

Emotional temperatures

Even following care procedures may not prevent lawsuits

AN ARTICLE IN A CLINICAL JOURNAL ADVOCATED THE USE OF practice guidelines, effective treatments, and proper documentation as an antidote to the rash of lawsuits experienced by nursing facilities.¹ There is certainly no denying that the provision of care needs to be based on sound clinical protocols. These protocols can be useful as a defense when faced with legal action.

The case presented was of an elderly woman who had fallen, became bedridden, and developed a decubitus ulcer. When contacted by an attorney, the facility was able to get the claim dropped because it was able to show the Agency for Health Care Research and Quality guidelines were followed in the care of the pressure ulcer. One conclusion: the science of care is a key to a successful defense strategy.

The article also reported on events leading up to the claim. The daughter, who had contacted the attorney, had experienced no fewer than 10 incidents of resident service failure. Each of these incidents should have sounded alarms at the facility but did not. The facility had numerous opportunities to respond in a manner that could have prevented this daughter from reaching a frustration level that resulted in contacting an attorney. Another valid conclusion might be: The science of care is not sufficient; good resident relations are needed in the prevention of claims and lawsuits.

The resident-relations model that is presented below is based on thousands of cases involving family or resident complaints. It also borrows from research completed during the past 10 years at Vanderbilt University on why people sue health facilities and how to reduce this risk. The research relies heavily on data from physician practices and acute care, but the principles do transfer to long term settings.

Following suit

One of these principles is the "compelling relationship between patients' dissatisfactions with interpersonal aspects of care and their decisions to file suit."² In fact, there is some evidence that a much greater number of residents file suit without a valid claim than those that do have a valid claim.³ Many families are dealing with a variety of emotions and are looking for information and support to help them cope with feelings of guilt and loss.³ In many instances, the decision to take legal action and file a lawsuit is driven by the emotional energy precipitated by what families perceive to be insensitive handling and poor communication.^{2,3}

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Turning up the heat

This information suggests that each resident has an emotional thermometer. Picture the thermometer with descriptors such as "concerned" and "irritated," indicating the resident is likely to take problems or concerns directly to the staff member or department head. Moving up the scale, "frustrated" and "upset" indicate the resident is more likely to ask to speak to a manager, the owner, or even the corporate office. Finally, we find "angry" and "inconsolable." These are the levels at which the resident will pursue redress by seeking an outside party.

Actions by staff, policies of a facility, and responses to residents can be judged in terms of whether they raise or lower the temperature on this emotional thermometer. There are countless interactions with families and residents where the emotional thermometer is affected. However, it might be more productive to examine time periods where there is a greater probability that the emotional thermometer will be affected.

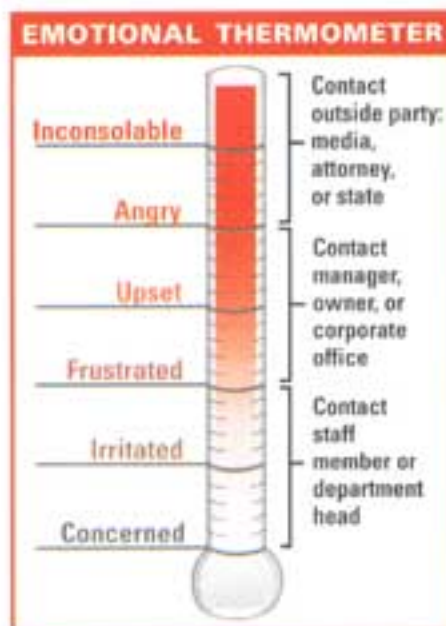
Day of admission. This is a day filled with feelings of uncertainty, anxiety, confusion, and perhaps guilt. Admissions are commonplace events in a nursing facility and staff members can easily get into a routine. However, to the family this might be a first-time experience. Is there a familiar face greeting the family? Often the person who gives facility tours, the person who does hospital evaluations, and the person greeting the family on the day of admission

are different people. Is the room ready with a welcome note? Is the day filled with completing myriad forms and tasks required by the facility, or is some time spent attending to family needs? Is there clear information about what to expect—meals, laundry, therapies, doctor visits, medications, chances of returning home, etc.? The bottom line is whether the resident and family are less anxious at the end of the day.

First 72 hours. First impressions are lasting impressions. They create a mindset that families then reinforce by looking for supporting examples. Contacting families and residents early in the process will create positive first impressions. This gives families a reason to overlook minor lapses in communication or service and begins to build trust, credibility, and communication. Failure to identify problems creates a negative first impression and results in families and residents looking for additional examples and evidence of poor service.

When there are problems

The response to a concern or problem is critical. It starts with how staff views a complaining family. If this is "just another difficult family," then it is likely the concern will be treated as an annoyance. If the complaint is viewed as a gift,



then there is a chance that staff will use this opportunity to truly find out the problem and take steps to respond.⁴

As one study reports, "Frustrated, angry residents given a friendly, free, and approachable outlet are far less likely to seek lawyers or media publicity to resolve their feelings of anger or grief about an adverse outcome or inadequate service."⁵ Another reason to handle complaints properly is that research has also shown that residents who do complain and have their complaint responded to are more loyal than residents who do not complain.⁶ A service recovery program must be a part of every facility's plan for resident service.

There will be situations when a resident will insist on resolving a complaint with persons outside the facility. The problem may be frustration with facility staff in getting issues resolved (the most common reason), the seriousness of the situation, or just the nature of the resident who wants "to go to the top." It is important for the facility to have a complaint process established and promoted so that the complaint comes to the owner or corporate office. Failure to communicate this program can result in residents contacting the state, the media, or an attorney.

When there are changes

Sometimes problems can spring from residents who have been otherwise very satisfied over a long period of time. It may be precipitated by changes in the family, changes in the facility or staff, or an unfortunate lapse in resident service.

The best defense is a high-touch approach that emphasizes building a relationship of trust between a resident or family member and at least one staff member.

No one likes surprises. They tend to raise the emotional temperature. Everyone understands the importance of communicating change, but equally important is collecting information on how families feel about the change. If the facility understands that a family member is unclear, misinformed, upset, unaware, or puzzled, then appropriate responses can be made by its staff. There is an opportunity to lower the temperature.

Combining the concepts of the emotional thermometer with the time periods described above has implications for data collection and staff training. By keeping frequent contact with families and residents about concerns and problems and maintaining a log or database, one is able to discern patterns in service-delivery lapses. The *Joint Commission Journal on Quality Improvement* states that "health care organizations need systems not only for *reacting* to patient complaints but also for *preventing* as much dissatisfaction as possible from occurring in the first place."⁷ In an article on developing an early identification and response model for preventing lawsuits, it was noted that "patient complaints are more frequent than lawsuits, allowing ... earlier and potentially more economically efficient interventions."⁸

The most reliable method of discovering resident concerns is to distribute a survey and to allow anonymous responses. The process of disseminating the survey in itself is a message