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Strengthening Facility-Family Relationships: Transparency Is Key

Trust is an indispensable component of any successful relationship, including the connection between an aging services organization and residents/family members. Maintaining trust depends upon openness, ongoing two-way communication, and a commitment to transparency and integrity in every interaction.

By honestly describing their care capabilities, costs and policies from the initial encounter onward, facilities create a positive impression, forge trust, and foster realistic expectations on the part of residents and families, thus minimizing the likelihood of later dissatisfaction. And by providing a forum for families to ask questions and discuss their concerns, organizations can resolve minor annoyances before they escalate into major conflicts.

This edition of *CareFully Speaking*® addresses four areas where transparency is of critical importance: marketing, resident selection, billing/collection activities and interactions with family councils. At a time when consumer opinions are widely disseminated and easily accessed, cultivating healthy, trust-based relationships with residents and family members has never been more critical to reducing risk and achieving sustainable, long-term success.

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As family dynamics can affect communication and decision-making, a sidebar on page 6 offers a series of measures designed to help administrators prevent and defuse intra-family conflicts.

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ACCURATE MARKETING REPRESENTATIONS

Any descriptions included within marketing materials of organizational services and capabilities may be viewed as promises by residents and family members. Hence, any false, misleading or exaggerated statements about the facility create the potential for later allegations of breach of contract or misrepresentation. The use of the following superlative phrases on websites and in advertisements and brochures is particularly problematic, as they can inflate the expectations of prospective families:

"Experts in dementia care." Overstating dementia care credentials can lead to deceptive marketing claims.[1] Aging services organizations that advertise "expert care" must meet certain minimal standards. While requirements vary depending upon state licensing mandates, organizations that make such representations typically are expected to ...

- **Provide specialized training in dementia care** for nurses, direct caregivers and other staff members.
- **Implement safety measures to prevent wandering and elopement,** such as installing doorway alarms and fencing in outdoor areas.
- **Offer appropriate activities** for residents with dementia.
- **Employ a dedicated activities director** for the dementia unit.
- **Set aside recreation and dining areas** for use by residents with dementia.

QUICK LINKS

- Facility Assessment Tool, issued by the Centers for Medicare & Medicaid Services.
- Family and Resident Councils, a resource list maintained by the National Long-Term Care Ombudsman Resource Center.
- Nursing Home Admission Agreements, a guide to California's Standard Admission Agreement, from the California Advocates for Nursing Home Reform, January 1, 2016.
- Nursing Home Capabilities List, a downloadable resource designed to systematize hospital discharge situations, available from INTERACT (Interventions to Reduce Acute Care Transfers).
- "Want to Collect Your Private Pay? Start at the Beginning," a guide to collection strategies by SNF Solutions, April 12, 2011.

1 Lazar, K. "Group Faults Mass. Nursing Home Dementia Care." *Boston Globe*, July 15, 2015.

During annual inspections, state surveyors typically review dementia programs and services, comparing them with relevant advertising statements. Therefore, all print and online marketing materials should be reviewed by administrators and legal professionals to ensure that they contain no misleading messages, either direct or indirect, which may unduly influence prospective residents or family members.

"Unparalleled in senior care." Inflated assertions concerning quality of care may violate unfair trade practices and consumer protection laws, especially where they misrepresent services and staffing levels. In a recent case, a large aging services organization paid $2 million to resolve claims brought by the state attorney general.[2] The claims asserted that advertising and marketing materials misled consumers by promising to provide basic care to residents, even though the facilities were understaffed.

The increasing frequency of marketing- and advertising-related allegations in aging services litigation underscores the importance of reviewing state consumer protection laws and avoiding use of absolute and hyperbolic phrases, such as "best care," "maximum degree of independence" and "highest-rated quality." A more prudent alternative is to describe services in terms of goals, such as "We strive to provide our residents with a safe and compassionate environment."

"A five-star facility." The Centers for Medicare and Medicaid (CMS) Five-Star Quality Rating Program for skilled nursing facilities assigns a star rating to each of three domains – staffing, quality and health inspections – as well as an overall rating. According to a recent study, misrepresentation of star ratings is becoming more common and may be unfairly influencing consumer decision-making.[3] The most frequent form of data manipulation noted in the study involves citing a relatively high "individual" star rating without mentioning the considerably lower composite score, thus giving a potentially misleading impression of the CMS evaluation. Staffing levels also may be misstated, based on daily payroll records submitted to Medicare.[4]

To avoid allegations of CMS star rating inflation, fully disclose rating methodology to prospective residents and families. In general, selling points should be supported by facts and figures, including actual quality of care metrics. For example, rather than merely stating that the organization is a safe place for loved ones, consider reporting documented positive trends in infection and fall rates, and/or providing evidence that the facility outperforms regional or national averages in these areas.

2 "Pennsylvania Nursing Home Chain to Pay $2M to Resolve Claims of Misleading Consumers." Medical Malpractice Lawyers.Com, October 13, 2016.
3 Edelman, T. "Don't Be Fooled by the Federal Nursing Home Five-Star Quality Rating System." Center for Medicare Advocacy, October 5, 2016.
4 Rau, Jordan. "'It's Almost like a Ghost Town.' Most Nursing Homes Overstated Staffing for Years." *New York Times*, July 7, 2018.

REALISTIC SELECTION CRITERIA

Failure to understand and manage the expectations of residents and family members can lead to conflicts, and ultimately litigation, if residents fail to receive anticipated services and care. Given the increasing age, acuity levels and increased service needs of assisted living (AL) and independent living residents, it is incumbent upon organizations to candidly and thoroughly describe their capabilities and limitations to prospective residents and their families, in order to ensure the suitability of placements.

The process of managing family expectations starts with conveying realistic resident selection criteria in marketing materials, as well as during prospective resident visits and admission assessments. For example, AL organizations are designed for individuals who require aid with some activities of daily living, such as personal care, mobility, medication management, meal preparation and household chores. Families should be expressly informed that an AL setting is not the appropriate environment for residents with the following conditions, among others:

- **Complete immobility,** i.e., bed-bound status.
- **Aggressive behavior** presenting a reasonable likelihood of serious harm to self or others.
- **Unpredictable physical or verbal outbursts** that can be controlled only with medication.
- **Need for two-person assistance** for activities of daily living beyond bathing and/or transferring.
- **Medical problems requiring skilled nursing,** such as ongoing care of chronic wounds and indwelling catheters.

Some families can become so overwhelmed by the placement process that they cannot clearly distinguish between available options or determine whether a short-term or longer-term setting is preferable. (See "Making the Best Choice: Rehabilitation Versus Skilled Care" on **page 4**.) Organizations can enhance and facilitate decision-making by carefully explaining to families how levels of care differ, and helping them identify and articulate their loved one's needs and desires. (For a sample questionnaire designed to aid residents and families in clarifying their situation and narrowing their choices, see Assisted Living: A Self-Assessment Checklist, from AssistedLiving.com.)

STRAIGHTFORWARD BILLING/COLLECTION POLICIES

Transparency in billing practices clarifies mutual obligations and helps prevent unpleasant surprises and resultant disputes. By implementing and enforcing a policy of upfront disclosure of monthly fees and payment provisions – including deductibles, coinsurance, Medicare/Medicaid coverage and denials, appeals processes, refund terms and collection policies – organizations can strengthen their relationships with residents and families and reduce the potential for conflict.

A financial full-disclosure commitment should include the following measures, among others:

- **Outline billing policies and protocols in written materials,** on the resident portal and in admission contracts.
- **Define the term *responsible party* in admission contracts,** noting in writing whether the signatory, if other than the resident, will be held accountable for making payments.
- **Disclose the possibility of additional fees upon admission,** including potential charges for medication, laboratory services and transportation.
- **As an exercise, review a mock billing statement with responsible parties** and explain its full contents, including the "fine print."
- **Offer a tutorial on how insurance coverage works,** including what to expect in terms of deductibles owed, coinsurance balances and the role of secondary payers, as well as the appeals process in the event of coverage denials.
- **Appoint an advocate** to serve as liaison between the organization and residents/family members regarding routine insurance questions and billing matters.
- **Maintain an up-to-date list of local social service agencies,** and refer residents who require assistance to the appropriate resource.
- **Enclose a courteous, non-threatening letter with past-due billing statements,** noting the outstanding balance and requesting cooperation in resolving the matter.
- **Discuss overdue accounts in person with residents and family members** before turning the matter over to an outside agency for collection.

Making the Best Choice: Rehabilitation Versus Skilled Care

As hospitals, in response to changing incentives, discharge patients more quickly, aging services organizations are filling the gap by providing a wider range of specialized continued care. Options include long-term acute care hospitals, skilled nursing facilities, home-based care and inpatient rehabilitation, as well as treatment centers focusing on specific conditions, such as cardiac recovery, Parkinson's disease and multiple sclerosis.

For many inpatients with acute post-hospitalization care needs, the fundamental choice is between inpatient rehabilitation and skilled care facilities. While the two setting types are licensed to provide many of the same services, they differ in important ways, which should be clearly explained to prospective residents and their families. Key differences are summarized below:

INPATIENT REHABILITATION	LONGER-TERM SKILLED CARE
Focus is on rehabilitative therapy, especially for cardiac and stroke recovery, joint replacement care and post-hospital recuperation.	**Focus is on management of chronic medical conditions,** such as cancer, respiratory disease and significant wounds.
Residents are assessed five times per week by a rehabilitation physiatrist.	**Residents are assessed every 30 days** by an internal medicine physician.
Stays are short-term, lasting only as long as the intensive rehabilitation process requires.	**Stays are often of indefinite length,** depending upon the resident's condition, needs and level of functioning.
Weekly interdisciplinary meetings are held with a rehabilitation team, which includes patients and their families, therapists, nurses, social workers and doctors.	**Monthly interdisciplinary team meetings are held** to review and update written resident care plans.
Twenty-four-hour-a-day care is available from staff trained and certified in rehabilitative nursing.	**Registered nurses are available 24 hours a day,** but access to specialty rehabilitation nurses may be limited.
Nurses are qualified to treat patients of all ages with multiple physical and medical issues.	**Nurses are trained to care for elderly individuals** with chronic conditions.
The day shift nurse-to-patient ratio is typically 1:6, ensuring that staff members are available to provide complex rehabilitative care.	**Nurses are responsible for a higher number of residents** because their care needs are less acute.
Physical, occupational, speech and recreational therapy offerings are available up to three hours a day, every day.	**Patients are typically provided one or more therapies not considered intensive,** with sessions ranging from as little as 45 minutes to a maximum of 12 hours per week.
Care is coordinated by a case manager who assists with discharge planning.	**Care coordination efforts are focused on long-term placement,** including home-based and community options.

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In cases of extreme payment delinquency, some aging services organizations have attempted to gain guardianship of residents, thus obtaining control over their assets.[5] This tactic is controversial, with some viewing it as a legitimate means of debt collection and others as a form of intimidation. Guardianship is a complex and sensitive matter, governed by statutes that vary widely from state to state. Before filing a petition, consult legal counsel to ensure compliance with relevant rules and regulations, especially in terms of documenting business and resident care records.

SUPPORT FOR FAMILY COUNCILS

The 1987 Nursing Home Reform Act guarantees relatives of residents the right to form family councils, which are intended to enhance living conditions and the overall resident care experience. In turn, aging services facilities must cooperate with councils, provide them with a private meeting space and designate an employee as a liaison to the group. Staff members generally attend meetings only at the council's invitation.

An active and vigorous family council offers a range of potential benefits for aging services organizations. By permitting family members to interact directly with administrators and staff, family councils facilitate shared decision-making, help build trust, identify issues and concerns, and serve as a sounding board for ideas and improvements. These forums also offer a convenient opportunity for leadership to convey important information to relatives, reducing the potential for misunderstanding and consequent friction.

The following strategies can help aging services organizations create and sustain active, useful and focused family councils:

- **Establish or reinstitute a family council** if the organization currently lacks one. Arrange a discussion with staff and interested relatives about the benefits of a functioning council and offer to help plan the first meeting. (See Curry, L. et al. "Family Councils in Long-term Care Facilities." *Managed Health Care Connect,* January 2007, volume 15:1.)
- **Inform new and prospective residents and families of the council.** Develop an online portal dedicated to family council minutes, agendas and activities; publicize the group in newsletter articles, emails and flyers; and mention the council and its work in facility orientation sessions.
- **Educate staff and management about the family council's goals,** as well as its rights and potential benefits. (For guidance, see the sample staff training presentation "Supporting Family Council Development," prepared by the National Consumer Voice for Quality Long-Term Care.)
- **Provide assistance but not leadership.** To maintain the family council's independence and openness, ensure that meetings are planned and facilitated primarily by members, without management control. Staff should never be voting members or attend meetings uninvited.
- **Schedule family council meetings at convenient times for working people,** such as early mornings, evenings or weekends.
- **Publicize meetings well in advance via email, conventional mail and/or telephone,** and remember to include the discussion agenda and other relevant information in announcements.
- **Offer to provide speakers for meetings.** Encourage staff members and leaders to answer questions at family council meetings and suggest suitable outside speakers.
- **Ensure that a clear and accurate record is made of every meeting,** including the complete names of participants, a list of the topics discussed and descriptions of decisions made. Minutes should be taken by a qualified family member, reviewed for accuracy by an administrator, and circulated or posted for viewing by all residents/families. (For a model meeting notice and agenda, as well as sample minutes, see Grant, R., "Family Guide to Effective Family Councils," issued by the National Long-Term Care Ombudsman Resource Center, scrolling down to Appendices 8, 9 and 10.)
- **Demonstrate that family council input is taken seriously** by communicating regularly with council officers and responding to comments and questions within a designated time frame.

Strong, trusting relationships with residents and families do not just happen: They are the result of an across-the-board commitment to transparency, integrity and mutual communication. Ethical marketing, admissions and billing procedures, supported by an effective family council program, can help prevent conflicts and reduce liability exposure, while at the same time enhancing organizational reputation and paving the way for future growth and success.

5 Picchi, A. "How Nursing Homes Collect Debts: Seizing Guardianship." *CBS News Moneywatch,* January 26, 2015.

Six Strategies to Help Manage Intra-family Conflict

Family members should be encouraged to work together to obtain the best possible aging services experience for their loved one. However, negative family dynamics can make group advocacy a challenge for spouses, children, siblings and other relatives, with initial good intentions sometimes descending into miscommunication, friction and indecision. Intra-family conflicts also may lead to tension with aging services staff and leadership, contributing to complaints and a breakdown of cooperation.

The following six measures are intended to help providers understand and mitigate common sources of intra-family conflict, as well as to assist families in resolving differences of opinion and achieving consensus on care decisions:

1. Educate staff on the sources of family conflict, which include but are not limited to the following:

- **Reenactment of childhood roles and rivalries,** leading to power struggles, passive-aggressive behavior, and feelings of resentment and victimization.
- **Disagreements over a loved one's condition, capabilities and prognosis,** bogging down decision-making and leading to delays in providing needed treatment.
- **Varied financial situations among siblings or other family members,** producing differing opinions about level of care and choice of setting.
- **Unequal distribution of elder care burdens,** resulting in feelings of resentment by family members who shoulder most of the demands.

2. Provide ample opportunity for family members to ask questions about care. Staff members may not be trained or inclined to share all relevant information with family members on a day-to-day basis. To better manage expectations and ensure that all parties understand the plan of care, invite involved relatives and significant others to participate in monthly care planning meetings, family council sessions, and impromptu open discussions with administrators and staff. By broadening participation and inclusion, organizations can enhance family harmony and minimize conflict.

3. Request that family members choose a spokesperson to serve as liaison between facility and family, and to discuss concerns and consensual family decisions with staff and administrators.

4. Encourage family members to hold meetings among themselves on a monthly basis and as soon as any differences of opinion arise. By offering a meeting room or helping coordinate a conference call, facility leadership can help families talk through issues and resolve differences. Consider asking meeting participants if a social services representative can attend, in order to answer questions and provide advice when requested.

5. If necessary, request the assistance of a professional mediator. An outside facilitator can help family members clarify caregiving issues and move beyond impasses. In addition, the presence of a neutral third party can help allay defensiveness and apprehension, encouraging family members to speak openly about their questions, concerns and reservations. To find a professionally trained mediator, contact a local senior center or area agency on aging.

6. Contact a long-term care (LTC) ombudsman. Ombudsmen work with family members and aging services staff to address concerns, advocate for resident rights, and intervene when residents, relatives and providers disagree on care-related issues. An ombudsman can help identify the underlying sources of family conflicts, investigate complaints and suggest corrective actions. Consult a local LTC Ombudsman Office to learn more about this valuable resource. (See Grant, R. and Overall-Laib, A., "Working with Families: Tips for Effective Communication and Strategies for Challenging Situations," from the National Long-Term Care Ombudsman Resource Center.)

Planning Effective Intergenerational Programs

Connecting with others on a regular basis is a fundamental human need. Intergenerational (IG) programs bring together residents and younger people through planned, mutually beneficial activities in social settings that focus on shared recreational interests, skills, knowledge and/or experiences. Younger members of a resident's extended family are often invited to participate in IG programs, thus strengthening family ties while enriching residents' lives.

In addition to promoting much-needed social interaction, IG programs offer a wide range of benefits, including the following:

- **Improving health outcomes** and quality of life for residents.
- **Building self-esteem** for all participants through the sharing and learning of new skills.
- **Teaching youth about aging** and promoting intergenerational respect and understanding.
- **Fostering a commitment to volunteerism** at any age and reinforcing community bonds.

IG programs vary in scope. Some involve on-site weekly activities, such as gardening, playing board games, or art and craft making. Larger-scale possibilities include having residents travel to schools or community centers for senior buddy programs or interactive classes. (For more information and advice, see Jarrott, S. "Tried and True: A Guide to Successful Intergenerational Activities at Shared Site Programs," from Generations United®, 2007.)

Success in any IG program, large or small, requires careful planning. The following strategies can help promote safe and productive intergenerational connections between residents, their families and younger community members:

- **Start small.** Begin with a relatively simple activity and invite six to eight youth to participate. Limit the length to one or two hours, and ensure that there are at least two supervising chaperones for every 10 participants. As participants and staff become more familiar with the concept and each other, programming scope and ambition may be gradually enlarged.
- **Consider the energy and focus levels of all participants when selecting an activity,** especially when programs involve memory-care residents or young children.
- **Select a setting that can safely and comfortably accommodate the group and the planned activity.** Indoor spaces should permit adjustment of temperature, airflow and lighting levels.
- **Obtain written informed consent from all participants** (or their parents in the case of minors). Fully inform residents and their family members of the risks as well as benefits of the planned IG activities.
- **Develop safety guidelines for IG programs,** including a strict hand-washing policy, basic first aid provisions, food preparation and storage protocols, allergy precautions, and response measures for outbreaks of influenza, gastritis and other common, fast-spreading illnesses.
- **Review the organization's insurance portfolio, ensuring that it includes coverage for potential IG-related exposures,** such as slips and falls, wandering, abusive acts and food-borne illness.
- **Promptly inform administrators of any incidents or inappropriate behaviors,** and maintain records of all safety- and liability-related issues and occurrences.

CNA Risk Control Services

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