

Long-Term Care Survey Alert

HOW COULD YOU HANDLE IT?

Read the situation below and decide how you would handle it before you compare it to expert advice.

Situation:

How should a nursing facility address the issue of whether residents are competent to make health care decisions, especially when they have fluctuating cognitive abilities?

Solution:

Here's how **TCW Management Company** handles the issue of resident competency to make decisions in its nursing facilities, according to **Kathy Hurst, JD**, director of health care operations and human resources for the Anaheim-based corporation.

Upon admission, the facility has the admitting physician document whether the resident is competent to do two things:

1. Enter into a contract, including the admission agreement with the nursing facility; and
2. Make informed health care decisions.

The facility staff also asks the physician to document if the resident is competent, incompetent -- or has fluctuating capacity, Hurst reports. "We have a number of residents who have some short-term memory loss or some times of day when they are better in terms of being able to make informed decisions," she reports. "That way, if the surveyor says: 'This resident is too confused to make her own health care decisions,' then you can point to the ongoing documentation to show that the resident has fluctuating capacity."

TCW-managed facilities then ask the physician to reassess residents' competency as part of the history and physical at least annually. Meantime, if the resident displays significant enough cognitive changes, the interdisciplinary staff contacts a psychiatrist to do a one-time evaluation of the resident. "Competency determinations are medical decisions -- not nursing ones," Hurst cautions.

In Hurst's view, even seriously cognitively impaired residents have a right to refuse care. "If you go to put a personal alarm on a patient who is combative and screaming and tearing off the alarm -- that patient is communicating a refusal," Hurst says.

"Yes, you can get a surrogate decision-maker to direct you to put on the alarm, but then you get into the question of how much you want to agitate a resident to do that a family member wishes to be done," Hurst notes. "That's where you have to call a team/family meeting to discuss the issue on a case-by-case basis and document that you did."