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Top 10 Recommendations to Avoid Litigation

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Nursing homes and assisted living facilities have been targeted by plaintiff's attorneys who advertise heavily in an effort to solicit plaintiffs for malpractice suits. Often, the plaintiffs are unhappy family members of residents who have experienced falls, pressure wounds, unexplained injuries or death at nursing homes. In our practice defending long term care facilities, we encounter common trial themes that are designed to tug at the heartstrings of jurors. These themes include "profits over people," corporate negligence, understaffing and general neglect. There are, however, some relatively simple and straightforward actions that nursing homes can take to avoid litigation, even in the current litigious environment. These are our top 10 recommendations:

10. Conduct Background Checks. State and federal regulations require nursing homes to conduct background checks on their caregivers. Such a practice helps long term care facilities weed out bad apples and focus on employees who truly care about the residents they treat. Consider conducting background checks on potential residents as well. Having a registered sex offender as a resident will provide a plaintiff's attorney with compelling ammunition if there is a case of resident-on-resident abuse.

9. Go the Extra Mile After Discharge. It is important to show residents and their families that you care both during a person's residency and after. Maintaining a positive relationship with families following a resident's discharge is an effective means for avoiding litigation later. If a resident passes away, have representatives from the facility attend visitation or the funeral and send a card or memorial to the family. Additionally, consider inviting the family members of former residents to the facility for an annual memorial service to honor the individuals who resided at the facility in the past.

8. Train Your Staff. Training your staff is not only required to satisfy federal and state regulations, but it can also be vital to avoid litigation. Often in litigation, family members report instances where they were told by CNAs and nurses that the facility was "understaffed" so they could not timely change or feed their loved one. Other times, family members report complaints from staff about the condition of the facility, problems with equipment and the absence of supplies. Staff members should be trained on appropriate communication and interaction with residents and their families, remembering that customer service and satisfaction are crucial to the success of a facility.

7. Set Realistic Expectations. Frequently, family members who sue long term care facilities do not understand the nature of their loved one's medical condition and expect nursing homes to improve and even cure a resident's illnesses. Setting realistic expectations about a resident's outcome can help family members understand the disease process and decrease the likelihood of a lawsuit if an inevitable medical complication occurs. Maintain accurate marketing materials that do not overstate your facility's services; communicate with family members regularly about the level of care provided to their loved ones; conduct regular tours of the facility with family members and provide educational opportunities about common issues such as falls and pressure wounds. Education is key to manage the expectations of family members and to avoid litigation.

6. Use an Arbitration Agreement. Talk to your counsel to determine if your facility is in a jurisdiction that will enforce arbitration agreements. If so, implement an arbitration agreement. We have been involved in cases that have been abandoned by plaintiff's lawyers once an arbitration agreement has been enforced. While such

an outcome is rare, more often than not, arbitration is a much better forum than our judicial system, and having a dispute decided by an educated arbitrator is often much more desirable than a jury.

5. Communicate with the Resident and Family. Families file suit when they do not understand (1) that a resident's condition is deteriorating, (2) the reason a resident's condition is deteriorating and (3) the possible outcomes of a resident's condition. Talk to your medical director and the physicians in your facility to ensure they communicate regularly with residents and their families. We recommend using written communication tools such as a quarterly questionnaire that are completed by families and ask questions like, "Are you satisfied with the care delivered to your loved one?" and "Is there anything you would like to change about the care received by your loved one?" Such communications can help open a dialogue between the facility and family members (and they make excellent exhibits at trial).

4. If You Have a Policy, Follow It. This may seem obvious, but we regularly represent long term care facilities that have written policies and procedures that are not implemented in practice. Such conduct provides fodder for plaintiff's lawyers who can obtain admissions from caregivers that specific policies adopted by a facility were "violated." Review your policies and procedures. If they include procedures that you do not follow, either change your practice or update your policies and procedures manual.

3. Document Appropriately. Caregivers are humans. They work hard, often under stressful circumstances, and they may get frustrated with the residents. However, train your staff to ensure that their frustrations are voiced in the appropriate internal and confidential forums rather than expressed in the residents' charts.

2. Document Accurately. Inaccurate documentation alone can make a plaintiff's case. Documenting on a resident when she is out of the facility can make a jury question the credibility of the staff that cared for a resident. Likewise, failing to document the administration of treatments or medications enables a plaintiff's lawyer to argue that "it wasn't done if it wasn't charted." Regular chart audits and quality assurance measures to ensure accurate documentation can effectively strip a plaintiff's lawyer of such arguments and avoid criticism from their nurse experts.

1. Provide Quality Care. Above all else, provide quality nursing care. Hire and retain staff who genuinely care for the residents at your facility and work diligently to avoid preventable accidents and incidents.