Indiana State Department of Health

LONG TERM CARE NEWSLETTER

ISDH Long Term Care
Newsletter Issue # 09-37
December 11, 2009

In Today's Issue:
- Survey Update: Scanners
- Regulatory Updates
- Recalls

Survey Update: Scanners

The ISDH is testing the use of portable scanners to scan documents in an effort to improve the survey process. The ISDH recently issued scanners to approximately ten of its surveyors and they are now being used during surveys.

The ISDH has several goals for the scanning of documents. First, we would like to reduce costs for both the provider and state. A paperless system will decrease survey costs. Scanning documents eliminates the need for copying so saves considerable resources. It also allows surveyors to exchange documents electronically and eliminates the time and cost of delivering documents to the ISDH office at the conclusion of the survey. The ISDH added encryption software a couple of years ago so that the electronic transmission of documents is secure.

Second, the ISDH anticipates implementing the CMS Quality Indicator (QIS) Survey System in late 2010. The QIS system utilizes computer-driven templates. Having documents electronically allows for increased search capacity consistent with the QIS system and improves the use of technology.

Third, surveys produce a lot of paper. Having documents electronically save not only paper but storage space. This in turn reduces state costs for storage space.

Regulatory Updates

Staff to resident abuse follow-up

In the last edition (November 30, 2009) of this newsletter, the ISDH discussed several regulatory issues. One of those issues was staff to resident abuse. The ISDH received several questions and comments to that discussion. The following is the ISDH response to those questions.

1. Will all alleged staff to resident abuse incidents be turned into complaint investigations?

Staff to resident abuse incidents have always been reviewed by one of our abuse, neglect, or misappropriation review team. If the allegations proved to be substantiated, the ISDH would review the findings to determine whether the aide registry qualifications were implicated, whether the matter should be referred to the appropriate licensing board, and whether the incident should be investigated by a complaint surveyor for facility deficiencies. The ISDH anticipates continuing that process. If staff to

resident abuse, neglect, or misappropriation is substantiated, the matter would be referred to a complaint surveyor for review. If the alleged abuse is isolated and it appears that the facility acted appropriately, it may not be looked at until the next annual survey.

The ISDH has received comments that, as a result of facilities being cited for staff to resident abuse, facilities will be inclined to not report abuse incidents as required. Some facilities have indicated that they will just take the risk of being caught for not reporting. The ISDH will be looking closely at abuse and neglect during surveys. A facility failing to report as required may be subject to enforcement action.

2. If the staff person who does not report an abusive situation immediately is as guilty as the perpetrator, is the expectation to terminate both employees if facility policy is to terminate any employee where abuse is substantiated?

The ISDH has no requirement that staff be terminated for abuse, neglect, or misappropriation. The ISDH expects that the facility administration will appropriately address the problem based on the specific situation.

Abuse, neglect, and misappropriation have varying levels of severity or causes. Most facilities would likely terminate an individual that intentionally physically hits a resident causing injury. Playfully cuffing a resident as parents often do their children to gain their attention may be viewed by a resident as abuse but perhaps additional staff training might be an appropriate response.

There is a similar distinction for a staff member who fails to report abuse. The ISDH is aware of incidents where the perpetrator threatens a fellow staff person if they report. Although in most cases that threat is unrealistic and does not justify the failure to protect a resident by appropriately reporting the incident, there may be situations where it is understandable why a staff member failed or at least delayed appropriately reporting the incident. Rather than terminating and losing the investment in training, failure to report an incident may at times be better used by facilities as a "teachable moment" to promote the prevention of abuse and demonstrate the need for appropriate reporting of abuse.

Many facilities have a zero tolerance policy for any abuse, neglect, or misappropriation. Under the facility's policy, an individual found to have committed one of those actions or failing to report is terminated. That is a facility determination. The ISDH is aware that facility attorneys may have advised such action for third party liability reasons. The ISDH however does not have an expectation that an individual is automatically terminated. In terms of correcting a deficient action, the ISDH expects that there is an appropriate response based on the circumstances.

The ISDH is encouraging a culture change to where reporting inappropriate conduct is expected by all facility staff as part of a culture where staff do not tolerate inappropriate conduct towards residents. Failure to report is important because it may allow abuse to continue unchecked. A facility's abuse prevention policy generally relies on reporting by staff as a key component. Failure of staff to report therefore results in a deficient practice because the prevention system was not followed. Such failure may be cited on a survey report under the abuse tag and have an impact on the scope and severity of the abuse deficiency. If an individual fails to report abuse, neglect, or misappropriation, the facility may have failed to follow the requirement that abuse be appropriately identified and investigated. It is however up to the facility to determine their response and potential disciplinary action for failure of staff to report abuse.

The ISDH suggests that, in any situation of abuse or neglect, there are differences in levels of culpability. The ISDH expects to see appropriate disciplinary action based on the circumstances. While failing to report a witnessed rape may warrant termination, some actions may not be readily identified by staff as abuse and therefore training on what constitutes abuse is perhaps more appropriate in those cases. The facility however determines whether discipline is appropriate and the level of discipline to be applied.

3. A facility is expected not to retaliate against a staff person who reports abuse. Automatically citing a facility who reports abuse, regardless of the system or safeguards in place to prevent abuse, seems like retaliation against the facility trying to stay within regulatory expectations/requirements.

A facility should be cited when they fail to follow regulations. Abuse, neglect, and misappropriation of property are prohibited by regulations. Self-reporting does not change the fact that abuse occurred in

violation of regulations.

A staff person who reports abuse is doing their job. In some cases a staff member may appropriately report abuse but the facts perhaps later indicate that the staff member failed to some degree to follow procedures or was to some degree involved in the abuse. If a staff member self-reports that he or she abused a resident or failed to follow facility policy in reporting, there should be appropriate discipline of that staff member. While self-reporting may reduce the resulting punishment in some cases, self-reporting does not eliminate the fact that a deficient practice occurred.

The ISDH recognizes that there is increased sensitivity to abuse by facility management and administration. Staff connected with a facility do not want to be linked to abuse. The argument often made to the ISDH is that a facility should not be cited if they made reasonable efforts to prevent abuse. The reality is that abuse is no different than other standards of care. For instance, an owner, facility administrator or director of nursing undoubtedly does not want medication errors to occur and cannot always prevent a staff member from committing a medication error. Regulations require however proper medication administration so, if a nurse fails to properly administer a medication, the facility is cited at the scope and severity level indicated by the circumstances. Even if the medication error was self-reported, it does not eliminate the fact that a deficient practice occurred. The same approach applies to abuse.

While a facility may have safeguards in place to prevent abuse, if abuse occurs the bottom line is that they did not work and abuse occurred by a staff member of that facility. A facility is reviewed not only on whether they have an appropriate policy and procedure in place but also on the quality of care actually provided. A survey is not a performance evaluation of an owner, administrator, or director of nursing. A survey is a review of quality of care provided at a facility by all of the facility's staff. A survey is intended to identify care issues and ensure that issues are properly addressed. Just like a medication error, failure to conduct an assessment, failure to provide the ordered diet, or failure to reposition a resident, deficiencies should be cited regardless of whether they are self-reported. Self-reporting is an opportunity for an individual or a facility to demonstrate accountability but does not mitigate the fact that a deficient practice occurred.

The term "retaliation" does not fit this situation. Abuse is a significant problem. The purpose of a survey is to identify quality of care issues. Self-reporting does not, and should not, give a facility a free pass from being cited for deficient quality of care. If the state does not cite self-reported abuse, the abuse problem is hid and the survey process has failed its purpose of providing a reliable report of care issues. Citing a deficient practice is never retaliation. Surveyors are expected to cite all instances where a facility has not met the required standards of care. Citing a facility for a deficient practice that happened to be self-reported is clearly not retaliation because surveyors are required to cite any deficient practice. Transparency of the abuse problem is an opportunity for health care facilities and providers to focus attention on a serious matter.

CMS Revisions to Appendix PP – "Interpretive Guidelines for Long-Term Care Facilities," Tag F441"

Transmittal 52, dated September 25, 2009, was rescinded and replaced by Transmittal 54 dated November 30, 2009. There was an error in Tag F441, in which removed the notation, "Error Bookmark Not Defined." Also in this tag the subsection, "Preventing the Spread of Illness Related to MDROs," regarding the mix of water to bleach was corrected. In addition, minor changes were made to the examples for Severity Level 4. All other information in this instruction remained the same.

Transmittal 54, dated November 30, 2009, was then rescinded and replaced by Transmittal 55 dated December 2, 2009. *Clostridium difficile* can survive in the environment (e.g., on floors, bed rails or around toilet seats) in its spore form for up to six months. Rigorously cleaning the environment removes *Clostridium difficile* spores, and can help prevent transmission of the organism. [Referenced to Mayfield, J.L., Leet, T., Miller, J., and Mundy, L.M. (2000, Oct. 25). Environmental control to reduce transmission of Clostridium Difficile. Clinical Infectious Disease. 2000;31. Pp.998] Cleaning equipment used for residents with *Clostridium difficile* with a 1:10 dilution of sodium hypochlorite (nine parts water to one part bleach) will also reduce the spread of the organism. Once mixed, the solution is effective for 24 hours. Previously, a portion of this information was incorrectly stated and is now corrected. All other information in this instruction remains the same.

MDS 3.0: Part I - An Introduction: Satellite Broadcast and Webcast

Attached is the announcement and agenda for the upcoming MDS satellite broadcast scheduled for Thursday, December 17. This program will also have a live webcast, and will be available as an archived webcast for viewing after December 17, 2010, at http://surveyortraining.cms.hhs.gov/. Registration is not required to view a broadcast or archived Webcast. Surveyors and Certification Specialists must register to receive credit for any broadcast.

Recalls

Norpramin (desipramine hydrochloride) - Dear Healthcare Professional Letter
Audience: Psychiatric healthcare professionals

[Posted 12/02/2009] Sanofi-Aventis and FDA notified healthcare professionals of changes to the Warnings and Overdosage sections of the Prescribing Information for Norpramin (desipramine hydrochloride), indicated for the treatment of depression. The new safety information states that extreme caution should be used when this drug is given to patients who have a family history of sudden death, cardiac dysrhythmias, and cardiac conduction disturbances; and that seizures precede cardiac dysrhythmias and death in some patients.

Alka-Seltzer Plus Day & Night Cold Formula Liquid Gels - Incorrect Packaging
Audience: Consumers

[Posted 12/09/2009] Bayer Consumer Care and FDA notified consumers of a recall of a single product lot of the combination package of Alka-Seltzer Plus Day & Night Cold Formula Liquid Gels. The labeling on the foil blister card of certain packages within the lot were printed with the label reversed. The label for the green Night product appears under some of the blue Day product and vice versa. Consumers using the affected product lot may not be aware of the warnings of an antihistamine in the product that could cause drowsiness.

The affected Alka-Seltzer Plus product lot number can be found on both the interior blister package (in black text adjacent to the expiration date) as well as on the exterior carton containing the blister packaging (embossed on the side panel under the Bayer logo). This product was sold only in the U.S. at retail outlets nationwide.

- Package size: 20 liquid filled capsules per carton (12 day formulation capsules and 8 night formulation capsules)
- UPC#: 016500537779
- Lot #: 296939L
- Expiration: 5/11

Consumers who purchased combination packages of Alka-Seltzer Plus Day and Night Cold Formula Liquid Gels from the lot included in this recall should stop using the product and contact Bayer with any questions or for instructions on a refund or replacement.

Best wishes for the coming week.

Terry Whitson
Assistant Commissioner
Indiana State Department of Health