Long-Term Care Survey Alert

Resident Safety: Escape This Facility's Fate: Stop Resident-to- Resident Sex Abuse Before It's Too Late

3 strategies help you cover the bases.

If your facility doesn't take the right steps to protect residents from being sexually molested by a resident with dementia, watch out.

Case in point: One facility where a resident with dementia repeatedly made sexual advances toward female residents ended up with IJ and terminated from Medicare, according to a CMS surveyor training webinar, "Sex Abuse in Long-Term Care." The facility also received a more than $1 million CMP, which CMS settled for $400,000, reported former HHS attorney **Lisa Tripp,** who presented in the webinar. "The facility was readmitted to the Medicare program but only after they hired all new staff and all new management -- and made sure this kind of situation would never recur," said Tripp.

As outlined by the facility's CMS 2567, the nursing notes indicated repeated incidents of abuse over a period of six months, including the male resident putting his hands under female residents' clothing; in one case, he was reported found on top of a cognitively impaired female resident.

Disturbing: The nursing notes never identified the female victims, said Tripp. "This pattern held true for almost every single one of the 20-plus reports that were noted," she observed. "Not only are the victims not named -- their families aren't notified. Nothing is done at all to attend to their physical or emotional concerns. And there's no assessment of any possible trauma."

The facility's main intervention was to redirect the offending resident and occasionally provide some very short periods of one-to-one supervision, Tripp reported.

The facility "also tried a few sporadic pharmacological interventions ..." But "basically, the facility treated the molestation of these women as a problem behavior with no victim -- just because there was no physical injury or no sexual penetration that they discovered."

Tripp observed that "a quick look" at the facility's quality improvement committee notes showed that many months would pass when the committee didn't even address protecting residents from the male resident.

Deal breaker: "When interviewed, the facility administrator said he did not consider the female residents to have been abused," Tripp said. "Surveyors actually heard the same message from many on nursing staff, as well. They really looked at this as a 'boys will be boys' kind of thing."

Take the Proactive Road

Facilities faced with similar scenarios might consider these strategies and options, say experts.

1. Do a careful evaluation of the person's cognition, advises **Lynda Mathis, RN, BS, CLNL,** lead clinical consultant with LTC Solutions in Conway, Ark. Mathis recommends using the St. Louis University Mental Scale (SLUMS), a 30-point test like the Folstein except it's free. "It gives you a more accurate picture of the person's cognition than the [MDS 3.0] Brief Interview for Mental Status," she says. If the person has Alzheimer's type dementia, identify his or her functional age by using the Functional Assessment Staging Tool to identify their functional age, Mathis advises.

Beware: If the person has a higher cognitive status than those he or she is acting out with, you may be looking at a predator situation, says Mathis.

Do a med review: "Sometimes a medication the individual is taking (especially benzodiazepines and levodopa) can increase disinhibition and contribute to his/her acting out," says Mathis. Other drugs that can cause a problem in that regard include anabolic steroids, such as testosterone and oxandrolone, which are used to treat muscle wasting and weight loss in males, adds **Albert Barber, PharmD,** with Clinical Rx Consulting in Stow, Ohio.

2. Meet your reporting obligations. In the case discussed in the surveyor training webinar, "the facility should have notified the victimized residents' families," says attorney **Jeannie Adams,** noting that "facilities are supposed to contact families about a resident change in condition." In addition to federal reporting obligations, also take a look at state law requirements, advises Adams, with Hancock, Daniel, Johnson & Nagle in Glen Allen, Va. In some states, for example, you should report the incident to the State Department of Social Services/Adult Protective Services division, she says.

"Another option we have talked about with facilities is calling the police, which could mean an arrest where it's treated as a criminal matter," says Adams.

Keep in mind: Facility employees and contractors are now required to report a "reasonable suspicion" of a crime against a resident to local law enforcement and the survey agency (see page 53 of this issue for more information).

Problem: Local law enforcement agencies don't want to take on the responsibility of caring for a person with dementia in a local jail, observes nurse attorney **Barbara Miltenberger,** with Husch Blackwell in Jefferson City, Mo. "And many state psychiatric hospitals are full or for acute episodes only." She has, however, found "some law enforcement officials helpful in dealing with families that refuse to move their family member to another location when a discharge hearings officer has determined that the facility cannot meet the resident's needs."

Tip: The facility could take advantage of temporary detention orders for psychiatric evaluation, Adams suggests. "States have various options for temporary detention orders. The standard varies from state to state but there are mechanisms by which residents can be hospitalized (at least temporarily) for psychiatric evaluation."

3. Consider contacting the Ombudsman for assistance. Adams says she has worked with facilities that have had some success getting the Ombudsman "mediate a resolution." In that scenario, the facility "contacts the family of the person allegedly doing the molesting and advises them that the facility cannot care for the person and is going to have to discharge him."

To find discharge options, Adams recommends working through the Ombudsman and/or the State Department of Social Services, "if the facility has a good relationship with these entities."

Bottom line, says Miltenberger: A facility cannot keep a resident who is sexually abusing other residents. "The options are to transfer [the person] to a psychiatric hospital or perhaps a place with same sex units. If all else fails, it is the family's responsibility, if the facility cannot meet the resident's needs. For men, sometimes the use of Depo-Provera, the female hormone, will reduce the unwanted behaviors."

Mathis thinks that once people in the long-term care community talk about these issues more, they will start providing more alternative placements for such residents. (Mathis also has some ideas for supervising such residents in a nursing facility. See the sidebar on page 51.)

Editors note: You can view the surveyor training video at http://www.cmstraining.info/pubs/VideoInformation.aspx?cid=1092. The webinar also includes two other IJ cases involving sexual abuse.