

Playing it safe

Rampant litigation has forced nursing homes to step up risk management efforts. Education is one of their latest tactics

BY LIZA BERGER

When it comes to risk management, providers could learn a thing or two from Martin Goetz, executive director and chief executive officer of River Garden Hebrew Home for the Aged in Jacksonville, FL.

Goetz, who has worked at the 180-bed not-for-profit facility for 29 years, has experienced firsthand the dark days in the Sunshine State – when large litigation settlements pummeled nursing homes in the 1990s, driving up insurance premiums and forcing facilities out of business.

“It’s not just citrus that’s an export product in Florida,” Goetz says. “We’ve exported litigation.”

Indeed, the rise and frequency of insurance claims has elevated risk management to a sort of code-red in nursing homes throughout the country. Risk management today encompasses everything from arbitration agreements at admission to accurate bedside documentation to dependable wandering technology and lift equipment.

Facilities cannot afford to be lax with risk management, given the high price and rate of insurance claims today, experts say.

“Insurance losses in the long-term care setting have become staggering,” notes Sandi Petersen, managing partner with Senior Risk Solutions LLC, a risk management consulting firm. “In order to qualify for the best premiums in a preferred risk program, providers must show

evidence of quality assurance, performance improvement and risk management initiatives.”

Education insurance

Goetz has not-so-fond memories of the days when premiums were so high that nursing homes were virtually uninsurable. Today the premiums have eased, but the importance of risk management remains.

“We devote a lot of attention to risk management, not huge amounts of money,” says Goetz, adding that his facility has a Florida-certified risk manager on staff.

One step he is taking to protect his facility is to participate in a risk management program sponsored by an insurance brokerage firm.

Aon Association Services, a division of Affinity Insurance Services Inc., last year launched the Aon Quality Institute, a series of risk management courses for long-term care workers. Courses are now available for senior management, middle management, and most recently, frontline direct care and indirect care staff. Aon conceived the idea with the American Association of Homes and Services for the Aging, the association, which represents nonprofit long-term care providers.

The courses focus on risk management scenarios – such as a resident who suffers a foot fracture as a result of an unstable foot rest on a wheelchair – and how staff can prevent avoidable incidents.

While the course is not mandatory, long-term care facilities that partici-



Photos: iStockphoto.com

Costly lawsuits continue to drive risk management policies. But nursing homes are protecting themselves with education, arbitration agreements and good care practices.

pate receive a 10% credit on their general liability and professional liability premium.

While nonprofits typically do a great job of protecting residents, certain uncontrollable situations, such as turnover, can result in training inconsistencies among staff.

“It’s another resource,” said Maria Moreno, senior vice president of Aon Association Services. “If we can introduce some of these situations and bring it to the front of [the staff’s] mind ... it gets a dialogue going within the organization.”

Insurance premiums have actually stabilized for long-term care facilities over the last couple of years, she says.

“It used to be every time you

turned around there would be a piece about negligence,” she said. “While there are incidents out there, because of a huge push from AAHSA and others involved in long-term care, they have been working hard to get the word out about the need to provide good quality care to their residents.”

Still, the statistics are daunting. While there has been a downward trend in the number of claims, there has been an increase in the average payments for long-term care claims between 2000 and 2004, CNA, a major commercial insurer, said in a study. Also, the greatest frequency of claims within the long-term care sector occurred in skilled nursing facilities between 2000 and 2004, the

CNA study found.

(For more on claims, see sidebar on page 44.)

Pre-emptive protection

The rise in costly lawsuits against nursing homes has contributed to another new risk management advancement: arbitration agreements.

For the last three years, River Garden has been including arbitration agreements in its admissions packet for residents.

“At the least it takes the ability to inflame a jury out of the issue,” Goetz explains. “It’s harder to inflame a professional arbitrator.”

Arbitration agreements state that if a dispute arises, the facility and resident will resolve the conflict with an arbitrator, a neutral party, or a panel of arbitrators. The arbitration award is binding and legally enforceable, and can be reviewed by the courts.

As Goetz noted, facilities prefer arbitration to lawsuits that can end up in the hands of a jury, which can result in a runaway verdict.

“It’s definitely a response to a court system that people are saying doesn’t really work that well,” says Keith Maurer, director of healthcare for the National Arbitration Forum, which provides alternative dispute resolution services in the United States and 35 other countries.

“Instead, they are opting for a more efficient forum that has been endorsed by Congress and the Supreme Court.”

While arbitration is recognized as an effective way to fend off high jury verdicts, nursing homes actually use arbitration most often to settle billing disputes.

Facilities are getting smarter about crafting agreements, Maurer says. While there are lawsuits challenging agreements, facilities should be safe if they have a well-drafted agreement that does not favor one side over the other.

“A properly drafted agreement is virtually enforced all the time,” Maurer says.

Besides drafting flaws, problems arise if the person signing the agreement is incapable at the time. How the agreement is presented is also important.

The forum offers a “Resident’s Guide to Arbitration,” which

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Martin Goetz, River Garden Hebrew Home

explains the arbitration process clearly and in big letters. (For more on crafting arbitration agreements, see sidebar on page 42.)

“Simply handing that out at the time of admission is going to go a long way toward having that agreement upheld,” Maurer says.

Goetz says his facility has yet to invoke the arbitration agreement, but every little bit of prevention helps.

“Anyone in Florida who tells you they have never been sued is a liar,” he says.

Good care

Above all, a good risk management program is about good care, experts say. Open communication lines, careful documentation and a stable workforce are critical components.

Keeping in touch with family members goes a long way toward avoiding potential lawsuits. It is better to be upfront with the family if an incident, such as a fall, occurs than to keep it from the family and risk losing their trust. The family might be angry with you at the

time, but they will trust you in the long run.

“You screw up, you admit it,” Goetz advises. “No matter how stupid it makes you look. You never get another chance to recover your credibility.”

Cheryl Phillips, chief medical officer and medical director for chronic disease management for Sutter Health Partners, sees the process of consent as a good opportunity to engage the family in dialogue.

“Informed consent is not completing a form,” says Phillips, who is also secretary of the board of directors for the American Geriatrics Society. “To me, informed consent is engaging the patient and family in a partnership decision.”

Expectation management is also a part of risk management, says Dr. Jeffrey M. Levine, a geriatrician in New York City. That might mean “instructing the family that the patient has a poor prognosis and encouraging them to accept that.”

Recognizing potentially litigious families can help avoid lawsuits down the line, Levine says. There are certain red flags, such as families with radically unrealistic expectations and families that show up with cameras.

Accurate, timely documentation is also key to a good risk management program.

“Documentation should identify the problem, clearly illustrate actions until the resolution of the problem occurs,” says Petersen of Senior Risk Solutions.

Advise Levine: “Never alter a record. Never backdate notes.”

A strong risk management program also entails a stable, well-trained workforce.

“Turnover is a problem,” says Patrick D. Kelly, an attorney with Steptoe and Johnson in Charleston, WV. “People come in and don’t know the policies and procedures and don’t care. [Facilities] have to continue to educate their staff, and I think they have to develop some internal compliance program to monitor themselves.”

24-hour job

Risk management can be seen as a 24-hour-a-day job, stretching into the far corners of any community.



Severity of allegations – closed claims

	Number of closed claims	Average paid indemnity	Average paid expense	Average total paid
Not-for-profit				
Elopement	6	\$354,229	\$39,421	\$393,650
Failure to monitor (excluding falls)	23	\$188,839	\$53,935	\$235,739
Abuse	20	\$88,325	\$45,617	\$120,257
Medication error	8	\$89,021	\$22,641	\$108,832
Resident falls	202	\$72,558	\$18,077	\$84,281
For-profit				
Elopement	55	\$169,770	\$26,958	\$193,297
Failure to monitor (excluding falls)	97	\$185,860	\$50,893	\$230,457
Abuse	138	\$144,988	\$44,900	\$183,705
Medication error	60	\$154,097	\$37,598	\$185,428
Resident falls	650	\$93,708	\$26,222	\$114,040

Source: CNA, “Comparison of Claims Data in Long Term Care,” January 1996 through March 2005

“I think risk management is extremely important, in everything, from handling medications to handling patients,” says Linda Bowman of Guldman Inc., which makes resident lifting equipment. “Litigation is rampant, so the big question is where to allocate the limited budget dollars.”

Technology can play an important role. More information technology specialists are getting involved in risk management because “they understand that technology can improve the care [facilities] provide residents and can improve their risk management abilities in a way to monitor residents,” said Guy Lerner, president of HomeFree Inc., which provides wireless systems to monitor residents.

Because falls and elopements are two main sources of litigation activity, updating wandering technology or lift equipment may be a good idea.

“With the increase in the various security risks, such as elopements due to dementia ... the operators of long-term care facilities are revisiting their existing strategies and the technologies employed,” says Jim Frost, vice president of senior care for RF Technologies Inc., maker of wandering and fall management solutions.

Still, “Having the equipment only does not provide the nursing home potential additional gains in safety and security,” notes Jason Stevens, director of national accounts for Stanley Senior Technologies. “To maximize the investment return in technology and to significantly impact risk reduction, the home must adopt an entire program around falls and wandering.”

More facilities are employing a multi-disciplinary approach toward risk management, says Arnold Silverman, president of Yonkers, NY-based Skil-Care Corp., supplier of a variety of nursing home safety products, including alarms and pressure mattresses. Using physical therapy for strengthening and occupational therapy for wheelchair positioning plays a role in eliminating risks, for example.

Resident-focused

As much as lawsuits play a role in good risk management, so does concern for residents.



Tips for arbitration agreements:

- Make sure the agreement is mutual and covers all disputes.
- Offer all legal remedies.
- Make alternative dispute resolution (ADR) cost-effective for residents.
- Make the agreement clear.
- Educate residents about ADR options.
- Consider providing an opt-out provision.
- Invoke the Federal Arbitration Act.
- Select a reputable independent entity to administer the process.

Source: National Arbitration Forum, “Mediating and Arbitrating Long Term Care Disputes,” 2005

“Concern for the welfare of residents is still the primary motivator for most facilities to purchase a wander prevention system. But there is no doubt that reducing their liability exposure is also an important factor,” says Steve Elder, communications specialist with VeriChip Corp. “Facilities see that protecting their residents from this risk is good business, as well as good care.”

While the stakes are great, risk management does not necessarily have to cost a lot.

“Even without large expenditures, facilities can bolster good risk management through consistent, reliable, best-practice-driven processes,” says Petersen of Senior Risk Solutions. “Doing the same ‘right’ thing in the same ‘right’ way each and every time ensures ownership of risk management by all.” ■