Healthcare

# CAREFULLY SPEAKING®

**A Risk Management Resource for Aging Services** | 2023 Issue 1

## After the COVID Crisis: Restoring Safety, Morale and Trust

Aging services organizations faced a "perfect storm" of adversity during the first phase of the coronavirus pandemic, marked by the convergence of staffing shortages, bed rationing, lack of protective equipment and limited rapid testing capability, among other challenges. At the height of the crisis, 94 percent of aging services facilities experienced at least one outbreak, with residents and staff representing one-third of all reported COVID-19 deaths in the U.S. (See "COVID-19 and Aging Services by the Numbers" on page 2.) Although many facilities had safety and quality concerns before the crisis, the pandemic revealed the full extent of problems facing the aging services industry. These issues include a precarious funding system, chronic workforce shortages, high turnover, and a lack of meaningful data and tools by which to monitor staff performance and quality of care.

Although COVID infections continue, the level of sickness and death is below the elevated numbers of the last three years. But memories of the pandemic are still fresh, and many advocates, researchers and legislators are proposing a variety of reforms at the state and federal level designed to overhaul the aging services industry as a whole and improve facility response to future outbreaks. (See "A Brief Look at Aging Services Reform Measures" on page 5.) In the interim, as temporary liability protections wane, organizations facing a potential wave of negligence and wrongful death lawsuits should consider focusing on short-term initiatives to help restore the confidence of residents, families, staff and communities.

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This edition of *CareFully Speaking*® offers a variety of practical recommendations designed to help aging services organizations bolster staff morale, improve resident wellness and repair the erosion of public trust that occurred as a result of the coronavirus pandemic. The process of rebuilding credibility begins with a renewed commitment to strengthening clinical, operational and financial transparency. A range of techniques for achieving greater transparency can be found on page 7.

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## Enhancing Resident Safety and Wellness

**Provide 24-hour registered nurse (RN) staffing.** Federal law and state regulations currently require facilities to employ an RN for at least eight consecutive hours a day, seven days a week, unless a waiver applies. However, according to research, higher RN staffing levels correlate with enhanced infection control, resident assessment, identification of chronic and acute conditions, and care planning. Collectively, these improvements can help reduce resident mortality, strengthen overall quality of care and reduce liability exposure.

**Strengthen infection control oversight.** According to performance audits by the Government Accountability Office, infection prevention and control (IPC) deficiencies deteriorated during the pandemic. From 2020 to 2021, 8 percent of IPC deficiencies were classified as actual harm and 4 percent as immediate jeopardy. Prior to the pandemic, however, 99 percent of IPC deficiencies were classified as *no harm*. According to the Centers for Disease Control and Prevention, aging services settings should hire a full-time certified infection preventionist as a first step toward raising their ICP expertise to the level of their acute care counterparts.

**Reduce room crowding.** The pandemic has served to remind us that reducing multi-occupancy rooms can help slow down the spread of infectious diseases. In addition, the shift to private or semi-private rooms helps promote resident autonomy, dignity and privacy – basic tenets of a resident-centered model of care.

**Repeat depression screens.** One severe consequence of the pandemic has been increased isolation among residents, potentially resulting in depression and anxiety. For this reason, aging services organizations should consider updating resident depression screens. By arranging for telemedicine consultations with social service workers and mental health professionals, organizations can efficiently evaluate symptoms and devise individualized treatment plans.

**Emphasize social connections.** When planning group activities, the focus should be on maximizing connection and interaction. In addition to offering a variety of traditional indoor and outdoor programs, facilities may wish to provide higher-functioning residents with access to online conferencing platforms (such as Zoom and Skype), as well as social media training. Finally, ensure that all room telephones are equipped with volume-control settings and enlarged keypads for easy dialing.

**Reduce unnecessary medications.** The use of antipsychotic drugs has declined in aging services facilities to a national average of 14.5 percent, due in part to the effects of the Centers for Medicare & Medicaid Services National Partnership to Improve Dementia Care in Nursing Homes. However, organizations must continue to address the significant issues of polypharmacy and inappropriate use of psychotropic drugs. The following drug-related initiatives can help reduce risk and enhance resident well-being:

- **Create an interdisciplinary prescription support team** – comprising medical, nursing and pharmaceutical professionals – to conduct medication review and risk assessment.
- **Incorporate electronic alerts into prescribing systems** in order to remind providers of contraindications and minimize harmful side effects and interactions.
- **Review medication regimes on a monthly basis** to identify excessive and unsafe drug use, focusing on proton-pump inhibitors, benzodiazepines, antipsychotics, anticholinergic drugs and other potentially hazardous pharmaceuticals.

### COVID-19 and Aging Services by the Numbers

- Over 1.5 million residents have contracted COVID-19 since the onset of the pandemic.
- More than 200,000 aging care residents and staff members have succumbed to the disease.
- More than a third of all reported COVID-19 fatalities in the U.S. are associated with aging services facilities.
- Aging services residents and staff were seven times more likely to die of COVID-19 than the population as a whole.
- About one in 12 (8 percent) of residents in a skilled care, assisted living or other aging services facility died of COVID-19. For skilled care settings specifically, the fatality figure is approximately 1 in 10.

### Improving Staff Morale

**Recognize jobs well done**. In a post-pandemic environment, employee recognition programs can help strengthen staff morale and reduce turnover. Such programs should be based not solely on longevity, but also on individual and group accomplishments, including …

- Enhancing resident-family satisfaction.
- Contributing significantly to resident care.
- Identifying quality issues and concerns.
- Maintaining an excellent attendance record.

Many recognition programs feature a bonus pay structure to reward weekend coverage or filling of vacant shifts. In addition, preferred parking spaces, meal coupons, highlights in employee publications and employee-of-the month awards reinforce the organization's commitment to direct care workers.

**Initiate a staff wellness program**. Many aging services organizations have launched wellness programs for direct care providers designed to combat the effects of work-related stress, reduce absenteeism and prevent staff injuries related to exhaustion and clinical burnout. Programs typically consist of both online and in-person sessions focusing on preventive health tips, job coaching, stress-reduction techniques, pre-shift warm-ups and injury rehabilitation activities. (For program resources, see Staff & Resident Well-Being on the website of the Agency for Healthcare Research and Quality.)

Organizational wellness programs also may include support groups for both licensed and unlicensed workers. Regular interactions can be an effective means of helping employees develop their coping, communication and problem solving skills. Sessions can range from ad hoc discussions about reducing stress and building confidence to longer term, more ambitious programs facilitated by an HR consultant.

**Develop career pathways**. Many organizations have instituted "stepladder" programs designed to enhance professional growth opportunities for nursing aides and other members of their unlicensed workforce. Career pathways enable direct care workers to master skills and assume additional responsibilities at a safe, steady pace. In addition to bolstering staff retention and morale, pathways can help boost the organizational bottom line, as it is typically more efficient to promote current employees on an incremental basis than to recruit additional licensed staff. (See CNA *Special Resource*, September 2022, "A Focus on Staff Recruitment and Retention: The Importance of Building Leaders and Careers".)

On a national level, the American Health Care Association and LeadingAge™ are advocating for extensive career enhancement programs combining state, federal and academic resources. Proposals include offering student loan forgiveness, tax credits and other incentives to licensed and unlicensed healthcare professionals, thus encouraging them to remain in the aging services industry. (See "Care for Our Seniors Act: Improving America's Nursing Homes By Learning From Tragedy & Implementing Bold Solutions For The Future.")

**Align training with current job demands.** Educational requirements may not fully address the comprehensive range of skills required of employees in today's aging services settings. To better align training with the realities of a changing workplace, consider expanding learning opportunities to include such areas as teamwork, time management, interpersonal communication, computer skills and care of behaviorally challenged residents.

**Support state efforts to improve staffing.** Minimum mandatory staffing levels represent the most effective strategy to ensure balanced and safe workloads for caregivers. To publicize this message, the New York chapter of LeadingAge™ has crafted a sample advocacy letter, encouraging aging services organizations to ask residents and family members to download the letter, personalize its message and mail it to lawmakers.

In the interim, aging services organizations must consider other means of ameliorating ongoing staffing shortages. The following suggestions may help enhance resident safety:

- **Staff floaters.** Rather than constantly changing schedules, supervisors can assign certain employees to fill any staffing gaps that arise. These extra staff members are instructed to "float" within the facility during high-demand times and to work partial shifts when necessary.
- **Alternate workers.** Completing paperwork and other non-clinical tasks are delegated to clerks and hospitality aides, freeing direct care workers from these time-consuming activities.
- **Job sharing.** Aides rotate through the organization, focusing on areas where help is most needed. This protocol can help relieve the monotony of fixed duties and give staff an opportunity to cross-train in different areas, such as dementia care.

### Restoring Resident/Family and Community Trust

**Provide prompt access to personal health information.** Keeping residents and family members apprised of assessment findings and treatment plans is critical to maintaining trust, as well as promoting resident well-being. Dedicated resident portals help convey treatment plans and important updates in a timely, convenient manner, while maintaining open lines of communication with residents and their families. Alternatively, issue resident care summaries on a regular basis to all concerned parties

Note that legislation recently has been enacted aimed at enhancing the transparency of healthcare data, with special emphasis on increasing resident access to personal health information and timely disclosure of records. (For a quick overview of this legislation, including the 21st Century Cures Act [Cures Act] and the more recent Coronavirus Aid, Relief, and Economic Security Act [CARES Act], see "Cures Act Versus CARES Act: How Do They Differ?" on page 6.)

**Encourage constructive feedback.** An effective resident/family engagement strategy requires an ongoing, proactive effort to solicit feedback. Encourage residents and their relatives to speak face-to-face with an administrator or staff member about their questions, concerns, and positive and negative feelings. In addition, permit residents and family members to share comments online, via the organizational messaging interface on the home page, if available.

**Partner with community hospitals to provide telehealth options.** Telehealth services offer relatively easy access to a wide variety of medical experts, which can translate into better outcomes. By working remotely with hospital-based providers, facilities are better prepared to handle emergency situations, decrease unnecessary hospitalizations and readmissions, and improve quality and continuity of care. In addition, such working relationships foster stronger community ties and can help enhance resident and family confidence and satisfaction.

**Update the emergency preparedness plan, and publicize the organization's commitment to effective disaster response.** The coronavirus pandemic underscored the need to implement a comprehensive emergency preparedness plan, and to revise the plan based upon lessons learned from the pandemic. (For related reading, see CNA *Special Resource*, January 2022, "Emergency Planning: A Risk Management Guide for Healthcare Facilities and Providers".)

In particular, the following actions can help reassure residents, staff and the larger community that the organization takes seriously its responsibility to prepare for a future outbreak:

- **Stockpile personal protective equipment,** including N95 respirator masks in the core inventory, as well as surgical masks, gloves, hand sanitizers and other commonly used supplies.
- **Maintain adequate stocks of environmental cleaning agents and disinfectants,** and know how to use them correctly according to manufacturers' recommendations.
- **Collaborate with local health departments** and other community facilities, in the event of emergencies involving evacuation orders or bed rationing.
- **Focus on staff safety and retention,** instituting generous sick leave policies that permit employees to stay home when they are ill, and offering hazard pay for those who work during disease outbreaks and other emergencies.
- **Periodically update communication links with residents, their families and community contacts,** and ascertain how individuals/organizations prefer to be contacted.
- **Conduct regular infectious disease drills,** focusing on such critical tasks as rapid testing and isolation of exposed residents and staff.

**Express appreciation and gratitude to residents and family members.** A simple, sincere note thanking residents and families for their loyalty, support and patience over the pandemic period, and reiterating leadership's commitment to providing safe, dignified and humane care, can help strengthen strained relationships and enhance resident/family satisfaction.

The COVID-19 pandemic, the worst infectious disease outbreak in a century, has been an especially traumatic event for aging services organizations. The crisis seems to be receding, but its psychological effects linger, as do the systemic problems it revealed. It is incumbent upon organizational leaders to acknowledge its toll in terms of death and suffering, as well as the deterioration of public trust and employee morale. Now is the time to take concrete steps to improve overall care, restore relationships, and enhance resident and family satisfaction.

## A Brief Look at Aging Services Reform Measures

The Nursing Home Reform Act of 1987 marks the last substantial overhaul of the aging services industry. Today, lawmakers, federal regulators, and consumer and labor advocates are pursuing new reforms intended to improve quality of care and employee safety. Some of these proposals are summarized below:

**Legislate minimum staffing levels.** Mandatory minimum staffing levels (typically, slightly over four hours of nursing care per resident per day) have been advocated in past decades. Most recently, the U.S. Department of Health and Human Services has been directed under the Build Back Better Act to report to Congress on the appropriateness of minimum staff-to-resident ratios in skilled nursing facilities, suggesting that the groundwork is being laid for future federal legislation. Individual states also have increased their scrutiny over nurse staffing levels. For example, in New York, pending legislation proposes to establish a minimum staffing level of 3.5 hours of total nursing care per resident per day, including 1.1 hours of care rendered by a licensed nurse. However, critics of minimum staffing mandates contend that they do not address the critical shortage of available workers, which is the root cause of the problem.

**Improve on-demand staff training.** The Centers for Medicare & Medicaid Services (CMS) continues to develop new training tools for aging services staff, such as instructional guidelines, staff competency assessment tools, and technical assistance seminars and webinars. These materials focus primarily on decreasing adverse events, improving dementia care, and bolstering staff performance and retention.

**Enhance the national Care Compare website.** CMS introduced new measures on Care Compare, a consumer-friendly website that tracks quality metrics in aging services organizations. In addition, the agency plans to improve the site's readability and usefulness, add staffing-related measures and increase accountability for facilities that self-report inaccurate information to the website.

**Increase owner accountability.** Various reform measures aimed at unscrupulous providers are being considered. One proposal would require that organizations seeking to participate in Medicare and Medicaid first must show proof of corporate competency. Another suggestion is to regulate the proportion of income that must be spent on providing care. For example, in New Jersey, enacted legislation mandates that aging care facilities expend 90 percent of their annual aggregate revenue on direct resident care.

**Track owners and operators.** CMS recently expanded its data offerings on aging facility ownership, enabling consumers to track owners and operators across state lines, as well as by their previous health and safety violations. The measure is the latest effort by CMS to increase transparency regarding complex corporate affiliations, as well as operating history. (See data.CMS.gov.)

**Identify noncompliant facilities.** The Special Focus Facility (SFF) program, which permits CMS to increase the frequency of compliance surveys at lower performing facilities, has undergone recent revisions. These reforms are designed primarily to broaden the program. They also seek to strengthen enforcement by authorizing termination of the Medicare and Medicaid contracts of organizations that fail to pass two consecutive inspections while in the SFF program. In addition, the Biden Administration also has asked Congress to provide almost $500 million to CMS to fund additional health and safety inspections at aging services facilities.

**Expand penalties, sanctions and assessment capabilities.** In addition to levying fines for violations detected during onsite inspections, CMS will expand enforcement actions against poorly performing facilities based upon desk reviews of submitted data. CMS also is moving away from one-time fines toward more aggressive daily penalties for noncompliant facilities, while imposing more significant monetary and non-monetary sanctions, such as holds on new admissions and suspensions of payment. And to improve its evaluative capabilities, CMS plans to increase the use of predictive analytics and other advanced data processing tools.

## Cures Act Versus CARES Act: How Do They Differ?

### Cures Act

The 21st Century Cures Act (Cures Act), effective in December 2016, includes some provisions designed to accelerate medical product development by facilitating data sharing for research purposes. The Act also aims to improve interoperability of electronic healthcare record systems, thus giving residents easier access to their own health information.

For aging services organizations that offer home health services to residents via an outside contracted agency or facility-owned program, the Cures Act …

- **Eases certification restrictions,** permitting nurse practitioners, physician assistants and other non-physician providers to authorize and oversee home health services.
- **Establishes new requirements** for electronically verifying home health and personal care services in order to combat fraud.
- **Modifies reimbursement policies** for remote patient monitoring, encouraging wider use of wireless technology to collect resident health data.
- **Creates new rules for various types of home infusion therapies,** requiring home care providers to train clients or caregivers to self-administer drugs, educate them on the goals and potential side effects of therapy, and visit them periodically to assess the infusion site.

*Sources*: 21st Century Cures Act, a resource page of the U.S. Food and Drug Administration, and Baxter, A. "Making Sense of New Cures Act Regulations for Home Health." *Home Health Care News*, January 23, 2017.

### CARES Act

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) is a $2.2 trillion stimulus bill enacted by Congress in March 2020 to mitigate the then impending economic crisis caused by the global coronavirus outbreak. The Act provided relief in the form of increased payments under federal health programs, earmarking $200 million for the Centers for Medicare & Medicaid Services to help aging services facilities enhance their infection control capabilities and limit the spread of COVID-19.

Title III of the CARES Act affected aging services facilities in the following additional areas, among others:

- **Accelerated Medicare payments to skilled nursing facilities** and other providers of Medicare-reimbursable services. This change resulted in greater reimbursement flexibility, permitting non-hospital providers to receive their Medicare payments in advance.
- **Delayed reductions in Medicare payments** that were scheduled to go into effect in May 2020, at the onset of the pandemic.
- **Relaxed post-acute care eligibility rules,** granting aging services providers greater flexibility in accessing rehabilitation services for residents and permitting them to accept a wider range of residents during the COVID emergency, in order to free up beds in acute care hospitals.
- **Boosted funding for surveys** and certification of facilities.
- **Granted liability protections to healthcare workers** who volunteered their services during the COVID-19 public health emergency, as long as they acted within the scope of their license.
- **Eased certain HIPAA and HITECH provisions** relating to disclosure of resident information for purposes of treatment, payment and healthcare operations.

*Source*: Health CARES – Title III of the CARES Act Impact on Long Term Care Facilities, from *Seyfarth News & Insights*. April 8, 2020.

# Essential Steps to Achieving Transparency in Aging Services

## Remain abreast of national efforts.

Financial and operational transparency in aging services is compromised by complex ownership structures that potentially permit operators to conceal payments and divert monies from direct resident care. The following regulatory reform measures, designed to clarify ownership and performance levels, are on the horizon:

- **Revisions to the CMS Care Compare website,** intended to facilitate searches by individual facility, as well as by chain and common ownership. (See page 5.)
- **Publication of an annual compendium on quality of care** in national aging services chains.
- **Issuance of federal change-of-ownership rules,** including ownership and management screening requirements.
- **Development of a formal ownership approval process** to screen out those with prior health and safety violations.
- **Annual submission of detailed cost reports** on all operations, as well as organizational flowcharts of related entities, such as home offices, real estate investment trusts, parent companies and holding organizations, among others.

## Examine the role of private equity (PE).

The National Bureau of Economic Research estimates that PE ownership in aging services facilities has cost American taxpayers $20.7 billion in additional medical treatment. A growing body of research suggests that investment company ownership is associated with inferior resident outcomes, leading aging care consumers and advocates to take a second look at the PE business model. The following aspects of PE acquisition and ownership, among others, may have adverse implications for both transparency and resident care:

- **Use of borrowed money to purchase facilities,** creating an incentive to transfer debts onto the setting's balance sheet.
- **Inadequate disclosure reports** that lack a clear statement of ownership.
- **Failure to fully reveal affiliations with vendors,** potentially concealing shared ownership.
- **Exorbitant management fees** imposed on facilities.
- **Sudden and drastic reduction in labor costs,** i.e., mass layoffs.
- **Rapid selloff of acquired properties** to produce instant return on investment.
- **Emphasis on short-term post-acute care,** which reimburses at a higher rate than does long-term care.

## Analyze and improve the quality of facility data.

For many facilities, vast amounts of clinical data quickly become unmanageable. While advanced analytical software may enhance information management, these tools do not obviate the need for a comprehensive data strategy. The following actions can help improve the quality of clinical and operational data:

- **Identify the strengths and weaknesses of all internal databases,** including, but not limited to, electronic health-care records; facility management systems; survey, finance and compliance data repositories; and resident relationship management tools.
- **Define areas of desired improvement,** in order to focus data compilation efforts.
- **Present clinical and quality data in a clear, comprehensible format** for the benefit of residents, regulators and consumers.
- **Solicit information from nurses and caregivers**, as well as residents and family members.
- **Demonstrate to leadership that sound data compilation methods strengthen the bottom line** by enhancing both decision-making and quality of care.

## Improve communication platforms.

Aging care organizations often lag behind their acute care counterparts for incorporating technology into basic operations. The following measures can help foster two-way communication between aging services providers, and residents and their family members, thereby strengthening rapport:

- **Implement online platforms** – such as satisfaction surveys and electronic suggestion boxes – to solicit feedback.
- **Grant residents access to their personal healthcare information** via online portals or other computer applications.
- **Create online educational modules** designed to inform residents and family about common chronic disease processes and treatment methods.
- **Encourage real-time communication between residents/families and staff,** utilizing electronic chat rooms and other discussion formats.
- **Hold routine family council and care planning meetings in a secure online forum,** in order to maximize participation.

Sources: Harrington, C. et al. "These Administrative Actions Would Improve Nursing Home Ownership And Financial Transparency In The Post COVID-19 Period." *Health Affairs*, February 11, 2021, and Lincoln, T. "Is it Private Equity? We Can't See." A report issued by Public Citizen, September 1, 2022.

## Quick Links

- "Best Practices for Promoting Emotional Well-being in Nursing Home Residents," a publication issued by the Agency for Healthcare Research and Quality, March 2022.
- "COVID-19 in Nursing Homes: CMS Needs to Continue to Strengthen Oversight of Infection Prevention and Control," a report issued by the U.S. Government Accountability Office, September 2022.
- "24-Hour Registered Nurses in Nursing Homes: Essential & Affordable," an alert issued by the Long Term Care Community Coalition, 2022.
- "Nursing Home Transparency: A Critical Tool to Improve the Quality of Nursing Home Care," a policy brief issued by the Long Term Care Community Coalition, 2022.



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