



NEWS & VIEWS

A Complimentary Newsletter from Med-Net Concepts, LLC
and its Network of Independent Affiliated Companies

Volume 4. Issue 9
September 2018

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ADMINISTRATORS TAKE NOTE

Two Series of Fraud Modules with NAB/NCERS CEs Are Now Available

A new set of NAB/NCERS approved fraud modules 9 -16 offering 3.75 CEs is now available on our website. These new modules, as well as modules 1-8 which offer 3 NAB/NCERS CEs, provide education on fraud, waste, and abuse prevention, and offer a combined total of 6.75 CEs for successful completion. All courses were developed by Betty Frandsen, our Director of Healthcare Education Development, and her staff.

Visit the Med-Net Compliance, LLC website at:

<https://www.mednetcompliance.com/med-net-academy/nab-ce-course>

The Intersection Between the Compliance and Ethics Committee and the QAPI Committee

By:
Louise Lindsey, Editor

The Centers for Medicare & Medicaid Services (CMS) regulations require nursing homes to have in place a Compliance and Ethics Program (§483.85) and a QAPI Program (§483.75).

A notable place where these two committees intersect and work together occurs when a facility encounters a compliance violation that may have systemic roots connected to providing substandard quality of care. While the providing of sub-standard quality of care is obviously something that falls into the realm of the QAPI Committee, if that sub-standard quality of care involves fraud, waste and abuse, it may be considered a violation of the False Claims Act due to the submission of claims to Medicare and Medicaid for reimbursement of those sub-standard services. This makes it a concern of the Compliance and Ethics Committee.

Here is an actual reported event to illustrate this point:

U.S. Files False Claims Act Lawsuit against Tennessee-based Long-term Healthcare Provider Naming Six Nursing Homes and the Corporation's Director of Operations

The lawsuit alleged that the defendants were responsible for the submission of false claims to Medicare and TennCare for skilled nursing home services that were either non-existent or grossly substandard. The lawsuit also alleges that the defendants submitted required nursing facility Pre-Admission forms with forged physician and nurse signatures.

The government's complaint alleges that between January 1, 2010 and December 31, 2015, five of the provider's facilities failed to provide the most basic and essential skilled nursing services to their residents. The lack of adequate care included chronic staffing shortages and shortages of critical medical supplies, failure to provide standard infection control, failures to administer medication to residents as prescribed by their physicians, failure to provide wound care as ordered by physicians, failure to adequately manage residents' pain, and providing unnecessary and excessive psychotropic medications to residents and using unnecessary physical restraints on residents. Consequently, the residents suffered pressure ulcers, falls, dehydration and malnutrition, among other harms.

The director of operations is alleged to have been aware that the resident care at the facilities were non-existent or grossly substandard but failed to correct these problems.

For a 16-month period from 2012 to 2014, the charged facilities fraudulently submitted falsified pre-admission forms to TennCare, to receive payments the company was not eligible to receive.

In May 2016, the healthcare corporation filed for relief under Chapter 11 of the Bankruptcy Code.

Ironically, this healthcare provider was previously involved in a whistleblower lawsuit for illegally double-billing Medicare and Medicaid for feeding tubes. They settled the suit by agreeing to pay \$2 million. The whistleblower in that lawsuit had been the Director of Operations and was terminated by the company when he warned company officials about the double billing.

It is not a huge leap to connect the roles that these two committees would play in the previous illustration. The facility's policies and procedures (However comprehensive they might be!) are being ignored. The staff education and training related to quality of care, abuse and neglect, medication administration, wound care, staffing shortages, standard infection control, use of physical restraints and psychotropic drugs, malnutrition, and most likely other harms certainly fall within quality assurance and performance improvement boundaries. All could be identified as QAPI concerns regarding clinical care, quality of life and resident choice. Developing and implementing audits to reveal undetected and potentially systemic issues that can be evaluated also connects with QAPI. Education and training, auditing, investigation while related to QAPI are also elements in an Effective Compliance and Ethics Program.

The purpose of the Compliance and Ethics Program in skilled nursing facilities is to be effective in "preventing and detecting criminal, civil and administrative violations and promoting quality of care."

The purpose of the QAPI Program is to use "two mutually-reinforcing aspects of a quality management system- Quality Assurance (QA) and Performance Improvement (PI)-to create a systematic, comprehensive and data-driven approach to maintaining and improving safety and quality in nursing homes while involving residents, families, and all nursing home caregivers in practical and creative problem-solving." (Nursing Home Quality Initiatives Questions and Answers, August 29, 2017)

The success of a facility's compliance and ethics program is greatly enhanced by the thoroughness of the facility's QAPI program. Conversely, the QAPI program is strengthened by the elements of the compliance and ethics program. While both programs are the result of Federal statutes and regulation, both are charged with providing a high level of care and well-being for the residents residing in the nursing homes where they operate.

There are specified elements in each program that are intended to ensure that that program operates effectively. For example, Chapter 8 of the Federal Sentencing Guidelines identifies seven essential elements for an independent facility or corporate organization with multiple facilities to include in the structure of a Compliance and Ethics program:

- Written policies and procedures,
- Designated corporate compliance and ethics officer and a compliance and ethics committee,
- Effective training and education,
- Open lines of communication without fear of retribution,
- Enforcement through well-publicized disciplinary guidelines,
- Auditing and monitoring and
- Corrective action plans.

Similarly, a QAPI program is required to incorporate five elements in its structure. These five elements form the

tactical structure for developing, implementing and maintaining a QAPI program that rests on the solid foundation of clinical care, quality of life and resident choice. They include:

- **Design and Scope**
A QAPI program must be ongoing and comprehensive in design and scope and address all systems of care and management practices.
- **Governance and Leadership**
One person should be designated to be accountable for QAPI along with a QAPI Committee. Adequate resources should be available to enable QAPI efforts for safety, quality, rights, choice and maintaining a balance between safety and residents' rights and choice.
- **Feedback, Data Systems and Monitoring**
The facility should ensure that systems are in place to monitor care and services. These systems should continuously be incorporating feedback from staff residents, families and others with valid input and include tracking, investigating and monitoring adverse events every time they occur. Action plans must be implemented to prevent adverse events from recurring.
- **Performance Improvement Projects (PIPs)**
A PIP is a focused effort to systematically gather information regarding a problem that may occur in one area of a facility or throughout the facility. This effort identifies systemic issues or problems and follows-up with developed interventions and improvements.
- **Systematic Analysis and Systemic Action**
A systematic approach is used to determine when more in-depth analysis is needed to understand a problem, its causes and implications of a change.

The Compliance and Ethics Committee

The purpose of the Compliance and Ethics Committee is to advise and assist the Compliance and Ethics Officer with the responsibilities of that office, e.g., education and training, investigation of reported violations, monitoring and auditing areas where violations have occurred. The committee is charged with overseeing, maintaining and improving the Code of Conduct and the Compliance and Ethics program. The Compliance and Ethics Committee is comprised of these standing members: Principal/Board Member, Administrator, Compliance and Ethics Officer, Privacy Officer, and the Director of Nursing.

The Compliance and Ethics Committee at times may include Ad Hoc members in its meetings. These members could include persons in these positions: In-service Director, MDS Coordinator, Rehab Coordinator, Medical Director, Admissions/Case Manager, Medical Records Director, Accounting Director and Human Resources Director.

The Compliance and Ethics Committee meets on a regular basis that may be quarterly, monthly or more often if needed.

The Quality Assessment and Assurance Committee (QAA)/Quality Assurance and Performance Improvement Committee (QAPI)

The QAA/QAPI Committee advises the Administrator and governing board (body). It oversees the QAPI program by establishing performance and outcome indicators for quality of care and services delivered in the facility and determines which tools to use to measure data regarding those indicators. The committee interprets data within the established standards of care, benchmarks, targets and the strengths and challenges of the facility. Information that the committee gathers along with its interpretation is communicated to the owner/governing board (body).

Additional responsibilities of the QAA/QAPI Committee is the overseeing of facility systems and processes that support the delivery of quality of care and services. These include identifying and resolving actual and potential systemic problems related to resident care; helping departments, consultants and ancillary services implement systems to correct potential and actual issues in quality of care. The committee coordinates the development, implementation, monitoring and evaluation of performance improvement projects to achieve specific goals and to coordinate and facilitate communication pertaining to the delivery of quality resident care to the facility's departments, services and to facility staff, residents and family members.

QAA/QAPI Committee membership is determined by the Administrator who appoints both permanent and rotating members of the committee and to fill vacancies that may occur. The individuals required to serve on the committee at a minimum are: director of nursing, medical director or designee; and at least three other staff, one of whom must be the administrator, owner, board member or other individual in a leadership role with knowledge of facility systems and authority to change those systems. Others considered for participation include representative from Pharmacy, Social Services, Activities, Environmental Services, Infection Control, Rehabilitative/Restorative Services, Staff Development, Safety/Risk Management, Nursing Staff (non-management) and Medical Records.

The committee meets monthly and as needed to consider issues that need to be addressed in a timely

manner.

Whether a corporation operating multiple facilities or a single nursing home provider, each of these two federally mandated programs are intended to complement and facilitate the work of the other. When this happens, it strengthens the ability of the provider to provide the highest quality of care that the residents in their facilities deserve.

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