Medical Directors Have Leadership Obligations

Even when residents reject help, leadership calls for sincere, documented efforts to reduce risks involved.

Most facilities have “challenging” residents who might push the boundaries of good decision making, but the Van Duyn case provides lessons on how facilities can strike a balance between risk and safety in assessing residents’ decisions. The medical director should be involved in the ongoing development of resident care policies and procedures, and develop and continually review protocols determining the appropriateness of residents leaving the building unattended. Such protocols might include documentation of data from assessments of decision-making capabilities, physical limitations, and risks that may be encountered because of the resident’s medical and psychological limits.

Document the process of determining the safety of each resident requesting to leave the building unaccompanied and include the facility’s recommendations. Seek additional guidance from psychiatrists or other appropriate medical or legal professionals if a resident’s safety is in question because of his or her decision making. Periodically review with the interdisciplinary team any determination that it is safe for a resident to leave unattended. Seek guidance if a challenging situation arises. Create a plan of care to address the resident’s unaccompanied absences from the building. Risk can be reduced if a facility and its medical director work cooperatively to identify and address situations in which residents’ face risks such as unattended leave. Careful development and implementation of policies and procedures can improve the delivery of care – while reducing the facility’s potential exposure to regulatory or legal action – to residents who make choices that conflict with the recommendations of care professionals.

Medical Expert Perspective

Skilled nursing facility medical directors are responsible under federal law – 42 CFR 483.75(i)– for implementation of policies and the coordination of medical care in the facility. AMDA has additional guidance on the nuances of the medical director’s duties (www.amda.com/about/roles.cfm). This mandate certainly encompasses a broad set of tasks that often seem far out of proportion to what the medical director is paid and that might be difficult to achieve even with a full-time position. But that is the reality of what is expected of us.

In recent years (really dating back to the revision of the F tag 501 guidance in 2005), more scrutiny has been placed on the medical director’s role (or lack thereof) in the quality assessment and assurance process and in ensuring appropriate and up-to-date policies and procedures. While deficiencies under F tag 501 are usually tied to multiple other tags, they specifically cite lack of medical director leadership or involvement, as in the case discussed here.

Of course, the deficiency applies only to the facility, and ultimately it is the facility’s responsibility to hire a medical director who is engaged, involved, knowledgeable, and competent. There are still homes out there that hire medical directors as referral sources who may be woefully inept in the machinations of the nursing home world.

Having a CMD on board is an excellent idea for a nursing home where quality (and not just census) is the overarching goal, and with QAPI (the Quality Assessment and Performance Improvement program) looming, I think we will see more of a push for competent, certified medical directors.

We have also seen civil lawsuits where the medical director is specifically named as a defendant based on his or her involvement in that capacity (with or without involvement as the attending physician). A survey deficiency or citation under F tag 501 may be admissible in court and, if so, will certainly add to the probability of a verdict for the plaintiff.

Medical directors should be sure that they have adequate protection, either written into the facility’s medical director contract, listed explicitly on the facility’s insurance, or included on their own policy. Not many of these causes of action have been successful as of now, but they can be, and regular professional liability (malpractice) insurance typically will not cover medical director duties. Don’t take a chance.

--Karl Steinberg, MD, CMD, Editor in Chief