

# State Survey Deficiencies and Claim Allegations in Assisted Living Facilities

Susan Lucot, MSN, RN, MLT (ASCP), CPHRM

PEACE OF MIND

EXPERTISE

CHOICE

THE MEDPRO GROUP DIFFERENCE

Assisted living facilities (ALFs) were established to provide residential options for elderly individuals who find that living alone is no longer appropriate or practical. Often, the decision to move to an ALF is made when an elderly person needs help with everyday tasks, such as housekeeping, cooking, laundry, housing maintenance, and transportation. In addition, the elderly individual may need aid with personal care tasks, such as bathing, dressing, eating, managing medications, and toileting.

The model of living in these communities allows residents to possess some level of independence rather than being dependent on 24-hour skilled nursing care. Although this model is appealing to residents and their families, ALFs must balance a fine line between maintaining resident rights and keeping them safe.

Thus, the following issues often are identified as deficiencies in assisted living state surveys and are noted in legal claim allegations. Each issue is presented along with one or more risk-mitigation strategies to help ALF owners, operators, community management, and staff improve their practices.

## Issue: Marketing Advertisements

**Example:** False or misleading advertising, such as claims of 24-hour nursing care when no trained and licensed nurse – e.g., registered nurse (RN), licensed practical nurse (LPN), or licensed vocational nurse (LVN) – is onsite or on shift.

**Mitigation strategy:** Use truthful advertising; for example, if appropriate, advertise that the facility has 24-hour *resident* care rather than nursing care.

## Issue: Misleading Staff-to-Resident Ratios

**Example:** Advertising or promising a 1:1 staff-to-resident ratio that does not reflect direct resident care staff.

**Mitigation strategy:** Be transparent regarding direct staff-to-resident ratios. Ancillary staff members – such as those in administrative management, housekeeping, laundry, dietary, and maintenance – are not direct resident care staff and should not be counted toward the 1:1 staff-to-resident ratio.

## Issue: Inappropriate Level of Resident Care

**Example:** Admitting or retaining residents who have physical and/or mental deficits at a location (i.e., community, unit, etc.) that is not equipped or no longer able to provide safe and effective care.

**More information:** Sometimes the practice referenced in the example is due to marketing/sales staff making resident admission decisions rather than a qualified and licensed nurse or provider. These decisions can lead to allegations of profits over resident safety. In addition, hiring private duty nursing services for ALF residents may potentially increase facility liability if that service is not available on a given day or days for a multitude of reasons.

**Mitigation strategies:** The following recommendations can help ensure that residents are receiving the proper level of care:

- Conduct thorough and frequent assessments, including preadmission assessments. Trained and experienced nursing staff should conduct the assessments to ensure proper placement and retention of all residents.
- Establish and maintain open and transparent dialogue with each resident's power of attorney (POA) and family members so that they are actively engaged in the decision-making process.
- Inform residents' POAs and family members of the ALF's policy regarding scope of services and the need to comply with transfer requests for residents who have needs

the facility cannot meet. This includes residents who have advancing dementia, residents who have escalating aggressive behaviors, or residents whose physical conditions have worsened and require a higher level of care.

- Develop and maintain working relationships with other facilities to procure easier resident transfers and allay resident and family anxieties.

## **Issue: Admission of Dangerous Residents**

**Example:** Admitting residents without conducting full state and federal criminal background checks, including screening for sex offenders and residents who have behavioral health diagnoses.

**More information:** Lack of vetting residents has resulted in resident-on-resident cases of criminal and sexual assault, including death.

**Mitigation strategy:** Conduct full state and federal criminal background and sex offender checks, and screen residents for previous behavioral health diagnoses.

## **Issue: Staff Qualifications and Training**

**Example:** Hiring untrained and unlicensed personnel to serve as direct resident caregivers.

**More information:** Many states in the United States do not require trained and licensed nurses (i.e., RNs, LPNs, and LVNs) to provide care in ALF settings, which has led to the practice of using untrained caregivers. Also, on-the-job training is often inadequate for various tasks, such as:

- Performance of routine resident assessments
- Development of, and compliance with, individual resident care plans
- Identification of subtle changes in residents' physical, mental, and behavioral status
- Administration of medications or notification of residents to take medications
- Notification of management, providers, and family regarding changes in residents' conditions

- Documentation of assessments, treatments, monitoring, notifications, and care plan revisions
- Submission of incident reports for unsafe conditions, near misses, and adverse events
- Compliance with policies and procedures, including HIPAA

**Mitigation strategies:** If hiring trained and licensed nursing staff is not an option, ensure that proper and continuous training is provided to all direct resident caregivers. Initial and continuous training should include, but not be limited to:

- Review of policies and procedures (i.e., operational and clinical, including chain of command)
- Resident assessments/evaluations (upon admission, daily, and when changes in resident status are observed)
- Documentation (assessments, changes in resident status, notifications, care and treatment provided, interventions to maintain safety, etc.)
- Care plans (development, compliance, and revisions as needed)
- Medications (generic and brand names, purpose, most common and serious side effects, complications due to over- or under-administration, and notification of nursing management and providers)
- Incident reporting for unsafe conditions, near misses, and adverse events
- Notifications (management, providers, and POA/family)

## **Issue: Policies and Procedures**

**Example:** Having lack of, or inadequate, policies and procedures with little to no management oversight to ensure compliance.

**Mitigation strategies:** The following recommendations can help ensure a consistent approach to resident care, organizational protocols, and legal and regulatory compliance:

- Develop and implement well-constructed policies and procedures for chain of command; HIPAA compliance; assessments, care plans, and resident wellness checks;

notifications to management, providers, and family members; disclosure of adverse events; etc.

- Conduct routine management compliance audits and provide ongoing coaching for staff as noncompliance issues arise.

## **Issue: Assessments, Care Plans, and Management Oversight**

**Example:** Inadequate or inconsistent execution of resident assessments and care plans, and failure to properly monitor residents.

**More information:** ALFs are required to have fall, pressure injury, and wandering/elopement prevention programs. Problems occur when assessments are not performed as needed, care plans are not revised to reflect deficits identified through assessments, and management does not provide oversight. In addition, resident monitoring often is lacking, resulting in injuries. For example, residents have been harmed by being left unattended in courtyards, smoking areas, and at offsite activities.

**Mitigation strategies:** The following recommendations can help support a more robust assessment approach and improve quality of life for residents:

- Increase assessment frequency to include physical, cognitive, behavioral, and socialization aspects.
- Establish management expectations for routine oversight of assessments and care plans.
- Hire additional staff if feasible.
- Increase engagement activities for residents, such as soliciting volunteers in the local community, getting involved with local community groups or charities, and offering reading and arts sessions to local children.
- Adjust staffing to enhance engagement opportunities.

## Issue: Security

**Example:** Inadequate security of the building and campus results in an environment where residents might wander, or outside intruders might gain access to resident living quarters.

**Mitigation strategies:** Security for residents and staff is the responsibility of all employees. The following recommendations can help improve safety inside the building and on campus:

- Install surveillance cameras inside and outside of the building to track who is entering and exiting and from which areas.
- Monitor main entrance doors at all times.
- Ensure external doors are locked at all times to prevent outside intruders from gaining access inside.
- Introduce residents and family members to all staff members.
- Implement a system to identify and monitor all vendors, contractors, and surveyors while they are in the building and on campus.
- If using agency staffing, implement a system to vet their criminal and sex offender history, identify them as staff members, and track their assignments and whereabouts in the building.

## Issue: Culture of Safety

**Example:** Poor communication and teamwork result in an unsafe environment for residents and staff members.

**More information:** Lack of staff and management retention across the senior care industry creates hurdles for establishing a culture of safety in ALFs. Ineffective communication and lack of teamwork combined with unlicensed and untrained direct resident care staff can significantly increase risk exposures and lead to poor resident outcomes.

**Mitigation strategies:** Investing in facility management and staff is essential to improve employee retention and resident safety. The following recommendations can help reinforce a strong culture of safety:

- Examine current job descriptions. Do they align with the credentials and qualifications needed for the position? Is the salary based on local and national job averages? Is the salary appropriate for the skills and experience needed to fill the position?
- Examine current hiring practices. How are job applicants recruited? Are recruitment efforts effective in attracting high-quality and compassionate management and staff? Are thorough state and federal criminal background and sex offender checks conducted? Are previous work experiences reviewed?
- Examine current onboarding processes. Are new staff and managers given appropriate time and training to understand and learn the skills needed for their positions? Do new hires receive mentoring? Are new hires surveyed to assess the effectiveness of the organization's orientation process?
- Evaluate daily processes. Do managers and staff conduct daily briefings about the current work situation (e.g., staffing issues, building maintenance, supply inventory, and status of residents within the facility)? Are team huddles activated when changes with staff, residents, or facility operations occur during the shift? Are adverse event debriefings conducted to capture details leading up to and during the event as well as how the staff responded?
- Consider training opportunities. Has the facility implemented the teamwork elements of the Agency for Healthcare Research and Quality's **TeamSTEPS**<sup>®</sup> program? The elements include communication, leadership, mutual support, and situation monitoring.
- Learn from errors and near misses. Has the facility implemented a comprehensive root cause analysis program that includes reviewing potential system and process gaps?

## Issue: Corporate Leaders and Facility Management

**Example:** Inconsistent leadership and high turnover of facility management compromise resident care and overall management of the ALF.

**More information:** Because ALFs are limited in federal and state regulatory oversight, the model of resident care varies from one facility to another. The lack of consistent leadership, facility support (i.e., collaboration, decision-making, and finance), and corporate oversight has a tremendous impact on risk exposures.

More involved corporate leaders with proper training and trust in facility management can decrease the risks that often lead to state survey deficiency citations and legal claim allegations. Some of these risks include lack of:

- Oversight, monitoring, and problem solving
- Notification to providers regarding changes in resident status (e.g., advancing dementia that requires hospice care)
- Legal and regulatory compliance
- Financial oversight
- Equipment upgrades, infrastructure maintenance, and repairs
- Adequate staffing
- Response to facility needs and requests
- Experienced facility management and staff members who meet the hiring policies and job descriptions

**Mitigation strategies:** The following recommendations can help establish a solid corporate culture as well as a qualified and well-supported workforce:

- Prioritize investments in facility management, staff, and infrastructure. Having an aesthetically pleasing resident environment means little if the facility management and staff are unstable due to constant turnover and lack of empathy and compassion.



- Establish high-quality hiring and management processes, such as adhering to job description standards; offering comparable industry salaries and benefits; supporting a culture of safety, trust, fairness, and respect; responding to facility requests in a timely manner; and adopting a realistic work-life balance for all employees (management and nonmanagement).

## Learn More

Visit the National Institute on Aging to learn more about [residential facilities](#), [assisted living](#), and [nursing homes](#).

---

This document does not constitute legal or medical advice and should not be construed as rules or establishing a standard of care. Because the facts applicable to your situation may vary, or the laws applicable in your jurisdiction may differ, please contact your attorney or other professional advisors if you have any questions related to your legal or medical obligations or rights, state or federal laws, contract interpretation, or other legal questions.

MedPro Group is the marketing name used to refer to the insurance operations of The Medical Protective Company, Princeton Insurance Company, PLICO, Inc. and MedPro RRG Risk Retention Group. All insurance products are underwritten and administered by these and other Berkshire Hathaway affiliates, including National Fire & Marine Insurance Company. Product availability is based upon business and/or regulatory approval and may differ among companies.

© 2021 MedPro Group Inc. All rights reserved.