Long-Term Care Survey Alert

Reader Question

Question: If the resident is assessed by nursing or social work staff as being impaired in cognitive skills for daily decision making, is the resident considered capable of refusing treatments and should the facility follow his wishes in that regard?

Ohio subscriber

Answer: If the resident's physician has not declared the resident incompetent to make his own health care decisions in accordance with the applicable state law and the resident subsequently refuses treatment, then the facility cannot force treatment and must honor the resident's wishes in accordance with the Code of Federal Regulations. In such a case, the facility should carefully document in the resident's clinical record the following:

1. The physician had declared the resident competent to make health care decisions for himself.

2. The resident was advised and educated about the need for a clinical treatment and the consequences of refusing treatment.

3. The resident continues to refuse treatment after having been educated of consequences.

The physician and nursing staff should continue to encourage the resident to follow the treatment plan and to educate him about the consequences of his choice and his treatment options.

The facility could refuse to withhold treatment (related to religious or ethical missions) and prepare to transfer the resident (after giving the resident appropriate notice) on the grounds that the facility cannot meet the resident's expressed needs.

What if a physician declares a resident incompetent to make his own health decisions under applicable state law, and the resident has an advanced directive, guardian or power of attorney?

Then that legal representative should decide whether to accept or refuse treatment in accordance with the advanced directive or in keeping with the representative's understanding of the resident's wishes or preferences. The facility should document in the clinical record, and include a progress note from the participating physicians (usually at least two), that the resident is incompetent. Also include notes regarding the guardian's decision and/ or power of attorney regarding treatment.

If the resident is determined to be incompetent in accordance with state law and he does not have a power of attorney or guardian, the facility can do one of two things: It can pursue a guardianship in the local court or provide the treatment in a manner consistent with the facility's understanding of the resident's wishes at the time the resident was competent to make health care decisions on his own behalf.

Make sure to document how you made the incompetency determination in accordance with state law (including the physicians' notes). Also document that the resident currently has no guardian or legal representative and that your facility based the action on its understanding of the resident's wishes when the resident was competent.

In an emergency situation, the facility should provide treatment unless staff clearly knows (through a "do not resuscitate" order) that the resident does not wish the treatment. The facility should attempt to have a guardian appointed in all cases where a resident is incompetent and has no legal representative. Again, document each step of the process carefully and accurately.

Expert advice provided by Annaliese Impink, attorney with Bianculli & Impink in Arlington, VA.

Do you have a pressing question? Let our panel of experts help. Please e-mail your inquiries about survey, regulatory and quality-of-care issues to KarenL@EliResearch.com.