Survey and Malpractice in Nursing Homes

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Acknowledgements

AMDA Conferences / Website / JAMDA
CMS Manual
Learning Objectives

- Review of State Survey Process
- Malpractice in Nursing Home
Regulations

- Knowledge of regulations applicable to Long term care facilities:
  - Federal Regulations
  - State regulations
  - JCAHO

- Professional / Administrative requirements
Agencies responsible for compliance of regulations

- Department of Health and Human resources
- HCFA now CMS
  Medicare and Medicaid claims
  Develops and enforces policies
- Department of Health (State level)
  Ensures compliance with federal rules
  May have their own regulations
Facility Investigations

- **Federal**
  - US Attorney General office
  - Office of the Inspector General

- **State**
  - State Attorney General office - pain...
  - DOH survey - Annual / complaint generated
  - State licensing boards

- **Local Police**

- **Private Attorney**
State Survey

- State

DOH survey - Annual / complaint generated
Annual;
3-4 days
sample - 20 to 25%
Audit of the chart - MD/RN/SW/PT notes
Med-Tech book - times / missed dosages
QI - Falls, pressure sores, wt. Loss etc.
Citations
Correction plan
Follow up visit within 2 weeks
The regulations encompass several domains like:
- Weight loss
- Pressure ulcer
- Quality of care

Each domain corresponds to a regulatory code known as a Federal tag (F-tag) number.

Citation as F-Tag after the survey is completed.

Facility has to file for plan of correction within 2 weeks.
Deficiencies

- No actual harm with potential for minimum harm - A, B, C
- No actual harm with potential for more than minimum harm - D, E, F
- Actual Harm that is not immediate jeopardy - G, H, I
- Immediate jeopardy to resident’s health or safety - J, K, L.

Example - Pharmacy: F-Tag 429 G
F Tag 501 - Guidelines for surveyors

- F 501 will be cited with quality of care deficiencies
- Investigative protocols for 501 added like pressure sores
- Surveyors directed to communicate with medical director about various concerns
- Surveyors will correlate quality of care issues with medical director involvement
- F 501 citation is against the facility
Surveyors Communication with Medical Director

- Admission of residents whose care needs cannot be readily met by the facility
- Access to or provision of physician or consultant services
- Facility’s success in honoring residents rights and enhancing personal dignity
- Implementing and maintaining current standards of practice for resident care and quality of life
- Effectiveness of various committees responsible for overseeing resident care - e.g.s infection control
To investigate:

• Presence of a functioning Medical Director

• If concerns for resident care;
  - Facility / medical director responsibility for resident care policies
  - Coordination of medical care / physician leadership - quality assurance
Surveyors Investigative Protocol

- **Investigative Areas:**
  - Physician Credentialing
  - 24 hour physician services / coverage
  - Timely visits and orders
  - Scope of practice of physician extenders e.g., can not do skill admission
  - Medical director response to care problems
  - Attending physician liaison, education, monitoring, feedback, intervention
  - MD’s signing orders / D/C summaries
Surveyors Investigative Protocol

- Investigative Areas:
  - Admission policies;
    Process- MD notification/acceptance
    Types of patients can be admitted- e.g.,
    wound vac., respirator etc.
  - Delivery of other services;
    Nursing, PT/OT/ Pharmacy, xrays, labs.
  - Advanced directive/ end of life care
  - Conduct of research;
    Resident protection/consents/ protocols
  - QA participation
Surveyors Investigative Protocol

- Investigative Areas:
  - Reviewing any accidents
  - Assuring to monitor MD/NP/PA performance/credentials
  - Providing Information to MD/NP/PA AMDA updates
  - Reviewing random charts; MD notes, timing of H&P
  - Addressing any staff / family concerns about MD/NP/PA
Type of Deficiency F 501

- Severity Level 4 - Immediate Jeopardy (IJ)
- Severity Level 3 - Actual harm, not IJ
- Severity Level 2 - No actual harm with potential for more then minimal harm
- Severity Level 1 - No actual harm with potential for minimal harm
General Severity Criteria - F 501

- Failed to intervene with attending physicians in order to facilitate medical care
- Failed to provide guidance and/or approval of resident care policies
- Show evidence of process failures with respect to the medical director’s responsibilities
  
  AND

- Deficiency of another Tag
Examples

- Pattern of having problems with INR - Bleeding complications in several residents
  - Lack of INR protocol

- Pattern of certain attending physician not returning calls promptly and Medical director is aware of the problem

- Pattern of Pressure sores / wt. Loss etc...
Initial Facility Investigations

- How it works;
  - Record request
  - On-site inspection
  - Interviews
  - Written statements
  - Follow-up investigations
  - Medical Director usually not involved in this process
Role of Medical Director

(Facility Investigations / surveys)

- Raise a possibility of investigation

- Create protocols

  Who to notify (Be sure MD is one of them)

  When to inform an attorney

  What to initially tell the authorities

- Become familiar with facility’s policies

- Ensuring that policies are appropriate / documented
Role of Medical Director

(Facility Investigations / surveys)

- When Medical Director should be notified
  - Occurrence of serious injury resulting from a fall
  - Any abuse allegation
  - Serious medication error
  - Significant understaffing
  - High incidence of falls /restraints/ pressure sores
Role of Medical Director

(Facility Investigations / surveys)

• **When to contact an Attorney**
  - Death of a resident due to a serious medication error
  - Incident of physical abuse of resident by the staff or another resident
  - Incident of tampering the medical record of a resident

• **Attorney** - experience in long term care

• **Citations** - Rule of 10 (> 10% falls/sores etc.)

• **Common areas of litigation;**
  - Falls / Injuries / Pressure sores / Neglect or abuse
Malpractice and Litigation in Nursing Homes
Malpractice and Litigation

High risk problems

- Falls
- Weight Loss
- Pressure Sores
- Dehydration
- Medications – adverse reactions, polypharmacy
- Elopement
- Elder abuse
Avoiding Malpractice and Litigation

- Communication, communication, communication
- Thoughtful policies, especially for high risk domains
- Staff training
- Thorough documentation
- Transparency
- Regular family meetings
Avoiding Malpractice and Litigation

• Staff
  + Return calls promptly
  + Designate one contact staff for difficult family
  + Share plan of care and update
  + Protocols for follow up on abnormal labs; e.g., who is told, fax?, data on unit
  + Sign-outs and hand-offs

• Covering Physicians
  + Interest, knowledge in geriatrics and LTC
  + Available, Proper sign in and sign outs

• Interaction with DON / Administrator
Policies and Procedures

- To identify and manage falls, weight loss, medication errors, pressure sores, incontinence, et al.

Training

- Nurses and CNAs are responsibility of DON
- MDs, med students - Medical Director
Other Strategies to Reduce Attending MD and NP Risks

• Document in progress notes
  + Communications with family members
  + Attempted phone calls to contact families
  + Any refusals of treatment by patient / family / DPOA
  + Review any previous labs. since the last visit
  + New wt. Loss / skin change - plan of care

• Regularly review nurses notes
  + Verify accuracy and completeness of documentation - feedback to DON
  + Verify accuracy of any provider conversations with staff and family
Reasons to practice in Nursing home

- The population of seniors is growing
- Nursing homes need good doctors
- LTC is not only long term patient – SNF
- There is less managed care involvement
- LTC practice is more steady than out-patient
- Flexible work schedule
- Overhead is very low
- Offers other opportunities e.g., MD, Home health care
- Reimbursement is getting better – closer to hospital level of care
References:


4. AMDA website- AMDA.COM
How do you keep up?

- JAMDA
- JAGS
- AMDA - www.amda.com
  - Role / responsibilities of Medical Director
  - Guidelines / Policy papers
  - Synopsis of Federal Regulations
  - Certified Medical Director (CMD) course
- State / National level meetings
- AMDA, AGS, GSA
- Local chapter of AMDA