



Pennsylvania Coalition of Affiliated
Healthcare & Living Communities

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Anatomy of a Claim

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Objectives

- Evaluate risks inherent in how events are reported to the Department of Health
- Determine when facility events may be reportable to your insurance carriers
- Understand what type of documentation claims adjusters need to assess potential claims

Did You Know . . . ?

- The State Operations Manual (SOM) is easily searchable
- Current SOM is 749 pages
- The word “documentation” appears 196 times, on approximately 26% of all pages if it appeared one time on a page



Two Common Claims

LIFT ACCIDENTS

WOUND CARE



What is Wrong With This Picture?



Responding to the Event

- Evaluate resident
 - Resident is transferred to hospital
- Identify others potentially at risk
- Conduct investigation
- Charge nurse writes incident report
- Fall is noted in medical record
- File ERS report with Department of Health
- File PB-22

Responding to the 2567

F 0600	483.12(a)(1) Free from Abuse and Neglect	F 0600
SS=D	<p>§483.12 Freedom from Abuse, Neglect, and Exploitation The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.</p> <p>§483.12(a) The facility must-</p> <p>§483.12(a)(1) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;</p> <p>This REQUIREMENT is not met as evidenced by:</p>	

“Required” Plan of Correction (POC) Elements

- What corrective action(s) will be accomplished for residents affected by the deficient practice?
- How will you identify other residents having the potential to be affected by the same deficient practice and corrective actions?
- What measures will be put in place or system changes will you make to ensure that the deficient practice does not recur?
- How will the corrective action be monitored to ensure the deficient practice will not recur, i.e., what quality assurance programs will be established?
- Dates when the corrective action will be completed

Strategies for Preparing Effective POCs

- Less is more
- Read the F Tags and the state tags
- Don't be afraid to have your POC rejected
- Be responsive and responsible
 - Don't overpromise
 - Don't admit liability

Strategies for Preparing Effective POCs

- Don't go overboard with policies, procedures and plans of correction
- Keep your date of compliance as short as possible
 - Begin implementing corrective action during the survey and document corrections (e.g., inservicing of staff)

Consider POC Disclaimer Language

- Preparation and submission of this plan of correction is required by state and federal law. This plan of correction does not constitute an admission for purposes of general liability, professional malpractice or any other court proceeding.



Why Is It Important to Report Event to Insurance or Broker?

Claims reported after 14 days are more complex, take longer to close, and delay potential compensation

Keep claimant's family happy to avoid legal ramifications

Able to preserve evidence

Reduces legal risk

Keeps claim costs down

Proactively handle the claim/prevent similar future incidents

A claim could be denied if the timely reporting guidelines were not met

"Claims made" policies, mean coverage exists only for claims made during the time period the policy is in effect

How Does PELICAN Complete the Initial Investigation?

- PELICAN has a dedicated claims team trained in handling nursing home claims
- When the acknowledgement letter is sent (within 24 hours of report) the claims representative reaches out for initial documents
- PELICAN Claims coordinates with Risk Control to address immerging issues

How is a Wound Care Claim Different From A Fall?



Typical Jury Reaction to Wound Care Pictures



CMS Pressure Ulcer (PU) Critical Pathway

- Used to determine if facility practices are in place to identify, evaluate, and intervene to prevent and/or heal pressure ulcers
- Key documents
 - MDS/CAAS for cognitive status, mobility status, functional mobility, bowel and bladder status, pain, nutritional status, skin conditions and pressure relieving devices
 - Physician's orders (e.g., wound treatment) and treatment record (TAR),
 - Pertinent diagnosis
 - Care plan (e.g., pressure relief devices, repositioning schedule, treatment, scheduled skin/wound inspection, or pressure ulcer history)

PU Critical Element Pathway Observations

- Observe wound care and assess the wound (observe as soon as possible)
 - Is the wound care performed in accordance with accepted standards of treatment, MD orders, and care plan?
 - Is there pain during wound care? If so, what did the nurse do?
 - Does the wound look infected?
 - Watch for breaks in IC practices.
 - Has the resident's skin been exposed to urinary and fecal incontinence?
- Are care planned interventions in place?
- Are staff following the care plan?
- Is the resident repositioned timely and in the correct position?
- Pressure relief devices are in place and working correctly.
- Does staff provide toileting/incontinent care if wound care would be affected by wet/soiled dressings?
- Ensure proper IC techniques are used.
- Does resident show signs of PU related pain?
- Are MD-ordered nutritional interventions implemented (e.g., supplements and hydration)?

PU Critical Element Pathway Interviews: Resident

- Did your wound develop in the facility? If so, do you know how it occurred?
- Has staff talked to you about your risk for the wound and how they plan to reduce the risk?
- Did staff discuss with you how they are going to treat your wound?
- Did you have a choice in how your wound would be treated?
- How often are dressings changed or treatment applied?
- Does your wound hurt? Do you have pain with wound care or when the dressings are changed? If so, what does staff do for your pain?
- What types of interventions are done to help heal your wound? (Ask about specific interventions – e.g., positioned q2h).
- If you know the resident refused care: Did the staff provide you with other options to treatment or did staff provide you with education on what might happen if you do not follow the treatment plans?
- Has your wound caused you to be less involved in activities you enjoy?
- Has your wound caused a change in your mood or ability to function?
- Is the wound getting better?

Critical PU Elements

1. If the condition or risks were present at the time of the required assessment, did the facility comprehensively assess to determine if any of the following were present:
 - Risks and/or determine underlying causes (to the extent possible) of the resident's development of a pressure ulcer
 - Presence and stage of an existing ulcer
 - Current treatments
 - Presence of infection
 - Impact upon the resident's function, mood, and cognition

Critical PU Elements

2. Did the facility develop a plan of care with interventions and measurable goals, in accordance with the assessment, resident's wishes, and current standards of practice, to prevent the development of a pressure ulcer, or if present, for the care and treatment of the pressure ulcer and/or infection of the ulcer?
3. Did the facility provide or arrange services to be provided by qualified persons in accordance with the resident's written plan of care?

Critical PU Elements

4. Did the facility reassess the effectiveness of the interventions and review and revise the plan of care (with input from the resident or representative, to the extent possible), if necessary, to meet the needs of the resident?
5. Based on observation, interviews, and record review, did the facility provide care and services to prevent the development of an avoidable pressure ulcer and/or to promote the healing of a pressure ulcer and/or to prevent or treat an infection?

The Claim Begins



Don't Panic



Good Planning is Key



At last he had found the Regulatory Guidelines.

Remember

What you say
can and will
be held
against you!



And . . .

What you don't
write can and
will be held
against you!



Be Careful of E-Mails and Texts!

The "E" in E-Mail stands for

EVIDENCE



....and the "T" in Text could lead to

TESTIMONY

Questions

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