

DEFENSIVE DOCUMENTATION

Leading Age Senior Living Conference



Objective

- ❖ Understand principal areas of exposure for Senior Living Providers in general documentation and employee related reporting
- ❖ Learn best practices for generating appropriate documentation

Protecting Your License Through Proper Documentation

- Employee Handbook;
- Admission Agreements;
- Marketing Materials;
- Third-Party Agreements;
- Incident Reports



INCIDENT REPORTING



What Your Employees Should Think About Before Completing Documentation and Incident Reporting

- ❖ What is the purpose of this entry?
- ❖ Have they communicated the event to management?
- ❖ Does the documentation satisfy its intended purpose?
- ❖ Does the documentation document what the caregiver did and did not do for the client?

Plan for External Reader/Distribution

- ❖ It may be read by:
 - Insurance companies
 - Surveyors
 - Ombudsmen
 - Consultants
 - Authorized family members
 - Attorneys

Putting Pen to Paper

- ❖ Focus only on the event or condition
- ❖ It should only be factual
- ❖ Objective (keep the subjective statements out)
- ❖ Brevity
- ❖ Eliminate irrelevant detail
- ❖ Designation of time must be the real time that the event occurred and all reporting must be in chronological order
- ❖ Do not try to rationalize or explain why the event occurred



Recording Statements and Information in Incident Report

- ❖ Advise your caregivers to only record factual information
- ❖ Stay away from phrases like "left unattended" or "left unsupervised"
- ❖ Caregivers must understand the difference between an admission and statement
 - Ex: While assisting a resident with ambulation the caregiver looked away for a moment and next thing she knew the resident is on the ground. Resident tells caregiver that she slipped on a spot of water on the floor.
 - Incident Report Admission: Resident slipped on puddle of water that was directly in front of her.
 - Incident Report Statement: The resident reported to me that she slipped on water.
- ❖ The only subjective information documented should be direct quotes from the resident where necessary.
 - Avoid documenting assumptions or caregiver's personal opinions.

What to do when a mistake is made?

- ❖ If your caregiver, or whomever may be completing an incident report or other documentation, makes a mistake, draw a line through the incorrect information and write "mistaken entry." Then add the correct information (and, if necessary, an explanation for the mistake) and initial the changes.
- ❖ Never erase or scribble over an erroneous entry as such could appear to be an improper cover-up should the incident rise to the level of litigation.



Words to Avoid

- ❖ Likely
- ❖ Common
- ❖ Mistake
- ❖ Accidentally
- ❖ Incident
- ❖ May be
- ❖ Could be
- ❖ Abuse/abusive
- ❖ Somehow
- ❖ Unintentionally
- ❖ Miscalculated
- ❖ Confusing
- ❖ Apparently
- ❖ Assume

When is it too Defensive?

- ❖ A red flag in documentation can arise when caregivers or facilities continually place blame on the resident with little to no explanation and no corrective interventions.
 - Example: A resident repeatedly refuses to take their medication despite the caregiver's reminders to do so.
- ❖ Best practice: document interventions attempted to achieve the resident's compliance and results of those efforts.

Use of “Addenda”

- ❖ Use sparingly
- ❖ State the reason for the addendum
- ❖ Document the date and time and write the addendum as soon as possible after the original entry



Employee Training



Incorporate “DARE”

D: Data, Details

A: Assessment, Action

R: Response, Report

E: Evaluation, Education



DARE: Data, Details

- ❖ What was **said**?
- ❖ What was **observed**?
- ❖ What was **recorded**?



DARE: Assessment, Action

- ❖ Review the data and details and decide on *action steps* if needed?
- ❖ Does anyone else need to be involved?
- ❖ Is this outside your “scope of practice?”
- ❖ What is facility policy and how does it apply?

DARE: Response, Report

- ❖ How did the resident respond to the action(s) taken?
 - The overall goal is a sense of well-being, not a cure-all
- ❖ Who else needs to have the data, assessment, actions and responses?
 - Nursing management, administrator, physician, care plan team, family
- ❖ **“Report pertinent information once you have it.”**

DARE: Evaluation, Education

- ❖ Review everything you have done during the care process?
 - Does the documentation contain all necessary information to support good judgment?
- ❖ Do you need to educate anyone?
 - techs, aides, housekeeping, family, etc?

Best Practices: Bad Habits to Avoid

- ❖ Do not chart for others
- ❖ Do not use chart to assign blame or settle disputes
- ❖ Not a place for staff issues
- ❖ Do not refer to risk management efforts
- ❖ Do not try to cover up anything
- ❖ Do not leave blanks to fill in later
- ❖ Do not leave space for someone else

Use of Documentation in Litigation



Documentation that will Draw the Attention of a Plaintiff's Attorney

- ❖ Conflicting Documentation: This can occur between different caretakers (a resident has caretakers on more than one shift)
- ❖ Incident reports that "refer to risk management efforts"
- ❖ Falsification of Documentation
- ❖ Evidence of Pre or Post Signing of Documentation: If documentation is not signed at the time the entry is made, it can appear as though the caregiver had second thoughts about what to document
- ❖ Lack of Documentation by Caregiver on-site



Common Allegations

- ❖ Falls
- ❖ Abuse (Physical, Sexual)
- ❖ Elopement/Wandering
- ❖ Failure to Supervise
- ❖ Wrongful Death
- ❖ Changes in condition
- ❖ Medication Errors
- ❖ Corporate Negligence
- ❖ Wound issues

Falls

- ❖ Be concise
- ❖ Limited to the Event
- ❖ State facts objectively
- ❖ DO NOT try to rationalize or explain why the event occurred
- ❖ Do not give your opinion as to how the event could have occurred
- ❖ Include all interactions and resulting actions taken to care for the resident
- ❖ Document full conversations with the physicians on your assessment, your interactions, and any orders
- ❖ Document contacts with family and significant conversations

Licensing Issues-Marketing Materials

❖ Marketing Materials

– What is being marketed to families?

- ◆ Does the facility meet its marketing promises?
- ◆ Are families given unrealistic expectations?
- ◆ Are families provided explanations of staffing?
- ◆ Limitations of services?

❖ Does resident/family understand the role of the level of care of your community?

– Is this understanding documented?

Defensive Documentation: Employment Documentation



Performance Management – Common Pitfalls

- ❖ Not being honest with feedback.
- ❖ Not being timely with feedback.
- ❖ Inconsistency in feedback, treatment, expectations between employees.
- ❖ Failing to provide constructive, achievable performance improvement goals.
- ❖ Inconsistent, incomplete or inaccurate documentation
- ❖ Lack of awareness or understanding of protected status and possible impact to performance and measures

Performance Management: Charting the Course



- ❖ Knowledge of employment policies
- ❖ Consistent application and enforcement
- ❖ Consultation with Human Resources
 - Provides risk assessment
 - Ensures consistency within department and broader company
- ❖ Documentation
 - Progressive discipline
 - Accuracy in annual reviews
 - Termination

When Is Documentation Needed?

- ❖ Anytime an employee becomes subject to an adverse employment action.
 - Progressive discipline
 - Demotions
 - Reassignment to positions with less authority or different reporting
 - Reductions in pay
- ❖ Hiring or promotion
- ❖ Decisions resulting from safety issues, on the job injuries
- ❖ Unusual occurrences: i.e. investigations

Performance Management: Good Documentation Generally

- ❖ Timely- don't reach back to belatedly address earlier issues and don't delay acting on current issue.
- ❖ Complete-review the content before issued to ensure all relevant information included, don't avoid hard issues
 - Avoid "kitchen sink" approach
 - Avoid over-documentation
- ❖ Accurate- content should support actual problem, be truthful and make sense
- ❖ Factual- Clear statement of problem, avoid adjectives and hyperbole
- ❖ Identify how the problem needs to be resolved, place clear and specific responsibility on employee

Performance Management: Good Documentation

- ❖ Annual Review and in-between
- ❖ Follow format required in progressive discipline or other stated policies
- ❖ Avoid template pitfalls, remove unrelated or irrelevant content

Performance Management: Good Documentation

❖ Content

- Identify relevant performance issue
- Provide supporting details, examples
- Identify relevant performance standard/management expectations
- Describe the effect non-compliance or performance has on department or workplace where appropriate
- Describe remedial or corrective action
 - ◆ Time period for improvement
 - ◆ Consequences for continued poor performance

Employee Discipline: Good Documentation

- ❖ Identify the problem, when it arose and supporting facts
- ❖ Identify the remedial or corrective action to be taken
- ❖ Statement of consequences
- ❖ Documentation critical not just to correcting problem, but creating record that you raised and addressed problem



Discipline/Performance Management: Ready for Action

- ❖ Performance, attendance or other conduct issue presents need for discipline- STOP and consider...
 - Am I correctly applying policy?
 - Have I encountered issue with other employees? If so, what action was taken?
 - ◆ Am I being consistent with that prior action?
 - ◆ If not, what is legitimate basis for deviation?
 - Does the issue raise or implicate any accommodation or other protected needs of the employee?
 - ◆ Knowledge of issues
 - ◆ Consultation with HR

Discipline/Performance Management: Ready for Action

- ❖ Documentation
 - Follow rules above
- ❖ Email! Email and texts are **not private**,
 - Emails/texts are a record that will be discovered in litigation
 - Informality should be avoided
 - Tone, intent and meaning should be reviewed
 - Discussion of employees between managers should be avoided, pick up the phone, use formal documentation procedures to address a problem
- ❖ *New York Times Rule*

Performance Management

- ❖ Identify specific issue
- ❖ Provide examples
- ❖ Identify relevant standard/expectations
- ❖ Describe remedial or corrective action, including time period for improvement and consequences for lack of improvement

Discipline

- ❖ Identify the problem, when it arose and supporting facts
- ❖ Identify the remedial or corrective action to be taken
- ❖ Statement of consequences
- ❖ Documentation to correct problem & create record

Questions



Thank You



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