages Faced By Nursing Homes During The COVID-19 Pandemic*, Brian E. McGarry, Ph.D., Assistant Professor of Geriatrics/Aging and Public Health Sciences at the University of Rochester Medical Center (URMC) in collaboration with David C. Grabowski, Ph.D., Professor of Health Care Policy at Harvard Medical School, and Michael L. Barnett, M.D., M.S. Assistant Professor of Health Policy and Management at Harvard's T.H. Chan School of Public Health, August 20, 2020

The Adelman Advantage continued from page 2

Theme 6: Strengthening the Workforce Ecosystem

- Address nursing home workforce hazard pay; assess and leverage emergency nursing home **surge support** options; and **emphasize minimum care standards.**
- Issue guidance for **on-the-job certified nursing assistant (CNA) training, testing, and licensure**; track all CNAs via a **central registry**; **and catalyze interest in the CNA profession** through diverse recruitment vehicles.
- Provide **guidance grounded in maximizing equity and preventing employee burnout that allows nursing home workforce members to continue to work in multiple nursing homes** while adhering to infection prevention and control practices.
- Require a **Registered Nurse (RN) to be present around-the-clock** in a nursing home when 10% or more of residents test positive for COVID-19.
- Identify and immediately leverage **certified infection preventionists** who can support nursing homes' infection prevention needs.
- Professionalize **infection prevention positions in nursing homes** by updating regulations at 42 CFR § 483.80 so more fully qualified infection preventionists are available to serve in nursing homes.
- Require nursing homes to **employ infection preventionist(s) with specific educator duties** (1.0FTE < 30 resident beds; 2.0FTE > 30 resident beds).
- Convene a **Long-Term Care (LTC) Workforce Commission and/or Advisory Board** to assess, advise on, and provide independent oversight for modernization of workforce ecosystem.
- Work with federal, state, local, public, private, and academic **partners to catalyze overhaul of workforce ecosystem.**

Theme 7: Catalyzing Technical Assistance and Quality Improvement

- Identify and **work to achieve funding mechanisms for – or reprioritize activities of –technical assistance and other contractors to increase the availability of collaborative, on-site, data-driven support** prior to, during, and after a COVID-19 outbreak.

Theme 8: Enhancing Facility Design

- **Identify and share with nursing homes short-term facility design enhancements** to address immediate pandemic-related risks that can be implemented at minimal cost.
- **Establish a collaborative national forum** to identify and share best practices and recommendations; facilitate real-time learning on how to best use existing physical spaces.
- Collaboratively establish long-term priorities and seek appropriate funding streams for **nursing homes to redesign and/or strengthen facilities against infectious diseases**.

Theme 9: Making Data More Actionable

- **Improve COVID-19 data element standardization and data collection** while **identifying specific actions that CMS and federal partners will take in response** to changes in key COVID-19 data indicators based on data reported by nursing homes.
- Develop a **single, bidirectional application to serve as a central interface** for nursing **home data collection and information dissemination that includes essential COVID-19 guidance, statistics, and outcomes.**
- **Enhance health information technology (HIT) interoperability** to facilitate better communication, improve quality measurement standards, and **coordinate integration of nursing home data with data from other health organizations.**

Summary and Concluding Comments

The Commission Recommendations and Action Plans are comprehensive and will require significant resources to the industry to achieve the goals. CMS would tell you that the Commission's findings align with the actions the Trump Administration and CMS have taken to contain the spread of the virus and to safeguard nursing home residents from the ongoing threat of the COVID-19 pandemic. In its response to the final report form the Commission, CMS has suggested that it had already completed all of the necessary steps even before the report was issued — its analysis appears to close the door on taking further action on the report's many good recommendations.

It is yet to be seen where the resources will come from to support the industry and will it be too late? Industry advocates have been imploring CMS and the federal government to address many of the themes, recommendations and action plans for decades and certainly since January 2020 and as the pandemic continues reframe the long-term care landscape. To date, while CMS has taken some actions such as releasing iterative guidance with the CDC outlining details for screening and testing of residents, staff, and visitors and finally began providing rapid point-of care diagnostic devices and tests for nursing homes located in 62 hotspot geographic areas and allocated $5B for testing through the Provider Relief Fund, there must be more funding sources and less punitive actions taken by CMS with regulatory surveys and monetary penalties.

What actions will actually be taken over the next 6 months to prioritize long-term care in this pandemic yet to be seen. They are long overdue and have a responsibility to our senior and vulnerable populations, healthcare providers and owners/operators who have continued to invest resources to provide continued care to hold CMS and its partners accountable for taking timely right actions.

We will continue to keep you updated on developments in all areas that impact long-term care.

We are here to bring you peace of mind so let me hear from you and STAY SAFE.

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) and a Women Business Enterprise certified by the Tennessee Governor's Office of Diversity Business Enterprise 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.

Getting on the Same Page by Paige Hector, LMSW

"What Did You Say?! I Can't Hear You."

Communication in healthcare is an integral element of good resident care, family interactions and staff relations. Especially with the challenges inherent with masks (which impairs effective communication in a variety of ways), communication has risen to the forefront as staff share information, answer questions, and reassure residents and families. Perhaps these challenges have also laid bare the need for improvement. Recently, I had two experiences that got me thinking more deeply about communication skills with older adults. One took place at a physician's office and one at the local animal shelter.

Many years ago, my family befriended an older woman (I'll call her Elsie) in our neighborhood. She became my son's adopted grandma and attends all our family gatherings. As Elsie progressed in age (now 89 years old), she asked me to serve as her medical power of attorney. Fiercely independent, it wasn't until the past two years that I became more involved and now completely responsible for her medical care arrangements. When her beloved PCP retired last year, we've struggled to get situated with a new provider and doing so in a pandemic has added to the complications. Last week, I took her to an appointment with a provider recommended by the wellness coordinator at Elsie's retirement community. The office staff was lovely, and the place had a good 'vibe' to it. We were promptly escorted to an exam room and greeted by the medical assistant, a kind, efficient, and upbeat healthcare professional.

While remarkable healthy, Elsie struggles with hearing loss. She wears bilateral hearing aids and does fairly well as long as the other person speaks up, enunciates, and maintains a slower pace. Unfortunately, the medical assistant's pitch was very high, almost with a sing-song quality and she spoke rather quickly. Of course, the mask added an additional barrier. As I've become accustomed to doing for Elsie, I watched for the signs that she did not hear or understand the exchange and intervened to ensure accurate messaging. She has shared with me on many occasions how frustrating it is to not be able to hear, and for Elsie, a retired teacher, this basic tenet of communication has been a difficult loss.

The second interaction was shared with my dad, a just-turned 80 year old who is incredibly active and healthy but also struggles with hearing loss. Dad decided to adopt a four-legged friend from the local animal shelter and on a Friday afternoon, we had an appointment to meet several potential new family members. We were greeted by a kind staff member (whom I will call David) who escorted us through the kennels and answered questions. Dad was wearing both hearing aids, but I could tell immediately that the communication between David and Dad was going to be challenging. David spoke very softly, and quickly, with no tonal inflection to his voice. Within the first few minutes of our conversation, I asked David to speak up so my dad could hear him. To his credit, David made an initial attempt to increase the volume of his voice, but the effort quickly faded. It was further complicated by the masks and barking dogs. I had to relay every statement David made. Another complicating factor was that David made very little eye contact and when he did, he directed it to me which made me feel very badly for my dad. It was as though he wasn't present. He was the one adopting the dog, not me. Dad's hearing might be poor, but his cognition is very much intact!

Later, I asked Dad how he felt about our experience and he said, "I felt somewhat humiliated. If he [David] had spoken in a manner that had clarity, I could have understood him. I was annoyed. He didn't even look at me when he spoke."

According to the Crisis Prevention Institute, only 7% of communication is verbal, 55% is non-verbal and 38% is the tone of voice. Pause for a moment and consider, only 7% of communication is verbal. That's remarkable! Non-verbal features and tone are critically important elements of effective communication.

The tone of voice contributes to communication style which refers to *how* we say something, not what we say. There are four variables that comprise communication style (Crane, 2012). First, the tone of voice conveys emotions – dull or exciting, interesting or boring, angry or enthusiastic. The second variable is volume, how loudly or softly one speaks. The volume needs to be good for the audience which means that the communicator needs to be aware of and in tune with how the message is being received. Third is the pitch of the voice, in other words how high or low it sounds (a good analogy is the pitch of a piano). The fourth variable is pace, how quickly or slowly one speaks.

Let's review those four communication variables in light of the encounters with Elsie and my dad. The medical assistant's tone was super, she conveyed enthusiasm and kindness. Her volume was adequate, but the pitch was way too high and the pace too fast. And, she displayed no awareness or ability to 'read the audience' to determine if, and how, her information was being received.

The communication experience with my dad was worse but for different reasons. David's tone was dull, the volume way too soft, the pace too fast, the pitch okay. Like the medical assistant, David demonstrated little awareness of the effect of his communication on the receiver.

While Phase 3 guidance is still pending, F941 Communication Training states, "A facility must include effective communications as a mandatory training for direct care staff." The regulation can certainly be interpreted in various ways, but it seems logical that training should include the *quality* of the communication, not just the message itself. I'm willing to bet that most people would agree that the way in which information is shared is just as important as the content. In fact, it might even take precedence.

Crane T. *The Heart of Coaching*. San Diego, CA: FTA Press; 2012.

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Kessler's Corner

by Chip Kessler

How Are Things Going?

If you are like most nursing and assisted living facilities, 2020 has been a very challenging year, in any number of areas.

Census is certainly one of the many challenges you've faced. What with a regular onslaught of COVID-19 related negative stories against assisted living communities and nursing homes in the media, many people have been skittish about placing a loved one in a caregiving environment. Because of this, giving people the necessary peace-of-mind that your building is still a great option for meeting the needs at-hand, is job #1, marketing-wise.

It's one thing to realize this, another to get an impactful message out there in your marketing efforts along with your platforms such as your website, Facebook page and other avenues. I can't overstate how important this kind of message is! Let me provide some basic components of what you must relate to the people in your region and community you're attempting to reach:

- The steps you have been and continue to take to make your facility and grounds a safe, clean and healthy environment

- Your staffs' daily, unwavering commitment to your residents and families

- What you have done and continue to do in order to keep you residents happy and satisfied (activities you do, meals you prepare, other points of interest)

PLEASE NOTE: This is the question you must answer inside prospective new families and residents' heads: "why should I select your building versus the competition, or just doing nothing at all?"

Failing to give specific, concrete reasons "why" is the difference between getting new residents in these unique times, or not. It's not any more complicated this this! "Why should I choose you" … keep this in mind and make it the centerpiece of every message you send to those who are looking for what you have to offer.

Chip Kessler provides marketing/customer service consulting services to nursing and assisted living facilities nationwide. He has also created staff development and training programs in these disciplines. If you are interested in discovering more about these programs, plus his personal consulting services, go to ExtendedCareProducts.com or call 800-807-4553.

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