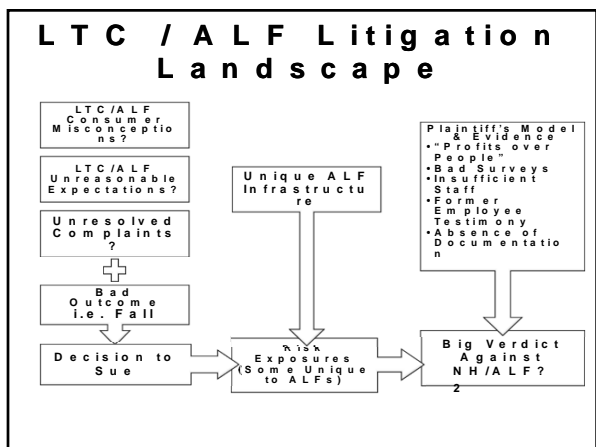


**Applying
Lessons Learned
from LTC / ALF
Litigation
to Reduce Risk**

KHCA
NATIONAL HEALTH CARE ASSOCIATION

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**LTC Litigation
Climate**

- ◆ Negative Public Perception of Nursing Homes and Society's Fear of Aging
- ◆ Perception of Elderly as "Frail," "Dependent"
- ◆ Factors in Decision to Sue
 - Bad Outcome (i.e., fall)
 - + Guilt?
 - + Personality Conflict?
 - + Unreasonable Expectations?
 - + Unresolved Complaints?
- ◆ Cases Emotional (juror

Lawyer's Mode of Attack:
Evoke Anger & Sympathy
◆ Put Facility on Trial, Not Care Provided to Resident
◆ Sufficiency of Staffing
◆ Turnover and Former Employees
◆ Survey History
◆ Resident and Staff

How Attorneys Prove Neglect and Abuse
◆ Arguments based on hindsight: Whatever care was provided was not enough
◆ Evidence of industry wide issues in facility caused bad outcome
◆ Care not charted = care not given
◆ What is charted cannot be trusted
◆ Missing records

The LTC Fall Case: Plaintiff's Themes
◆ Falls occur when resident is not properly supervised
◆ Falls are the result of a "conscious corporate decision to undercapitalize the facility
◆ Facility's fall protocols and Section 483(25)(h)(2)/F324 establish the standard of care: violate either

**The ALF Fall Case:
Plaintiff's Themes**

- ◆ Negligent Admission
- ◆ Negligent Retention
- ◆ Falls Occur When Resident Not Properly Supervised
 - ◆ Insufficient Staff
 - ◆ Failure to Protect Resident from Harm
- ◆ Policy and Procedures Establish the Standard of Care

**Misconceptions and
Unreasonable
Expectations**

- (LTC/ALF)**
- ◆ LTC/ALF environment will be the solution to the problem or "curative"
 - ◆ Staffing Levels: Expectation of 1:1 care?
 - ◆ Special care units really mean special care?
 - ◆ "Once admitted, we don't need to participate in Mom's care"

8

**Unique
Infrastructure of
ALF**

- ◆ Care choice: economic or alternative to nursing home?
- ◆ Census-driven admission decisions
- ◆ Quick placement decisions
- ◆ Family's only point of reference: acute care

9


Risk Exposures Unique to ALFs

- ◆ ALFs are charged with the daily awareness of the general health of their clients
- ◆ ALFs market "autonomy" and "independence"
- ◆ ALFs are easy targets for wandering/elopement cases and fall cases
- ◆ Minimum documentation requirements
- ◆ Risky admissions
- ◆ Poorly-defined "move in-move out" criteria

Reducing Risk Through Formal Expectations Management Program

- community is accurate regarding services the facility does and does not offer
- ◆ brochures?
 - ◆ websites?
 - ◆ statements made by admissions / marketing staff?
- "No good press can be same as bad press"
- ◆ Consider involvement in community that allows facility to understand its perception in the community and improve reputation and relationships
 - ◆ Consider providing

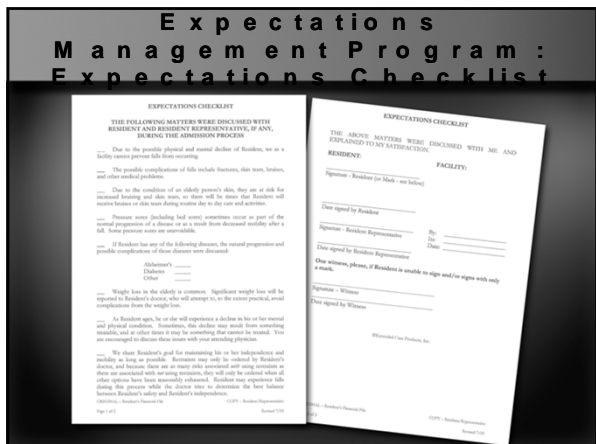
Reducing Risk Through Formal Expectations Management Program



unreasonable expectations together with feelings of

set the stage for conflict, and when combined with bad outcome, can be factors in a decision to file lawsuit

- ◆ Tools and Training for Managing Expectations
 - ◆ Recommended admission video: Setting Realistic Expectations (www.extendedcareproducts.com)
 - ◆ provide family with educational resources on aging/disease process
 - ◆ Have family acknowledge in writing discussions regarding realistic expectations



**Expectations Management in ALF:
Negotiate Risk and Obtain Consent to Treat**

Written Consent to Treat and Acknowledgement of Risk and Understanding of Level of Care

Family

- ◆ Understand Risks, Level of Care and Elect Admission to ALF

Doctor (Physician Certification)

- ◆ Aware of Resident

Risks

- Cannot Eliminate Fall Risk
- Falls Will Occur

Values

- Autonomy → Risk Falls

Levels of Care

- No 24 Hour Supervision
- No 1:1 Care
- No Dr. on Staff
- Explain Staff Patterns

Effective Handling of Complaints: Background

1. Complaints occur because of a failure to meet expectations
2. People who complain actually want to improve the relationship
3. The effective handling of a complaint may create a long-lasting relationship and loyal customer
4. Unresolved complaints cause anger

**E f f e c t i v e H a n d l i n g o f
C o m p l a i n t s : B a c k g r o u n d**

W h e n a c o m p l a i n t i s
n o t h a n d l e d
a p p r o p r i a t e l y ,
r e s i d e n t s / f a m i l i e s g e t
angrier.

A n g e r i s d i r e c t e d a t :

- ♦ P e r s o n w h o t o o k
c o m p l a i n t
- ♦ T h e f a c i l i t y
- ♦ T h e c o m p a n y t h a t
r u n s t h e f a c i l i t y

**E f f e c t i v e H a n d l i n g o f
C o m p l a i n t s : B a c k g r o u n d**

W h o d o r e s i d e n t s /
f a m i l i e s c o m p l a i n t o ?

1. 1%-5% c o m p l a i n t o
a d m i n i s t r a t i o n
2. *45% complain to caregivers*
3. 50% n e v e r
c o m p l a i n
(e v e n i f t h e r e i s a
p r o b l e m)

*All caregivers on floor must be educated
on how to take a complaint and how to*

**E f f e c t i v e H a n d l i n g o f
C o m p l a i n t s : B a c k g r o u n d**

B a r r i e r s t o e f f e c t i v e
c o m p l a i n t i n t a k e a n d
h a n d l i n g b y
c a r e g i v e r s :

1. L a c k o f k n o w l e d g e
o f c a r e g i v e r s o n
h o w t o r e s p o n d t o
c o m p l a i n t s
2. " W e k n o w w h a t
w e ' r e d o i n g "
a t t i t u d e
3. " I d o n ' t h a v e t i m e

**E f f e c t i v e H a n d l i n g o f
C o m p l a i n t s & I n c r e a s i n g
R e s i d e n t / F a m i l y
S a t i s f a c t i o n : S L A M**

**S t o p
L i s t e n
A c t
M o n i t
o r**

Note: While SLAM technique can be used for any type of complaint, re-emphasize with staff members some types of complaints cannot be resolved by caregiver alone (i.e., complaints of abuse, theft, improper care).

S L A M

S t o p

**W h a t y o u a r e
d o i n g a n d g i v e
y o u r u n d i v i d e d
a t t e n t i o n .**

S L A M

L i s t e n

**T o t h e c o m p l a i n t a t e y e -
l e v e l w i t h t h e p e r s o n
m a k i n g t h e c o m p l a i n t .
A s k i f y o u c a n t a k e n o t e s .
R e p e a t t h e c o m p l a i n t y o u
j u s t h e a r d .
U s e " y e s " t o p r o v i d e
f e e d b a c k a n d e s t a b l i s h
c o m m o n g r o u n d .
W a t c h f o r w o r d s t h a t
i d e n t i f y r e p e a t c o m p l a i n t s ,
e . g . , " a l w a y s , " " e v e r y**

S L A M

A c t

Act immediately.

Fix problem if, in your power to do so.

If you cannot, establish what you will do to report complaint and follow-up with person making complaint.

S L A M

**M o n i t
o r**

Make sure complaint has been resolved and the problem has not reoccurred.

If complaint cannot be resolved by staff person taking complaint, follow-up with person making the complaint and make sure complaint resolved to their satisfaction.

**is Always Right" and
Unreasonable
Expectations**

Establish
common ground
with resident /
family by
focusing
together on the
goal and not the
means to
achieve the goal.

**Fall Case:
Applying the
Standard of Care**

- ♦ The nursing home does not have a duty to prevent all falls
- ♦ The nursing home has a duty to act reasonably in assessing fall risk and utilizing reasonable interventions to reduce the risk of falls (or significant injury should a fall occur)
- ♦ Resident's dignity and quality of life require least-restrictive measures be utilized first
- ♦ Generally
 - ♦ Assess fall risk
 - ♦ Formulate care plan
 - ♦ Follow care plan intervention

Falls: Minimize Risk

- Falls can be managed. Not all falls can be prevented.*
- ♦ Be honest with your families
 - ♦ Negotiate the risk (discuss/explain)
 - ♦ Plan ahead for your interventions
 - ♦ Consider all new admissions at risk for falls
 - ♦ Plan your interventions according to type of fall risk
 - ♦ Complete the fall risk assessment tool within the first hour of admission (if you rely on the tool)

Falls: Minimizing Risk (ALF Specific)

- ♦ No representation facility will "prevent falls"
- ♦ Define and implement specific "move in-move out" criteria (no inappropriate admissions)
- ♦ Obtain client's baseline assessment and establish realistic service plan
- ♦ Educate family and negotiate risk during admission process
- ♦ Obtain consent to treat from client and physician
- ♦ Monitoring and awareness of client's general health conditions
- ♦ Demonstrate critical thinking

**R i s k M a n a g e m e n t
H o t L i s t**

- ◆ **P r o t e c t i n g I n t e r n a l
I n v e s t i g a t i o n s ,
I n c i d e n t R e p o r t s
a n d Q A**
- ◆ **E m p l o y e e F i l e s
(c u r r e n t a n d f o r m e r)**
- ◆ **P o l i c i e s a n d
P r o c e d u r e s**
- ◆ **M e d i c a l R e c o r d
R e q u e s t s**

**T H E M E D I C A L
R E C O R D S R E Q U E S T :
D E C I S I O N T R E E**

- ◆ **I s t h e r e s i d e n t a l i v e ? I f s o ,
i s t h e a u t h o r i z a t i o n
e x e c u t e d b y t h e r e s i d e n t ?**
- ◆ **I f a l i v e a n d n o t s i g n e d b y
t h e r e s i d e n t , i s t h e
a u t h o r i z a t i o n s i g n e d b y a
l e g a l r e p r e s e n t a t i v e o f t h e
r e s i d e n t ? I s p o w e r o f
a t t o r n e y d o c u m e n t a t i o n
a t t a c h e d ?**
- ◆ **I f t h e r e s i d e n t i s d e c e a s e d ,
i s t h e a u t h o r i z a t i o n
e x e c u t e d b y t h e p e r s o n a l
r e p r e s e n t a t i v e o r e x e c u t o r
o f t h e e s t a t e ? I s s u p p o r t i n g
d o c u m e n t a t i o n a t t a c h e d ?**
- ◆ **C a r e f u l l y c o n s i d e r b e f o r e
e x e c u t i n g a c c o m p a n y i n g**
