Policy & Procedures Regarding Resident To Resident Abuse
Cremea Mims, Director
Bureau of Health Services
October 30, 2007

Objectives

- Understand the purpose of Policies & Procedures (P & P).
- Ensure staff are familiar with P & P.
- Identify content of written procedures.
- P & P in the survey process.
- Examples of P & P.

Purpose of Policy & Procedures

- Living document
- Consistent with requirements
- Guidelines
- Risk management
- Reinforcement
- Facility Expectation
Written Procedures

• How and to whom staff are to report incidents.
• How internal investigations will be completed.
• How staff will be trained on the procedures related to allegations of resident to resident abuse.

Written Procedures Continued

• How residents will be informed of procedures.
• Define key words clearly.
• Document training.
• Culture change.

Ensure Staff Are Up-To Date

• Review P & P regularly.
• Posters to remind staff of location.
• Ensure staff are informed of updates.
• Make sure those responsible for procedures are on current list serves.
Examples Of Policies & Procedures

- Background Screening
- Abuse Investigation
- Investigation of Injuries of unknown sources
- Preventing Resident Abuse
- Protection of Residents
- Reporting Abuse or Neglect

Policies & Procedures Related To The Survey Process

- Survey Process
- Review of facility’s Policies & Procedures
- Are the Policies & Procedures current
- Did the facility staff follow the Policies & Procedures

Summary

- Facility’s Policies & Procedures in compliance with requirements.
- Use P & P as a proactive measure for risk management.
- Ensure staff are aware of the P & P and its location.
- Ensure staff are trained on abuse and policy.
- Document staff training.
- Remember it’s a living document.
Beyond DQA – Civil and Criminal
Issues of Resident Abuse

Linda Dawson, J.D.

October 30, 2007

Objectives

• Describe the risks of civil liability associated with incidents of resident to resident abuse and how to reduce the risks
• Describe the criminal justice systems’ response to reported resident to resident abuse
• Identify the key components of a thorough investigation of resident to resident abuse

Where to start?

• What do the applicable regulations require?
• What is required by your policies and procedures?
• What did you know?
• When did you know it?
• What did you do about it?
Documentation is Key!
- Shows that you know and understand what is required of you
- Shows that you evaluated and analyzed the information available to you
- Shows the interventions implemented and attempted
- Shows the effectiveness of each and any changes made

Keep It Real!
- Focus on an identified issue until it is no longer an issue - then document that the goal was met or resolved and remove it!
- Prevent fatigue or "same ol', same ol" documentation
- Licensed staff: monitor the quality of the documentation of all staff

Resident Safety
- Culture of Safety
- Applies to staff, visitors and residents
- Encourage "Blame free" reporting
- Sort: Unavoidable accident? Or foreseeable (and therefore preventable) harm?
- Use the assessment and care planning process to reduce or eliminate known risks of harm
Civil Liability

• If you assume the responsibility, you may assume the risk (duty of care) – so, know & evaluate the risks of harm
  - Did you know about the risk?
  - Should you reasonably have known?
  - How did you respond? Or fail to respond?

• Culpability
  - Neglect? Reckless? Intentional?

Civil Liability

• Possible civil outcomes:
  - Restitution – Repay costs or expenses incurred
  - Compensatory Damages – Make the victim whole
  - Punitive Damages – Punish the responsible party for failing to act to prevent the foreseeable harm

Avoiding Liability

• What was done to identify the hazards?
  - Things
  - Other persons
  - Individual's risks, including need for supervision

• Where & How did you look for the hazards?
• How did you identify them?
Avoiding Liability

• Show what was done:
  - What did you do?
  - What should or could have been done differently?
  - What is the current standard of practice?
  - What are best practices?
  - What is required?

Avoiding Liability

• Why and for what purpose did you act?
  • Was the resident aware of the hazard?
  • Was the family or guardian aware of the hazard?
  • Was the staff aware of the hazard? Did they know what to do? How did they know? Did they understand the purpose and desired outcome of the intervention?

Avoiding Liability

• How do you determine the effectiveness of your actions?
  • How is the effectiveness measured?
  • What is the result?
  • Get to the “root cause” to find effective solutions and limit your risk!
Learning Points:

To avoid or limit your liability:

• Know & evaluate the risks
• Use admissions information, assessments and care planning to reduce or eliminate foreseeable and preventable harm
• Encourage reporting and problem-solving
• Act promptly and responsibly on information
• Document – what, when, who, why, how?

Criminal liability

• Criminal law is premised on individualized culpability (guilt) and notice –
  - That certain actions are wrong and subject to punishment
  - Laws identify the conduct and the sanctions
  - Deter - individually and generally
• Focus in Resident to Resident Abuse -
  - Against the law vs. "programming" or care issue?

Strict Liability

• In civil and criminal law
• No intent required
• Violation = punishment regardless of intent
• Example: sexual contact with a small child
When abuse is a crime:

• Contact the police
• Law Enforcement's Investigation:
  - What happened?
  - Who was involved?
  - What was the actor's intent?
  - Take or conceal property of another?
  - Hit or bite – harm?
  - Touch intimately?
  - Fail to meet needs?
  - Consent?
  - Evidence? Proof?

Criminal Culpability

• Negligent: Knew or should have known better – high degree of carelessness
• Reckless: Didn't care; conscious disregard
• Intentional: Mental purpose

What's Important to Law Enforcement?

• Proof!
• The elements of crimes
• Whether the actor had the ability to understand the nature of the conduct and consequences of the action? Ability to conform conduct? Capacity to form mental purpose?
• Self-defense?
• Consent?
• Competence to give consent?
Who responds?

- Patrol Officer: Uniformed officer – Investigates, first on scene
- Detective: plain clothes – Follow up or specialized investigation
- Specialized Officers: CSI; Coroner; Victim advocates

Investigation & Prosecution

- Investigation
- Report
- Referral
- Charging decision
- Bail conditions
- Prosecution
- Conviction

Learning Points:

- Criminal negligence is carelessness to a high degree
- Recklessness is the conscious disregard for safety or welfare of another
- Intent – mental purpose to achieve a result
- Investigation, arrest & prosecution depend in part on evidence, intent, competence
Duty to Investigate

- Regardless of who the perpetrator is:
  - Caregiver
  - Resident
  - Family or visitor
  - Other

Conduct Your Investigation:

- Interview, Observe, Review, Collect Evidence, Document!
- Rule in/rule out
- Even if cause is unknown, a good investigation can identify things or individuals that did not cause the harm
- Investigation: Thorough; shows all options considered and how you reached your conclusion

If law enforcement is involved:

- Ask whether you can conduct your own investigation
- If you are asked to wait - document the officer's name, agency, date, and agency case number
- Send your report to DQA - include the plan for further investigation, if needed
Learning Points:

- A thorough investigation includes interviews, physical or documentary evidence.
- Report to DQA even if law enforcement is involved.
- Communicate how and why you made your decisions.
- Work collaboratively and coordinate efforts with other agencies to complete the investigation in order to determine what happened and hold perpetrators accountable, as appropriate.

Reporting Requirements

Shari Busse, Director
Office of Caregiver Quality
October 30, 2007

Requirements

- Caregiver Misconduct Incidents
- Adult-at-Risk Incidents
- DOA Response to Reports
**Caregiver Misconduct Incidents**

**Caregiver Misconduct Complaints**

[http://www.dhfs.state.wi.us/caregiver/contacts/Complaints.htm](http://www.dhfs.state.wi.us/caregiver/contacts/Complaints.htm)

**All Entities (except nursing homes)**

- BQA Memo 04-028, Revised Caregiver Misconduct Reporting Requirements for BQA Entities

**Nursing Homes Only**

- BQA memo 05-004, Requirements for Reporting Allegations of Abuse, Neglect, Misappropriation, Injuries of Unknown Source
- BQA memo 05-012, UPDATE - Requirements for Reporting Allegations of Abuse, Neglect, Misappropriation, Injuries of Unknown Source

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**Adults-at-Risk Incidents**

- The adult-at-risk has requested to make the report;
- Reasonable cause to believe that adult-at-risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss & unable to make an informed judgment
- Other adults-at-risk are at risk of serious bodily harm, death, sexual assault, or significant property loss

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**Adults-at-Risk Incidents**

No reporting is required in two instances:

- Not be in the best interest of the adult-at-risk (must document reasons for belief);
  - or
- Provides treatment by spiritual means through prayer for healing in lieu of medical care in accordance with his or her religious tradition
**Immunity Provisions**

- Protections for good-faith reporters of incidents involving adults-at-risk
- Immunity provisions apply to all reporters

**Response to Reports**

DQA responds to two types of health care complaints:
Complaints regarding entity activity (inappropriate or inadequate activity by an entity); and
Complaints of caregiver misconduct (inappropriate activity by a caregiver, e.g., abuse, neglect or misappropriation).

**Resources**

- **OQA Memo 06-028**
  - Adult-at-Risk, Including Elder Adult-at-Risk, Reporting Requirements For Entities Regulated by the Office of Quality Assurance
  - [http://dhfs.wisconsin.gov/rl_dsl/Publications/06-028.htm](http://dhfs.wisconsin.gov/rl_dsl/Publications/06-028.htm)

- **DDES INFO MEMO 2006-20**
  - Adult-at-Risk, Including Elder Adult-at-Risk, Reporting Requirements
Questions

Contact the Office of Caregiver Quality (OCQ) at:

Caregiver_intake@dhfs.state.wi.us

(608) 261-8319