



NEWS & VIEWS

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Pressure Ulcers.... Substandard Quality of Care False Claims Act - Fraud, Waste, and Abuse

**By:
Louise Lindsey, Editor**

The False Claims Act (FCA) that Congress passed on March 2, 1863, was intended to address unscrupulous acts of Civil War contractors who were selling decrepit horses and mules in ill health, faulty rifles and ammunition, rancid rations and provisions, and other fraudulent activities.

Since the FCA was expanded in 1986, the government has been applying it to healthcare providers to combat fraudulently submitted claims for services not provided. The FCA is also used by government authorities to hold healthcare providers responsible for claims submitted under Medicare or Medicaid programs for services that fail to meet applicable standards of care.

For example, a few years ago a U.S. Attorney used the FCA to settle allegations against a Pennsylvania nursing home involving the submission of claims for reimbursement where inadequate care had been provided for treatment and prevention of pressure ulcers, incontinence care, infection control, diabetic care, and other care concerns.

Under the FCA, a substandard quality of care allegation generally arises from one of two scenarios-a provider submits claims for reimbursement to the government with the false certification that the medical services were provided in compliance with regulations; or, the medical services provided and accurately billed were worthless and/or unnecessary.

In 2016, the U.S. Supreme Court upheld a new standard of liability under the FCA that is referred to as "implied false certification." The idea behind this theory is that the provider who submits the claim is assumed to be compliant with all relevant laws, regulations, contract requirements, etc., that comprise the conditions for payment. If a provider does not disclose any lack of compliance when they submit the claims, the claims are

considered to be false or fraudulent.

An example of "implied false certification" occurred in a case where a Medicaid beneficiary, who was receiving counseling services at a mental healthcare facility, was diagnosed as having a bipolar disorder, and was given medication that caused an adverse reaction resulting in the individual's death. The investigation revealed that the person prescribing the medication was not a licensed psychiatrist but was a nurse without the authority to prescribe medications without supervision. Additionally, it was discovered that only one of the five "so-called" professionals providing treatment was properly licensed, and the facility was providing only minimal supervision over the staff members.

No Department Left Out!

Lawsuits involving pressure ulcers continue to increase along with the settlement amounts involving future rehabilitation and disability care, pain and suffering, and punitive damages.

No department within a long-term post-acute care (LTPAC) center should be left out when concerns about pressure injury care practices surface.

Care concerns regarding pressure injuries provide an example for looking at the situation from a wholistic perspective-

- Accurately assessment of skin evaluation,
- Physician's orders for treatment,
- Personal care provided by the nursing staff,
- Turning and re-positioning of residents,
- Providing proper hydration and enhanced nourishment, and
- Weighing and noting decreased appetite.

The following are examples of verdicts and settlements for lawsuits involving pressure ulcers:

- \$300,000 - An 88-year-old man in a nursing home developed sacral and buttock pressure ulcers after being in bed for 40 days before his death. His wife claimed neglect.
- \$500,000 - An 89-year-old man developed stage II pressure ulcers four weeks after being admitted to a nursing home. He died, and both the nursing home and the hospital were sued for negligence.
- \$13.2 million - An 87-year-old woman was admitted to a nursing home for rehabilitation after falling and dislocating her shoulder. She developed stage IV pressure ulcers. A Lawsuit claimed wrongful death due to insufficient staffing.

The federal government has issued specific regulations addressing quality of care and pressure ulcers for LTPACs. These are defined under F686 Skin Integrity. Using the comprehensive assessment of a resident, F686 requires a facility to ensure two things:

- (i) "A resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable; and
- (ii) "A resident with pressure ulcers receives necessary treatment and services, consistent with professional standards of practice, to promote healing, prevent infection and prevent new ulcers from developing."

The intent of F686 is to ensure that the facility "provides care and services consistent with professional standards of practice to promote the prevention of pressure ulcer/injury development; promote the healing of existing pressure ulcers/injuries (including prevention of infection to the extent possible); and prevent development of additional pressure ulcers/injury." F686 can be cited when it has been determined that a provider failed to implement interventions to prevent the development of a pressure ulcer for a resident identified at risk.

The Centers for Medicare & Medicaid Services (CMS) defines avoidable and unavoidable ulcers as follows:

Avoidable means that the resident developed a pressure ulcer/injury and that the facility did not do one or more of the following: evaluate the resident's clinical condition and risk factors; define and implement interventions that are consistent with resident needs, resident goals, and professional standards of practice; monitor and evaluate the impact of the interventions; or revise the interventions as appropriate.

Unavoidable means that the resident developed a pressure ulcer/injury even though the facility had evaluated the resident's clinical condition and risk factors; defined and implemented interventions that are consistent with resident needs, goals, and professional standards of practice; monitored and evaluated the impact of the interventions; and revised the approaches as appropriate.

With proper assessment, early detection and staff involvement, pressure ulcers are frequently avoidable. The likelihood of pressure ulcers developing or not developing has a direct correlation to a facility's commitment to

making prevention a top priority.

The National Pressure Ulcer Advisory Panel has created a one-page guide to help prevent pressure injuries. It is titled "Pressure Injury Prevention Points" and can be downloaded at www.npuap.org

A study by the National Institute of Health (NIH) lists three suggestions for preventing pressure ulcers:

1. **Avoid Foam and Alternating Air Mattresses** - The NIH has determined that foam mattresses "produce high local pressures... and are more likely to predispose patients to pressure sores." While alternating air mattresses are considered preferable to foam mattresses, they are less desirable than the fluid-based mattresses the study recommends after finding that "fluidizing systems have been the most consistent at reducing pressure over the bony high points."
2. **Electrical Therapy Might Be Best for Wheelchair-Bound Residents** - The study found that "functional electrical stimulation has been shown to prevent pressure sores in paraplegic patients by inducing shape changes in the buttocks and improving blood flow." The study indicated that about one-fourth of all wheelchair users develop a pressure ulcer at some point. Pillows, according to the study are not always effective because they can cause compression and "wheelchair cushions rarely result in reduced pressure readings."
3. **When Possible, Beds Should Be Kept Flat** - The study suggests that it is better to assume a flat, supine position when resting in bed during the day. "Patients tended to develop more pressure sores in sacral tissues when the head of the bed was raised." Additionally, the study reported that a flatbed decreases the gravitational force on more sensitive areas of the body. The study also recommended lying in a prone or face down position at night.

A key factor when considering care concern issues is to remember this-"knowingly submitting claims against the United States for Medicare and Medicaid services not actually performed clearly violates the False Claims Act." Avoiding substandard quality of care for LTPAC centers involves implementing effective policies and procedures, training all departments' staff on their roles for providing quality care, and periodically auditing all departments to ensure they are providing quality care according to the policies and procedures' protocols.

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Jo Ann Halberstadter, Esq

ADMINISTRATORS TAKE NOTE

Med-Net Compliance, LLC now offers two series of fraud modules with NAB/NCERS CEs on our website. Modules 1-8 offers 3 NAB CEs and modules 9-16 offer 3.75 CEs. All modules provide education on fraud, waste and abuse prevention and offer a combined total of 6.75 CEs for successful completion.

To review the NAB Accredited courses visit our website:

<https://www.mednetcompliance.com/med-net-academy/nab-accredited-courses/>

All 16 courses on fraud, waste and abuse were developed by Betty Frandsen, our Vice President of Professional Development and her staff.

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