

Preventing Risk in Long-term Care: Lessons Learned

Save to myBoK

by Amy Wright, RHIT, HRM

“If you or a loved one has been the victim of nursing home abuse, please call for a free consultation.” This refrain is familiar to Floridians and is quickly moving to other states where laws allow large punitive or damage awards for malpractice lawsuits.

Long-term care appears to be a growing arena for malpractice lawsuits. The industry is particularly vulnerable because of the nature of the business. Admitting a loved one to a nursing home is an emotional and often a guilt-ridden decision for families. Malpractice attorneys have been able to paint a picture of a dark place where a fragile loved one spends his or her final years without care, compassion, or dignity. One prominent attorney even makes an unsubstantiated accusation that 40 percent of nursing home employees have criminal records. The result is an emergent crisis for long-term care facilities and corporations in a growing number of states. This article offers advice on how to keep your long-term care facility free of risk from unjustified malpractice lawsuits through careful attention to documentation.

Preventing Problems

According to Eileen Austin, a risk management consultant and former expert nursing witness, people sue for two reasons: they think no one cares and they want to know what happened. The latter explains the high requests received for medical records. Litigation starts with the medical record. When unsound, it opens the floodgates for out-of-court settlements.

How can a facility address the primary reasons people sue? First, deal with the situation directly. A potential problem may be remedied with a simple apology, not as an admission of guilt—just as one human being to another. If appropriate, let the family know what happened, why, and what corrective actions are being taken. The facility staff must let them know they care. Second, recognize that a properly maintained and documented medical record plays a prominent role in risk management and a facility’s defense against a malpractice claim.

Poorly maintained or documented medical records hinder a facility’s defense, which could lead to settling a case with a large lump-sum award. It is difficult for a facility to defend itself when records cannot be found, documentation contradicts itself, records were tampered with, and charting is neither complete nor objective.

Taking on Risk Management

It is important for HIM professionals to understand their role in risk management. First, ensure that there are quality measures for record controls in place. This includes ensuring the security and the integrity of the medical record as well as implementing chart audit/monitoring for the content. Second, be sure to attend facility meetings relating to risk management. It is important to be part of the process of identifying risk areas and implementing change. Finally, attend seminars and training to become better equipped with up-to-the-minute changes in state laws, regulations, and court decisions.

Risk management is critical, but in order for it to be successful, facility staff must be sold on its goals. Facility staff managers should:

- **Know and focus on your facility’s problem areas.** This will help you pick your battles and give staff hard statistics regarding the need for improvement. Also, be sure to focus on the positive, commending the good they do each day.
- **Treat your residents well and your staff better.** This will help not only with meeting staffing guidelines, but happier staff mean happier patients and happy patients usually don’t sue. Petty cash incentives and a modest budget for extracurricular activities can reap big dividends.
- **Train, train, train.** Does your staff know the implications of risk management and HIM functions? In-services on privacy and documentation practices are a good start and are a good way to raise the profile of our profession. Listen to

and implement staff ideas when possible to assure buy-in. Share statistics regarding the effect of lawsuits in your area. Educate staff about the effect of litigation regarding everyone's insurance rates, healthcare availability, and job security.

Proactive risk management is the first line of defense for a long-term care facility, and who better to fill this role than the HIM practitioner? Although the skill required to dissect and analyze such occurrences is inherent to HIM professionals, most of the risk management positions are held by registered nurses. As trained professionals, it is imperative that we sell our ability to perform diverse tasks. Managing information, after all, is managing risk. HIM professionals, while relatively small in number, constitute a pivotal group that can turn the tide of the litigation crisis in the long-term care industry. By working together with legislators and local healthcare experts we can ensure the longevity of our careers and the best care for long-term residents. u

Reference

AHIMA. "LTC Health Information Practice and Documentation Guidelines." Version 1.0 (September 2001). Available at www.ahima.org.

Amy Wright (thewrightsolution@msn.com) is consultant/risk manager for The Wright Solution in Largo, FL.

Lessons from Florida

Florida was one of the first states to see the growing trend in malpractice lawsuits. Increasing malpractice litigation has resulted in facilities, corporations, and practitioners leaving Florida because they are unable to obtain malpractice insurance. In 1998, there were more than 50 carriers of malpractice and liability insurance in the state. Today there are three. Many companies and physicians are forced to "go bare," meaning they carry the minimum amount of coverage allowed by law. This also minimizes the perception that they have "deep pockets"—the ability to pay large financial settlements or jury awards.

Faced with this grim scenario, Florida, with its high elderly population and an alliance of legislators and healthcare leaders, is building a model of how to mitigate the malpractice litigation in long-term care. An early foothold is Florida State Senate Bill 1202, which was enacted in May 2001. This legislation mandates, in part, that each nursing facility appoint a **qualified risk manager**. It also institutes a reporting system for adverse incidents, mandates monthly risk management committee meetings, and requires quarterly monitoring visits by the agency. This makes for a lot of red tape for the facility's staff, but also rewards such as reasonable caps on punitive and other damages.

The bill emphasizes quality and proactive approaches. **Quality documentation, vigilant incident reporting, and in-depth investigations** are the goal. Mandated 24-hour and 15-day reporting criteria for incidents such as broken bones, injuries of unknown origin, abuse, elopement, and death have been implemented.

AHIMA developed its LTC Health Information and Documentation Guidelines to provide the long-term care industry with professional guidance on properly maintaining health information/ medical record systems, implementing proactive audit/ monitoring systems, and implementing good documentation practices. The guidelines are available at www.ahima.org under HIM Resources or in the FORE Library: HIM Body of Knowledge in the Communities of Practice at www.ahima.org.

Article citation:

Wright, Amy. "Preventing Risk in Long-term Care: Lessons Learned." *Journal of AHIMA* 74, no.1 (2003): 64, 66.

Driving the Power of Knowledge

Copyright 2022 by The American Health Information Management Association. All Rights Reserved.