

Long-Term Care Survey Alert

Resident Rights: Cover The Bases When A Resident Refuses Potentially Lifesaving Care

Follow this pivotal risk management advice.

The resident or his decision-maker has a right to say "no" to care, but that refusal can leave the facility holding a bag full of F tags if the resident suffers a dire outcome. That's why you need to know when to start dotting the I's and crossing the T's to protect the facility's interests.

Example: Say a resident or his surrogate refuses care for an infected stage 4 pressure ulcer or thickened liquids to prevent aspiration, as examples. In such cases, the facility has a high level of liability and risk, says **Reta Underwood**, president of **Long-Term Care Consultants Inc.** in Buckner, KY. And the nursing home administration and care planning team have to come together and address the issue with the refusing resident, the responsible party -- or both, stresses Underwood.

Document what transpired in a concise way, she advises, including the following:

- People in attendance and date and time of the meeting
- The specific issues addressed
- The interventions and physician orders that the resident or his surrogate are refusing
- A statement that indicates the resident/decision-maker's decisions to continue refusing the care. The resident and/or legal guardian should sign and date the statement.

In situations where the facility has increased liability, such as a resident refusing thickened liquids for dysphagia, medical director **Kenneth Brubaker, MD**, goes the "second mile" and asks the resident or the power-of-attorney to sign a waiver.

"The waiver indicates that the person understands he knows the consequences of refusing the treatment and yet still chooses to do that," says Brubaker.

But in less risky situations, Brubaker doesn't take that route because he personally believes that "asking someone to sign such a paper can be polarizing." He does, however, make sure to at least have "two staff people listen to the conversation with the POA" so they can validate that the person said "she understood the consequences and is willing to take the risk." The staff then document that information in the medical record.

Key legal tip: "It's exceedingly important to document that you have adequately informed the resident or her responsible party about the risks and benefits" of a refused treatment, says attorney **Paula Sanders**, a partner at **Post & Schell** in Harrisburg, PA. "Develop an internal policy for how -- and how often -- to document that type of information," she suggests.

Try, try again: "Always reassess" whether the resident will accept the refused intervention, advises **Marian**

Scharwachter, RD, CPHRM, LNHA, who is CEO of **MyZiva.com**. Also offer the resident or his decision-maker alternatives that could potentially achieve the same outcome, experts suggest.

Editor's note: Read part 1 of this story, "When Residents Reject Care, Follow These Best Practice Strategies," in the March 2007 Long-Term Care Survey Alert. Also see "Resident Refusing Thickened Liquids? Try These Simple Work-Arounds," in this issue.