Long-Term Care Survey Alert

SPECIAL FOCUS: MANAGING RESIDENTS REFUSING CARE--When Residents Reject Care, Follow These Best Practice Strategies

Here's how to walk the survey tight rope on this high liability issue.

If surveyors discover that a resident has been rejecting care, be ready to show them how your interdisciplinary team has assessed and addressed the situation.

You can't force a resident to take medications or participate in activities, says attorney **Nancy Shellhorse,** with **Thompson & Knight LLP** in Austin, TX. But she notes that the revised F329 guidance (unnecessary drugs) addresses that issue in relation to medication administration. "**The Centers for Medicare & Medicaid Services** wants to see facilities document that a resident refused medication and assess and address the reason, if possible," she says.

Yet surveyors' focus on the issue of residents refusing care encompasses more than medications. Attorney **Paula Sanders** tells **Eli** that she's seeing surveyors taking a look at the issue of balancing the resident's right to make an informed choice to refuse care and meeting his "medical and safety needs."

Take the First Step

If the facility has someone who persistently rejects care, the staff should ask whether the person is cognitively intact to understand the risks of that decision, advises **Reta Underwood,** a survey expert and president of **Consultants for Long-Term Care** in Buckner, KY. "The cognitive assessment coded on the MDS is your 'primary' documentation for a resident's status," she says. "If the person doesn't have the mental capacity to make informed decisions, who is legally responsible for the resident in that regard? If there isn't anyone, the facility needs to take steps to get someone in that role."

Stay on top of a moving target: Keep in mind that a resident's decision-making capacity is fluid, advised a panel of speakers on balancing residents rights and health and safety at the November 2006 **American Association of Homes & Services for the Aging** conference.

A person "may be demented beyond belief," but can still say I want to wear my blue shirt, said Sanders, who participated in the presentation. You constantly have to reevaluate what is going on with the resident and where they stand in terms of being capable to make a decision about x but not y, emphasized Sanders, a partner at **Post & Schell** in Harrisburg, PA. "And if they aren't capable, what do you do" then?

Real-world strategy: Masonic Village at Elizabethtown uses a tool that assesses a resident's ability to make medical decisions. Yet even though the person has limited ability to make decisions today, they can have "no ability" tomorrow, noted **Kenneth Brubaker, MD, CMD,** a medical director for the facility in Elizabethtown, PA.

For example, the person could have delirium due to low sodium or a change in medication, among other causes. Depression and psychiatric illness, such as bipolar disorder, can also affect decision-making capability, Brubaker told AAHSA attendees.

Encourage Residents' Compliance With Prescribed Care

If the resident or his responsible party refuses care, educate him/her about the risks and benefits of that decision -- and document that you did, advises **Kurt Haas,** a former surveyor and currently a consultant in Amanda, OH. Also do a careful assessment and root cause analysis to figure out why the resident is refusing the care. For example, if he refuses

a medication, is that because he believes he had a negative reaction to it? asks **Nathan Lake, RN,** an MDS and long-term care expert in Seattle. "Did he have a negative experience with the medication nurse on a certain shift and wants to avoid further interactions? Has someone told him the medication or treatment is harmful?"

If the resident refuses medication because of side effects, switching him to a medication in the same or another class may be just what the doctor should order. For example, "if a resident refuses one class of blood pressure medication ... there's a good chance the physician and consultant pharmacist can find some alternative class of drugs that works for the person," says **William Simonson, PharmD, FASCP, CGP,** independent consultant pharmacist in Arlington, VA, and chair of the **Commission for Certification in Geriatric Pharmacy.** "The same is true for non-insulin dependent diabetes -- there are many different drugs from which to choose."

Care Plan the Alternatives

If the person continues to refuse an intervention, explore and document alternatives you've used to accommodate the resident's wishes and his medical needs. Document that not only in the physician and nursing notes but also in the social worker and activities notes -- especially with the new activities F tags, advised Sanders. And "make sure your care plan reflects whatever accommodations you are trying to make and that the resident has been a participant in the decision-making process."

For example: Say a resident who has significant depression refuses antidepressant medication therapy and he's cognitively able to make that decision, which his family supports. "The facility could design a care plan that includes a number of interventions to address the depression and get to the root cause of the condition -- for example, counseling or social services interventions, activities and exercise," says Sanders. The facility could also assign one of the more engaged residents to encourage the person to come out of his room and participate in activities.

Take credit: Your interventions "lose their steam" if they aren't documented so that "surveyors can see evidence of what you've done," including showing the active role of the medical director, said AAHSA presenter **Alan Horowitz,** assistant regional counsel for the U**.S. Department of Health and Human Services.**

Risk management tip: Consider obtaining a signed waiver from residents or their responsible parties where they refuse interventions in high liability situations -- for example, thickened liquids to prevent aspiration. (For details on how to protect the facility in that type of scenario, see the April 2007 Long-Term Care Survey Alert.)