

## Long-Term Care Survey Alert

### Risk Management ~ Zero In On Factors That Put Your Facility At Risk For Lawsuits

**Identify 4 risk-reducers that can keep you from court battles.**

Everyone agrees that managing certain risk factors can pay off, but the million-dollar question is -- which ones? To help answer that question, consider the findings of a recent study.

**LTCQ Inc.** identified factors in recent study that predict the likelihood a facility would get hit with a civil claim in the next year, costing it more than \$100,000 to settle, including defenses costs.

The study revealed strategies that are all "good risk management," according to **Steven Littlehale, RN, MS**, chief clinical officer for LTCQ in Lexington, MA. Littlehale and **Dick Butler, JD**, unveiled the study findings in a session, "Predicting Claims and Survey Risk in Nursing Facilities," at the 2007 **American Health Lawyers'** Long-Term Care and the Law conference in Orlando.

**One key finding:** "Low-risk facilities are low risk everywhere." That's true regardless if the facilities are in a state like Florida, which is generally viewed as the highest-risk state for being sued, or in New England, an area considered to be low risk for nursing home lawsuits, Littlehale told conferees.

Yet being in a high-risk state "amplified" a facility's high-risk profile, making it more likely to receive a claim of more than \$100K, according to the presentation.

#### Does Your Facility Have These 4 Risk Reducing Factors?

Facilities with the following factors had a lower risk of paying out more than \$100,000.

- **A high prevalence of advance directives.** Facilities with high rates of advance directives had a 43 percent less chance of paying out a claim in excess of \$100,000. That finding makes sense, in Littlehale's view, because "advance directives, if done appropriately," help families set realistic expectations. "The facility isn't creating scenarios" where a resident's loved one believes he will be walking and back to work because of the facility's great rehab when the resident is really experiencing a slow, irreversible decline, says Littlehale.

**Strategy:** One risk management strategy would be to identify residents with end-stage disease who may benefit from moving to palliative care. Then have a conversation with the family about the situation and obtain advance directives if needed. (For a free copy of an article in MDS Alert on the MDS-generated Personal Severity Index, which predicts a resident's risk of dying in the next six months, please e-mail your request to [editormon@aol.com](mailto:editormon@aol.com).)

- **Staffing to fit residents' needs rather than to satisfy staffing ratios.** Facilities with lower risk for a civil suit aligned resident acuity to the "quality and type of staff," says Littlehale. The finding "indicates that if you have a unit with residents who require lots of hands-on help with ADLs and other non-licensed nursing services, you'd do better to bulk up staffing with CNAs," he counsels.

The converse is also true. A nursing facility or unit with residents who have a high level of skilled nursing needs require licensed nurses to provide skilled bedsip: "One predictor for avoiding" losses on claims is having access to RNs on staff.

**Fascinating finding:** Facilities that buttressed their staffing ratios with temporary agency caregivers didn't do well compared to facilities that "consciously decided to run a little leaner with permanent staffing rather than bring in temp

agency staff," says Littlehale.

**Proactive strategy:** If a facility has to use temp staff, it might negotiate a long-term contract with the temp agency to provide the same staff to the facility, advises Littlehale. "That may cost more but the facility can then control and monitor" the temporary staff "and give them the orientation and supervision they need."

**Another idea:** One thing Littlehale did in his own practice is to assign an agency staff nurse to a permanent staff person who served as a buddy or mentor. Staff also treated the agency person like a guest and helped make her feel special and appreciated, he says. As a result, the temp nurse was more willing to ask their buddy and team for help "and ultimately convert to a permanent position," says Littlehale.

The temp nurses were also more likely to ask their agency to be assigned to the facility again. Word spread, he says, and the approach along with other strategies significantly reduced staff vacancies at the facility.

- **Preventing and managing consumer complaints.** The study found that a complaint to the state survey agency increased a facility's risk of being hit with a claim -- regardless of whether surveyors found the claim to be substantiated, noted Butler. (For ways to prevent families from becoming disgruntled, see the story below.)

- **Absence of a G-level or higher survey deficiency.** Facilities with at least one G-level deficiency on their annual survey had a higher risk of a greater than \$100,000 loss compared to facilities without such deficiencies.

### **Use Generic Risk Management at Your Own Risk**

Another take-home message from the study: Generic risk management programs aren't the best idea.

To better target risk management activities, you have to tailor your efforts to the facility's case-mix population, which may vary by unit, Butler emphasized.

Any continuous quality improvement program or risk management program has to be focused on your patient acuity, Butler counseled. That means multi-facility providers may have to customize risk management to each building if it has different patient populations, he said.