The Forgotten 5% Nursing Home Regulation Update

Linda R. Chamberlain

Board Certified in Elder Law

What is a Nursing Home?

- 24 hour a day RN nursing care;
- Case management;
- Health monitoring;
- Personal care, nutritional meals and special diets;
- Physical, occupational, and speech therapy;
- Social activities and respite care for those who are ill or physically infirm.

Sample Nursing Home Room

Nursing Home Stats

- 1.7 million beds, approximately 15,655 nursing facilities nationwide
- 83,587 nursing home beds in Florida, with 683 licensed nursing homes
- Average cost is $7,908/month – per AHCA, however DCF divisor is $8,944
- 16.6% of residents are between 65 – 74 y/o
- 26.65% of residents are between 75-84 y/o
- 33.7% of residents are between 85-94 y/o
- 7.8% are 95 years old or above
- Currently only about 5 % of us will end up in a nursing home

What may life look like in a nursing home?

Nursing Home Care
is NOT the same as Assisted Living

What are Activities of Daily Living?

- Self-care
- Ambulation (ability to walk)
- Dressing
- Bathing
- Eating
- Grooming
- Toileting
- Other similar tasks

Nursing Home Residents Health Status

- 6.1% need assistance with 3 ADL's
- 41.2% need assistance with 4 ADL's
- 22.4% need assistance with 5 ADL's

- 36.9% have severe cognitive impairment
- 24.9% have moderate cognitive impairment
- 38.2% have mild or no cognitive impairment

What puts you at risk for admission to a nursing home?

- Admission risk increases with age
- Low Income (Florida definitely supports this)
- Poor family support, lack of spouse or children
- Low Social Activity
- Functional or mental difficulties
- Caucasian race

Why Nursing Home and not an Assisted Living Facility?

- Require skilled nursing care (RN care) – significant medication management
- Require skilled care, PT, OT, ST
- IV Therapy
- Breathing Treatments
- Wound Care
- 1/3 of all admissions have problematic behaviors. Including verbal and physical abuse, acting inappropriately in public, resisting necessary care, and wandering
- Poor communication skills and understanding

Living your Life in a Nursing Home Day by Day

- You may be totally dependent on staff to get out of bed. How long must you lay there?
- Who gets their diaper changed first or taken to the toilet first?
- How long do you wait for your first cup of coffee? Will you ever have hot coffee again? Is there a Starbucks?
- Do you get to wake up and see what you are in the mood to eat for breakfast? And then get that breakfast? Can you reach your breakfast tray?
- Can you reach the call button, can you find it, will someone answer you within 10 minutes, 15 minutes, 30 minutes?
- How will you spend your day? Will someone help you shave? Will someone help you with your makeup and hair? Will someone help you brush your teeth?
- Where is your iPad? Will you be able to access the internet?
- Who is there to advocate for you? Who will make sure you are taken care of correctly and in a kind manner?

Be Kind

- Practice being kind now – so that when you need care and have memory issues you remember to smile and say “Please” and “Thank You!”
- Patience is a virtue – more caregivers may like you.
- Be nice to your caregiver, no matter what race or nationality.
- Remember, it’s always more fun to be with a fun person.
- No one likes a whiner.
- Positive thinking- makes you say more positive comments.
- Meditate and be thankful.

Federal Nursing Home Regulations

- The Nursing Home Reform Act (NHRA) became law in 1987 to improve nursing facility quality of care and resident rights.
- Federal Nursing Home Regulations apply to all nursing homes across the U.S. that participate in Medicare and/or Medicaid.
- The revised Federal Requirements took effect in November 2016, however implementation of the reforms have been delayed – and will be implemented in phases through November 2019.
- The revised Federal Regulations implement provisions from the ACA including the requirement for training on dementia care and abuse prevention and reporting.
- Enforced at State Level through required surveys and surprise surveys by AHCA.

Admission Procedures for Potential Residents or Residents

- Cannot require resident to waive rights to Medicare or Medicaid (expanded language)
- Cannot require oral or written assurance resident is not eligible for Medicaid or will not apply to Medicaid (expanded language)
- Cannot request or require residents to waive potential facility liability for losses of personal property. The facility shall exercise reasonable care for the protection of the resident's property from loss or theft. Lost dentures are facility responsibility. (new)
- Facility cannot require third party guarantee (expanded language)- however facility can require legal representative (POA, Guardian) to provide facility payment from the resident's income or assets. (expanded language)
- A NF can charge a Medicaid resident for items and services not covered in the state Medicaid plan. (same)
- A NF must disclose and provide to each resident a notice of special characteristics or service limitations of the facility. (new)

Admission Procedures for Potential Residents and Residents

- NH must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations.(new)
- NH must provide equal access to care and establish, maintain and implement identical policies and practices regarding transfer and discharge, regardless of payment source. (same)
- The facility may charge any amount for services furnished to non-Medicaid residents unless limited by State law. (new)

Arbitration Agreements

- A facility must not enter into a pre-dispute agreement for binding arbitration with any resident/legal representative and cannot require signing as a condition of admission to a facility. (new)
- A facility may implement after a dispute between resident and facility – however the continuing right to stay in the facility cannot be contingent upon signing an arbitration agreement. (new)

Resident Assessment and Care Planning

- Resident assessment must be completed within 14 calendar days after admission
- Assessment using the CMS form must include the following:
  - Identification and demographic info
  - Customary routine and Cognitive patterns
  - Communication abilities and vision abilities
  - Mood and behavior patterns and psychosocial well-being
  - Physical functioning and structural problems, include continence, diagnosis and health conditions

Resident Assessment and Care Planning

- Dental and nutritional status
- Skin condition
- Activity pursuit
- Medications
- Special treatments and procedures
- Discharge planning (new)

Resident Assessment and Care Plan

- Care Plan must be updated quarterly.
- Facility must coordinate assessments with the preadmission screening and resident review (PASSR) to avoid duplicative testing (PASSR screens for mental disorders, intellectual disability or related conditions
- All assessments must submitted to CMS within 14 days.
- Baseline Care Plans – must be developed for each resident within 48 hours of admission. (new) Care Plan must include:
  - Initial Goals, Physician orders (medications), Dietary orders, Therapy services, Social services and PASSR recommendation – must be provided to resident/legal representative

Resident Assessment and Care Plan

- The facility must consult with the resident/legal representative regarding goals for admission and desired outcomes; the resident's preference and potential future for discharge;
- Facility must document residents desire to return to community was assessed and referrals made to local agencies.

Comprehensive Care Plan

- Must be developed within 7 days after completion of comprehensive assessment (new)
- Must be prepared by interdisciplinary team that includes the attending physician, RN and nurse aide with responsibility for resident, member of food service, the resident and/or legal representative, other staff/professionals. (new)
- The facility must develop a discharge plan that focuses on the resident's discharge goals. (new)
- Consideration must be given as to the caregiver's capacity and capability (new)
- Facility must document all referrals made, and if discharge not possible – document why not. (new)
- Discharge summary must be provided at discharge. (new)

Incontinence and Pain Management (new)

- Facility must ensure a resident who is continent receives services and assistance to maintain continence.
- Facility must ensure a resident who is incontinent receives appropriate treatment to prevent urinary tract infections and to restore continence to the extent possible.
- The facility must ensure pain management is provided to residents.
- The facility must ensure residents who require dialysis receive such services.
- The facility must ensure residents who are trauma survivors receive culturally-competent, trauma-informed card.
- The facility must attempt to use appropriate alternatives before bed rails are used.

Medications (new)

- Medication review must be completed once a month by registered pharmacist.
- Any irregularities noted by pharmacist myst be documented to attending physician and medical director
- No PRN orders for psychotropic drugs for more than 14 days
- Medication error rates must be 5% or less.

Food (new)

- Recognize the residents religious, cultural, and ethnic needs
- Provide food that is palatable, attractive, and at as safe appetizing temperature
- Provide food that accommodates resident allergies, intolerances, and preferences;
- Provide liquids consistent with resident needs and preferences to maintain hydration;
- No more than 14 hours between substantial evening meal and breakfast (except if bedtime snack provided – then 16 hours);
- Snacks must be provided outside of scheduled meal times.
- Assistive devices must be provided
- Facility must have policy to ensure safe storage and handling of foods brought to resident

Resident Rights

- Resident's representative has the right to exercise the residents rights
- Resident has right to attend all care plan meetings and to request care plan meetings and revisions to the care plan
- Resident has right to be informed in advance of care to be provided, of treatment or alternative treatments available – and to choose what the resident wants
- The right to share a room with his or her roommate of choice when practicable and both residents consent
- Residents shall be informed of visitation policies and may consent to all visitors they designate. Private space for visit must be available if requested.

Facilities may not charge resident for the following during a Medicare/Medicaid stay

- Nursing services, Food and Nutrition services, activities, room/bed maintenance services
- Routine personal hygiene items including, but not limited to, hair hygience supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansers, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care supplies, sanitary napkins, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing assistance and basic personal laundry.

Items facilities may charge for:

- Phone, television, computer use or other electronic device for personal use
- Smoking materials, notions and novelties and confections
- Cosmetic and grooming items
- Personal clothing
- Personal reading matter
- Flowers and plants
- Gifts purchased on behalf of resident
- Cost of social events outside the scope of activities program
- Non-covered private duty care, private room, and specially prepared food/meals

Information and Communication

- Facility must provide resident/legal representative with access to personal and medical records (if hard copy requested facility may charge nominal fee)
- Facilities must make available and post all pertinent state agencies to report abuse, neglect, exploitation, noncompliance with advance directives, requests for information to return to the community
- Facility must provide reasonable access to a telephone, internet, stationary and postage.

Transfer and Discharge Regulations

- The facility may not discharge a resident unless:
  - The transfer/discharge is necessary for the resident's welfare and the resident's needs cannot be met at the facility; (same)
  - The transfer/discharge is appropriate because the resident's health has improved sufficiently and the resident no longer needs the services provided by the facility (same)
  - The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident (expanded);
  - The health of individuals in the facility would otherwise be endangered (expanded);

Transfer and Discharge Regulations

- The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare/Medicaid) a state at the facility. (expanded)
- Nonpayment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for the stay. (expanded)
- For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid. (expanded)
- The facility may not transfer/discharge the resident while an appeal is pending unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer/discharge would pose. (new)

Transfer and Discharge Regulations

- When the facility transfers/discharges a resident they must ensure the resident's medical record and appropriate information is communicated to the receiving healthcare provider. (expanded) At a minimum the information must include:
  - Contact information of the practitioner responsible for the care of the resident
  - Legal representative contact information (POA, Guardian)
  - Advance Directives
  - Special instructions or precautions for ongoing care
  - Comprehensive Care plan goals
  - All other information to ensure a safe and effective transition (expanded)

Transfer and Discharge Regulations

- Facility must notice resident/legal representative of the transfer/discharge and the reason in writing and in a language they understand. A copy must be sent to a representative of the Office of the State Long-Term Care Ombudsman. (expanded)
- 30 day notice required except when safety or health is an issue (same)
- Contents of the notice must include:
  - Reason, effective date, location of where resident transferred /discharged and
  - A statement of the resident's appeal rights, including contact information on how to obtain an appeal form and assistance (new)

Bed Hold Regulations

- NH must provide written information to resident/legal representative that specifies the state bed-hold policy (same)
- If facility determines resident can't return the facility must comply with the transfer/discharge regulations (new).

Alzheimer's Disease and Dementia Update

- Still NO CURE – prevention is key
- Lifestyle and activity can make a difference – increase physical activity, exercise, cognitive leisure activities, and social interaction
- Vitamin E and fish oil still recommended for prevention
- Make sure you are not Vitamin D deficient
- Mediterranean-style diet still recommended for prevention
- Recommend eating berries high in flavonoids, blueberries, strawberries,
- Hypertension appears to be associated with an increased risk of both vascular dementia and AD
- Avoid smoking

Alzheimer's Disease and Dementia Update

- Medicare Annual Wellness Visit is a yearly appointment with your primary care provider to create or update a personalized prevention plan
- This AWV should include a screening for cognitive impairment
- Consider utilizing the Montreal Cognitive Assessment – provides you and your healthcare provider a baseline screening. It is a screening tool for several neurological diseases; Parkinsons, AD, vascular cognitive impairment, Huntington's disease, sleep behavior disorder, primary brain tumors, multiple sclerosis, depression, schizophrenia and heart failure.
- Avoid head trauma, "fall-proof" your home, wear a seat belt, use a helmet with sports
- Remain engaged, interesting, and involved in social activities

Alzheimer's Disease and Hearing Loss

- In a recent study, Johns Hopkins followed 639 adults for almost 12 years and discovered that people with mild hearing loss had double the dementia risk; those with moderate hearing loss had triple the risk; and those with severe hearing impairment were 5 times more likely to develop dementia.

- To reiterate, even those with MILD hearing loss have double the risk of developing dementia. The worse your hearing loss, the higher your risk of dementia. This should be a wake-up call to anyone who chooses to ignore their hearing problems.

- In addition, researchers discovered that people with hearing loss were more likely to experience problems with walking and they fell more often. It may put you in harm's way, too, increasing your risk of getting injured in a variety of situations, including at work and while driving. Addressing hearing loss is a serious issue.

Resources

- https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html
- http://theconsumervoice.org/uploads/files/issues/Side-by-Side_Comparison_of_Revised_and_Previous_Requirements_of_Participation_1-20-2017.pdf
- https://www.hopkinsmedicine.org/news/media/releases/hearing_loss_and_dementia_linked_in_study