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

To help employers and employees understand their rights and responsibilities under the Americans with Disabilities Act (ADA) and other disability nondiscrimination laws and regulations, the US Department of Labor's Office of Disability Employment Policy-sponsored Job Accommodation Network (JAN) developed the Workplace Accommodation Toolkit. The Workplace Accommodation Toolkit centralizes resources and guidance related to reasonable accommodations, including sample policies, templates and checklists, as well as training videos and access to thousands of specific accommodation ideas. You can access the toolkit **here**.

New York Nursing Home Cited for Violations after Resident Death

New York State health inspectors cited a nursing home for causing "actual harm" by providing substandard care to a resident who died shortly after he was taken to a hospital emergency room. Inspectors said two licensed practical nurses delayed calling in a registered nurse or physician after the resident began exhibiting symptoms such as an irregular pulse, vomiting, incontinence, and "grayish" skin. The report stopped short of claiming the facility caused the man's death. The State cited the nursing home for lack of quality of care, administration of unnecessary drugs, and incomplete medical records, and it recommended that the U.S. Centers for Medicare and Medicaid Services fine the facility.

Compliance and Ethics Perspective:

Providing quality care to residents requires nursing staff to continuously assess the condition of a resident and to identify and report significant changes in condition to a supervisor and the resident's physician. Failure to make timely assessments and notifications may place the resident in "immediate jeopardy" and be considered provision of substandard quality of care.

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Illinois Nursing Home Fined $25k after Resident Elopes

The Illinois Department of Public Health fined a nursing home $25,000 for letting a 49-year-old woman with dementia wander away from the facility. Video footage detailed in the report shows the woman leaving through an emergency exit at 7:06 p.m. She did not have a coat or shoes and the temperature at the time was 41 degrees. The emergency door alarm is both audible and visual, with a panel on the wall lighting up to signify which door was opened, and it must be turned off manually. When an alarm sounds, staff are supposed to check the alarm panel to see which door was opened, then check outside the door for any residents that might have exited. A nurse on the clock that night said she did not remember hearing the emergency door alarm sounding or having reset it. A second nurse said that staff probably heard the alarm and thought it was one of the residents going out to smoke and just ignored it. "The residents have a smoke break at 7:00 p.m., and the alarm constantly rings during this time," a nurse stated in the report. Video footage shows that nurses realized the woman was missing less than 10 minutes after she walked out, but no one checked out the emergency exit door until a nurse brought residents in from smoking at 7:30 p.m., nearly 25 minutes after the woman left the facility. The resident was found an eighth of a mile away and was taken to the hospital. She complained that her feet hurt because of the cold.

Safety Perspective:

An element in providing quality of care for residents in skilled nursing facilities is to provide a safe environment that is free of accident hazards and maintains an adequate level of staff to monitor and supervise the residents. The purpose of having an alarm on an entrance or exit door is to prevent residents who are at risk for wandering/eloping from leaving the facility unescorted and being exposed to potential danger and harm. Allowing a situation where residents leave the facility to go outside and smoke through a door that sounds an alarm each time one of the smokers exits, may create a blasé attitude where staff assume that the alarm is not really an alarm to be concerned about but rather just a loud, bothersome noise. This poses a safety risk for residents who may wander or elope and may result in fines by state or federal authorities.

Business Manager Accused of Stealing Nearly $30,000 from Nursing Home Residents

An Oklahoma woman was charged with twenty-one counts of financial exploitation by a caregiver. Court documents allege she took nearly $30,000 total from twenty-one residents at a facility in Oklahoma. She had worked there as the business office manager, and part of her job included handing residents' accounts. Investigators said she withdrew money from residents' accounts without permission and kept it. There is no evidence the money was ever given to the residents. She is also accused of similar exploitation at a nursing home in a nearby county.

Compliance and Ethics Perspective:

A nursing home has a fiduciary responsibility to ensure that residents' personal funds and Medicaid stipends are protected and managed, and that facility employees are not able to divert those funds for their personal use. Generally Accepted Accounting Principles (GAAP) require that in the handling of monies such as residents' personal accounts, there should be a protocol requiring a separation of duties, i.e., the person allowed to make withdrawals or expenditures cannot be the person who receives deposits into the funds. Records should also be audited on a regular basis to ensure that funds dispersed are going to the residents and not diverted for an employee's personal gain.

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Lawsuit Claims Aide Deliberately Burned Resident with a Cigarette

A lawsuit was filed against a Georgia assisted living facility and its owner, claiming a nurse aide intentionally burned an elderly resident with a cigarette. According to the complaint, during her temporary stay at the facility, the resident was burned multiple times over the course of five days. Upon information and stated belief, at the time the accused aide was hired by the facility, she had an extensive criminal history which included prior convictions for aggravated assault (family violence), possession of a knife during commission of a felony, terroristic threats, cruelty to children, and a felony drug charge. The lawsuit alleges that the facility failed to conduct a background check on the aide before she was hired to provide care to the residents. It also alleges that none of the other employees reported the burn marks they would have found while assisting the resident with her daily tasks.

Human Resource Perspective:

Performing background checks on prospective employees to ensure that the nursing home is not hiring individuals who may pose a risk to the residents because of a prior history of abusive or criminal behaviour is the responsibility of the facility's Human Resource (HR) Department. HR departments are also responsible for conducting periodic, ongoing checks of state and federal databases like the Office of Inspector General's (OIG) List of Excluded Individuals and Entities (LEIE). A best practice for HR departments is to perform OIG Exclusion monthly monitoring and also periodic checks of state databases on all employees, but particularly those providing day-to-day care to the residents.

Phishing Attack Breaches Data of 183,000 Patients of New Mexico Healthcare Services Company

A New Mexico-based healthcare services company had to notify 183,000 patients that their personal and medical information was potentially breached after a month-long phishing attack. On June 6, 2019, company officials discovered a hacker had gained access to several employee email accounts beginning a month earlier on May 9. Access began through a phishing scam focused on gaining information. Upon discovery, the accounts were secured, and officials said they launched a review into the impacted emails and contacted law enforcement. The company will be implementing additional security measures to its email system, and employees will now be required to successfully complete mandatory training about safeguarding data, including education on phishing scams and protecting electronically stored data.

Risk Management Perspective:

Nursing homes, as Medicare providers, are required to comply with the Health Insurance Portability and Accountability Act (HIPAA) regarding the safeguarding of residents in their facility. Under HIPAA, there are three rules to know: (1) The Privacy Rule that determines when a resident's protected health information (PHI) may be used and disclosed; (2) The Security Rule that specifies the safeguards a covered provider must employ to protect the confidentiality, integrity, and availability of electronic protected health information (ePHI); and (3) The Breach Notification Rule requiring covered providers to notify affected individuals, the Department of Health & Human Services (HHS), and, in some instances the media, regarding a breach of unsecured PHI.

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Two Indiana Nurses Sentenced in Cases Prosecuted by AG's Medicaid Fraud Control Unit

A judge on August 1, 2019 handed down sentences to two nurses who pleaded guilty to drug charges in cases investigated and prosecuted by the Attorney General's Medicaid Fraud Control Unit (MFCU). Nurse 1 pleaded guilty to felony charges of knowingly or intentionally taking possession of controlled substances without creating required records of either administering or destroying the drugs. This activity occurred at least 61 times between Jan. 1, 2018, and March 22, 2018. Nurse 2 pleaded guilty to felony charges of forgery and obtaining controlled substances by fraud and deceit. An MFCU investigation found that between Nov. 5, 2017, and Jan. 13, 2018, he took medicine from residents' supplies at least 55 times.

Compliance and Ethics Perspective:

Safeguarding of controlled medications by healthcare providers is mandated by federal regulations. Failure to have strong protocols in place to ensure that medications intended for residents are not diverted by nursing staff and do not result in significant medication errors, abuse and neglect, misappropriation, and exploitation, would be considered a criminal act, and the provision of substandard quality of care.

Yours truly,

David S. Barmak, JD, CEO.

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- Mock Surveys

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- Managed Care Organization Contracting

Med-Net Rehabilitation Solutions, LLC
- Rehabilitation/ Reimbursement Programs
- Director of Rehabilitation Mentoring

HEALTHCARE COMPLIANCE AND ETHICS PROGRAM

Med-Net Compliance, LLC works to educate and assist healthcare providers in meeting their obligation to establish and operate an effective fraud, waste, and abuse compliance and ethics program. We develop and implement a healthcare compliance and ethics program to help ensure the creation of a proactive, dynamic program structure to reduce the potential for fraud, waste, and abuse and to put in place systems to identify and self-correct errors before the Medicare and Medicaid programs are billed. Elements of our healthcare compliance and ethics program include:

- Healthcare Compliance Officer, Compliance Committee, and Governing Body training and support
- Compliance Committee support
- Governing Body counsel
- Compliance and Ethics Program
- Training and Education
- Auditing and Monitoring
- Reporting System
- Response
- Enforcement of Standards
- Reassessment/Reevaluation

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