



MED-NET CONCEPTS LETTER ©

Where Compliance and Ethics, Risk Management/Safety, Quality Assurance and Performance Improvement, Reimbursement and Law Come Together.

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Dear Colleague,

Awareness is the first step toward an effective Compliance, Risk Management, Quality Assurance, Performance Improvement, and Law program. The following true reports are intended to broaden your understanding and awareness of potential exposures of liability throughout healthcare settings with the expectation that, as a starting point, forewarned is forearmed.

We believe a first-hand opinion of our sector of healthcare provides invaluable insight into the daily challenges facing our community.

Remember, it is important to immediately report any abuse of residents/patients, no matter the circumstances.

Please contact us for additional information as well as to discuss potential proactive programs to detect, prevent, and mitigate potential exposures and damages.

ALERTS



Did you know that the Office of the Inspector General (OIG) updates its “List of Excluded Individuals/Entities” (LEIE) every month—and that all LTC facilities should run a monthly check of employees against that database? Failure to do so can lead to penalties issued by the OIG, as “not knowing” that an employee is on the exclusion list is no defense. Check out the list **here**.

Tornado Hits Nursing Home in Pennsylvania

A tornado slammed into a nursing home near Conneautville, Pennsylvania, according to the Crawford County Department of Public Safety. The National Weather Service said it was an EF-2 tornado with winds up to 115 miles per hour and a path width of 50 yards. The roof and walls of the nursing home were blown off and all 170 residents were evacuated. The county sent buses to shuttle residents and employees to safety. Many of the residents stayed at a local middle school for the night and officials worked to get them spots in other facilities in the area. No serious injuries were reported, although two residents of the nursing home were hospitalized for unrelated concerns. The tornado did cause some other issues. “There was a pretty severe gas leak at the nursing home. That was one of the things that caused a few problems,” the deputy emergency manager said.

Risk Management Perspective:

Policy/Procedure: Emergency preparedness policies/procedures must be kept current.

Implementation: All staff, including volunteers and temporary workers, as well as residents and families, need to be aware and practiced in emergency preparedness processes including all special needs in the facility.

Audit: Periodically assess the policy/procedure and implementation to ensure they are comprehensive, complete, and current.

New Rulings on Connecticut Medical Marijuana Use Go against Employers

A healthcare worker told a potential employer that she took medical marijuana to deal with the effects of a car accident, but when a drug test came back positive, the nursing home rescinded her job offer. A federal judge ruled that the nursing home, which had cited federal laws against pot use, violated an anti-discrimination provision of the Connecticut's medical marijuana law. It was the latest in a series of clashes between U.S. and state laws that came out in favor of medical marijuana users trying to keep or obtain jobs with drug-testing employers. The Connecticut decision was the first ruling of its kind in a federal case and followed similar recent rulings against employers by state courts in Massachusetts and Rhode Island. Earlier rulings had gone against medical pot users in employment cases by state supreme courts including those in California, Colorado, Oregon and Washington over the past few years.

Human Resources Perspective:

Federal law typically overrides state law unless the state law is grounded in the state's constitution. In the area of employee use of marijuana for medicinal purposes, there has been conflict among state courts and now a federal court has added to that conflict. The issue is whether or not federal law, which prohibits the use of marijuana for any purpose, should govern a healthcare provider's policy towards employee medicinal use in states where medicinal use is lawful. Healthcare providers must consult legal counsel for guidance and then consistently follow that guidance in hiring, retention and termination decisions.

Policy/Procedure: There is conflict, nevertheless, follow your facility's policies and procedures.

Implementation: Education during new hire orientation and staff inservicing as laws and regulations change.

Audit: Audit your policies & procedures, education and inservices to make sure they are current and up-to-date.

EEOC Sues Michigan Department of Health and Human Services for Age Discrimination

A 56-year-old qualified applicant was unanimously recommended by an interview panel to be hired as a clinical social worker at a hospital run by the Michigan Department of Health and Human Services. The 31-year-old clinical services director instead selected a much younger employee, citing his preference for younger workers. The same clinical services director supervised another older worker, a 60-year-old woman, who worked as a clinical social worker for the hospital. When the clinical services director became her supervisor in November 2015, he gave her the least desirable assignments, scrutinized her work closer than her colleagues, and wrote her up. As a result, she took a medical leave of absence and subsequently retired.

Human Resources Perspective:

Policy/Procedure: Hiring should be in compliance with federal and state laws and regulations. Discharging or discrimination against an employee violates the Age Discrimination in Employment Act of 1967 regardless of who the individual is replaced by. It is a violation of the law to make employment decisions based on age.

Implementation: Age should not be a consideration in any employment decisions. Decisions should be based on merit and the ability to meet the criteria of the position. Educate during new hire orientation and periodically educate or train supervisory employees.

Audit: Periodically assess the policy/procedure and implementation with internal and external audits to ensure they are comprehensive, complete, and current.

Nursing Home Visitor Sexually Assaulted Resident

A 44-year-old man accused of sexually assaulting a female resident with dementia at a South Carolina nursing home was charged with 3rd degree criminal sexual conduct. Staff at the facility told the woman's family that he had been caught in the act. The resident had only been in the facility for three weeks. The man charged did not work at the facility and the family said they did not know him. "From the information we received, his family member passed in April. That facility just continues to let him come to the facility and let him visit and hang around people," a community activist, who is helping the family, said. The family's attorney said nursing home regulations are supposed to have a family member sign off on visitors when a patient has dementia.

Risk Management Perspective:

Policy/Procedure: Visitor and volunteer policies and procedures need to be current and up-to-date. Visitors and volunteers should be monitored for any inappropriate behaviors.

Implementation: Visitors should not be granted free access to all areas throughout a facility without facility staff present. Staff need to be trained to engage and report. All staff should wear ID and name tags.

Audit: Staff and management should be aware of visitors and volunteers when in the building and all staff should be aware of what is going on in the facility environment. Make sure staff are wearing their name tags.

Woman Died after Fall from Wheelchair Lift, Illinois Nursing Home Blamed

The estate of an Illinois woman filed suit against the operators of a nursing home, claiming the deceased died after she fell from a device used to lift her from a wheelchair. The administrator of the estate filed suit against the facility, as well as the company that operates the home. The woman had been admitted to the home on March 2, 2013 and she died Nov. 1, 2016. The suit claims that on Oct. 20, 2016, a nurse's assistant was attempting to transfer the patient from her wheelchair, using a Hoyer Lift (a mechanical lift). The complaint alleges that the woman fell, struck her head, and suffered a severe injury. She was taken to the hospital on Oct. 20 and discharged from the emergency department that same day. She died on Nov. 2 after being taken back to the hospital by ambulance. The suit claims that nursing home policy requires the help of two trained staff members to use the lift. The home allegedly failed to respond and act according to the patient's designation as a "fall risk," according to the suit. The suit is asking for at least \$50,000 in damages in each of two counts.

QAPI Perspective:

Policy/Procedure: Policies and procedures need to be up-to-date, and meet current guidelines, including at least two people per lift.

Implementation: Train staff in the use of mechanical equipment including lifts at orientation and periodically as needed.

Audit: Management observation of staff during normal resident care with mechanical lifts and random checks of use of mechanical equipment.

Yours truly,



David S. Barmak, JD, CEO.

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