Senior Care Newsletter — February 2021

This issue of MedPro Group's Senior Care Newsletter will highlight some of the important successes that senior care operators implemented in dealing with the coronavirus disease 2019 (COVID-19) pandemic. Specifically, these successes have helped manage the negative effects of social isolation that residents have experienced.

Before diving into the accomplishments in maintaining resident engagement and staff well-being, it is important to understand the magnitude of the situation. Knowing that direct care staff form a very personal relationship with their residents and appreciating how a serious pandemic compromises that relationship is imperative.

Before COVID-19

In the pre-pandemic senior care industry, many alluring features attracted residents to senior care facilities. They sought the peace of mind of having staff assistance with activities of daily living (ADLs) as well as meal preparation, housekeeping, laundry, and home maintenance services provided for them. Moving into a senior care community meant that they would no longer have to face those tasks that may be overly challenging or place them in harm's way.

Another feature in attracting seniors was the great potential for companionship with others sharing the same interests and experiences. Seniors living alone often have little contact with family and friends because of daily work and life commitments, relocation, illness, and death. Along with companionship, seniors looked forward to enjoying plentiful social amenities, participating in activities, and more. These activities promoted resident engagement and fostered a sense of belonging.

The Reality of Social Isolation

Of course, much of this changed in 2020 as the regulatory bodies mandated isolation for senior care residents to protect them from COVID-19. Although socially isolating residents from each other as well as from visiting family members and friends may have helped to slow the virus spread, its negative impact resulted in those same residents spiraling into loneliness, depression, anxiety, dementia, and dementia exacerbation.

In addition, exacerbation of chronic health conditions, such as heart disease, stroke, cancer, and diabetes, have been reported. Some residents' physical health declined due to lack of exercise, medication refusal, and poor nutrition and hydration, which in turn resulted in a failure to thrive.

Staff Carried a Heavy Burden

Aside from the residents' plight, direct care staff have carried a heavy burden. Pre-pandemic staffing shortages — particularly nurses, nurse aides, and resident care assistants — were prevalent across the country at all levels of senior care living.

With adequate supplies of personal protective equipment (PPE) often unavailable, this left staff vulnerable to exposure to the virus, further accelerating the virus spread. As staff became ill or exposed to a COVID-positive individual and could no longer work (whether or not they had symptoms), the minimum quarantine was 14 days, which left facilities with less staffing. With childcare centers forced to close in many states, some staff members were unable to work. Remaining staff members needed to compensate by working long hours on multiple day stretches. Extended work hours and supply inventory shortages were just a few of the challenges encountered by senior care operators and staff.

One of the greatest hardships experienced by senior care staff was the loss of beloved residents who suffered both physically from acute illness and/or deteriorating chronic conditions as well as emotionally from little if any or altered visitations with no physical human touch. All of these adversities led to staff burnout, which further exacerbated the staffing shortage and may have led to a decline in the quality of care.

Opportunities for Healing

Many senior care operators realized early in the pandemic that they needed to prioritize caring for their staff so they could provide the best care for their residents. Here are some ways in which senior care operators supported their staff:

- They connected with local nursing staff agencies to backfill direct resident care positions to provide time off for those staff members needing respite. In addition, childcare was provided for staff and sick pay for COVID-19 related absences was instituted.
- They partnered with hospice and bereavement counselors to provide staff support by offering prayer and meditation sessions. A chapel-like environment was established with soft lighting and soothing music to foster self-reflection and spirituality. Staff members could renew their faith and realize all their meaningful contributions in providing high quality resident care in this environment.
- They used the Employee Assistance Program (EAP) to provide solution-focused counseling that promoted positivity to balance the ongoing stress for staff.

These measures were taken to promote staff well-being, which had a profound influence in providing compassionate care for their residents and demonstrating empathy for family members.

Creative Approaches Used to Engage Residents

Keeping senior care residents engaged and active had its challenges, especially with the mask and social distancing regulations. Knowing that senses such as vision and hearing often diminish over a person's lifetime, these mandates increased social isolation. For example, the inability to read lips and visualize facial expressions (critical components in nonverbal communication) combined with muffled vocalizations would quickly result in residents' withdrawal from conversation. In memory care units, the use of PPE required staff to demonstrate purposeful movements in order to communicate more clearly with the resident.

Staff also conducted deliberate conversations with residents to keep them informed and relieve anxiety about the future. Some clever methods used to engage residents included:

- Attaching fun pictures of staff members to their badges and personalizing their face shields.
- Allowing residents to use the senior care director's office for family visits since it offered better window visit opportunities.
- Investing in noise-canceling headsets to use on both sides of a partition to be like a window-enhanced visitation, which was especially helpful for memory care residents.
- Using virtual meeting technologies extensively.
- Coordinating drive-by parades that involved family members and friends.
- Using a traveling refreshment cart for desserts, happy hours, or to share chef creations.
- Having residents "meet at their doorways" to enjoy events, such as wacky remote car races and staff dressed up in costumes.
- Holding weekly pizza tastings complete with individual scorecards to promote debate among residents to rank the crust, sauce, cheese, and toppings.

In addition to engaging residents, establishing and maintaining transparent and frequent communication with family members was crucial. Phone chains were designated so that the center would contact one family member about a change in the resident's condition who would then relay it to the rest of the family. Weekly virtual family meetings also were conducted.

Despite all these efforts, the negative effects of social isolation in senior care will no doubt be felt for a while. Senior care operators need support and deserve our respect and gratitude for all that they have endured throughout this pandemic. They not only continued to deliver the best resident care possible in light of great challenges, but also they connected with the residents on a much deeper and humanistic level than ever before.

To all of our senior care insureds, "Thank you for all that you do!"

Webinar Reminder

For those of you who may have missed the webinar "Tell Your Story:" Survey and Litigation Readiness, you can view it here. The program, provided by senior care expert Connie Cheren, focuses on preparation for survey and litigation.

PREP Act Checklist (Hall Booth Smith, P.C.)

Hall Booth Smith, P.C. graciously provided the PREP Act Checklist (appended to the end of this newsletter) as a follow-up to the list of components in preparing for survey and litigation readiness highlighted in the November 2020 Senior Care Newsletter.

COVID-19 Vaccine Resources

MedPro has compiled COVID-19 Vaccine Resources that contain several curated regulatory and professional resources as well as fact sheets, policies, checklists, and other educational materials.

CMS COVID-19 Training for Senior Care

MedPro would like to remind all of our senior care insured clients of this training: CMS Targeted COVID-19 Training for Frontline Nursing Home Staff and Management.

Upcoming Educational Events

Legionella, COVID-19, and What's In Your Water? March 16, 2021 at 2:00 p.m. ET

Presenter: Dr. Janet Stout, an expert in *Legionella* in senior care water systems, is President and Director of Special Pathogens Laboratory and Research Associate Professor at the University of Pittsburgh Swanson School of Engineering.

Description: When COVID-19 hit, it impacted building water usage causing shutdowns and low occupancy. These conditions promote Legionella growth. When faced with Legionnaires' disease in a resident or patient, the stakes are high, and it is key that your community is prepared and able to react quickly.

Now mandated by CMS, water safety plans are a necessity for skilled nursing homes. The publication of CTI's Guideline 159, ASHRAE Guideline 12-2020, the ASSE Standard 12080 and

new Joint Commission guidance requires assessment of your proactive prevention strategies. Learn about these changes and how to integrate them into your approach to risk assessment, Legionella testing, and water safety and management programs. This presentation will demonstrate the importance of effective management and control of water systems.

To register for this webinar, click here.

This program has been approved for continuing education for 1.0 total participant hours by NAB/NCERS—Approval #20220315-1-A72712-DL. Call MedPro Group at 1-800-463-3776 for further information.

MedPro Group's Focused Learning Modules Coming in Spring/Summer 2021

MedPro will have focused learning modules on various topics available for on-demand education in Spring/Summer 2021. Intended for all staff and management in senior care living, each 20-minute module will provide an overview of an issue and relate it to survey deficiencies and potential litigation. Some risk mitigation strategies to improve practice also will be included.

MedPro Group's Patient (and Resident) Safety & Risk Solutions

We believe a strong risk management program reduces harm to residents and protects senior care communities and providers from liability. That's why we offer these services to our insured senior care operators.

- Onsite and virtual risk assessments to identify potential risk exposures
- Educational programs (live or on-demand webinars or onsite training) to inform senior care leaders and frontline staff
- Telephone consultations to address clinical and safety concerns
- The annual Senior Care Symposium to present information and education about relevant and emerging topics in risk management and resident safety

Disclaimer

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.

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HALL BOOTH SMITH, P.C.
ATTORNEYS AT LAW

CHECKLIST FOR PREP ACT INVESTIGATION

Last Revised: 7/2/20

The PREP Act provides tort immunity against claims for loss arising out of, resulting from, or related to the "use or administration," of a "covered countermeasure," by a "covered person" in an effort to treat or prevent the spread of COVID-19.

This checklist provides an overview of the evidence that should be gathered during initial investigation of a claim potentially subject to PREP immunity. It is divided into three categories: (1) Evidence of "Use" or "Administration"; (2) Evidence of "Covered Countermeasure" Status; and (1) Evidence of "Covered Person" Status. Due to the potential breadth of PREP immunity, this checklist is not exhaustive.

I. Evidence of "Use" or "Administration":

Type of Evidence	Check if Avail.
Medical Record of Plaintiff	
Billing Record of Plaintiff	
Administrative Policy/Procedure – COVID-19 Response	
Administrative Policy/Procedure – Infection Control	
Administrative Policy/Procedure – Resource Allocation	
Administrative Policy/Procedure – PPE Use/Allocation	
Administrative Policy/Procedure – Quarantine/Barrier Installation	
Guidance/Orders Received from Local Health Authority	
Guidance/Orders Received from State Health Authority	
Guidance/Orders Received from CMS/Federal Authority	
Other Guidance Followed While Developing COVID-19 Response	
Employee COVID-19 Testing Logs	
Invoices – PPE	
Invoices – COVID-19 Testing Supplies	
Invoices – Sterilization/Sanitation Products	
Inventory Logs – PPE	
Inventory Logs – COVID-19 Testing Supplies	
Inventory Logs – Sterilization/Sanitation Products	
Purchase Agreements – PPE	
Purchase Agreements – COVID-19 Testing Supplies	
Purchase Agreements – Sterilization/Sanitation Products	

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II. Evidence of "Covered Countermeasure" Status:

For each product identified, the following information should be obtained if possible: (1) Product Code; (2) Manufacturer; (3) Date of Purchase; (4) Date of Receipt; and (5) Date of Use/Administration. Common sources of such information will be **invoices, inventory logs, and purchase agreements**.

Product	Applicable Category(ies) of Countermeasure[1]	Evidence Needed	Check if Avail.
Surgical Masks	Qualified Pandemic or Epidemic Product; Security Countermeasure; Device authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
Respirators (including N95 surgical masks)	Respiratory Protective Devices; Security Countermeasures; Qualified Pandemic or Epidemic Product; Device authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
Gloves	Qualified Pandemic or Epidemic Product; Security Countermeasure; Device authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
Gowns	Qualified Pandemic or Epidemic Product; Security Countermeasure; Device authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
Face shields	Qualified Pandemic or Epidemic Product; Security Countermeasure; Device authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
Other Personal Protective Equipment	Qualified Pandemic or Epidemic Product; Security Countermeasure; Device authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
	Qualified Pandemic or Epidemic Product;	Product Code	
		Manufacturer	

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Decontamination/ Sterilization Systems	Security Countermeasure; Device authorized for emergency use	Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
Protective Barrier Enclosures	Qualified Pandemic or Epidemic Product	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
COVID Test Kits	Qualified Pandemic or Epidemic Product; Security Countermeasure; Device authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
Over-the-Counter Hand Sanitizer	Qualified Pandemic or Epidemic Product	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
Hydroxychloroquine (before June 15, 2020)	Qualified Pandemic or Epidemic Product; Security Countermeasure; Drug authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
Remdesivir	Qualified Pandemic or Epidemic Product; Security Countermeasure; Drug authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
CPAP Machines	Qualified Pandemic or Epidemic Product; Security Countermeasure; Device authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
Negative Pressure Ventilation Systems	Qualified Pandemic or Epidemic Product; Security Countermeasure; Device authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	
Airway Management Isolation Chambers	Qualified Pandemic or Epidemic Product; Security Countermeasure; Device authorized for emergency use	Product Code	
		Manufacturer	
		Date of Purchase	
		Date of Receipt	
		Date of Use/Admin.	

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III. Evidence of "Covered Person" Status:

Facility Role	Category of "Covered Person"	Evidence Needed	Check if Avail.
Facility	Qualified Person/Program Planner	Certificate of Need	
Licensed Nursing Home Administrator	Program Planner	Name	
		Licensure Status	
		Employment Status	
		Contact Information	
Attending Physician	Qualified Person/Program Planner as agent/employee	Name	
		Licensure Status	
		Employment Status	
		Contact Information	
Infection Preventionist	Program Planner	Name	
		Licensure Status	
		Employment Status	
		Contact Information	
Certified Nursing Assistant	Qualified Person/Program Planner as agent/employee	Name	
		Licensure Status	
		Employment Status	
		Contact Information	
Licensed Practical Nurse	Qualified Person/Program Planner as agent/employee	Name	
		Licensure Status	
		Employment Status	
		Contact Information	
Registered Nurse	Qualified Person/Program Planner as agent/employee	Name	
		Licensure Status	
		Employment Status	
		Contact Information	
Physical Therapist	Qualified Person/Program Planner as agent/employee	Name	
		Licensure Status	
		Employment Status	
		Contact Information	
Occupational Therapist	Qualified Person/Program Planner as agent/employee	Name	
		Licensure Status	
		Employment Status	
		Contact Information	
Speech Pathologist	Qualified Person/Program Planner as agent/employee	Name	
		Licensure Status	
		Employment Status	
		Contact Information	

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<table>
<tr><td rowspan="4">Social Worker</td><td rowspan="4">Qualified Person/Program Planner as agent/employee</td><td>Name</td><td></td></tr>
<tr><td>Licensure Status</td><td></td></tr>
<tr><td>Employment Status</td><td></td></tr>
<tr><td>Contact Information</td><td></td></tr>
<tr><td rowspan="4">Activity Therapist</td><td rowspan="4">Qualified Person/Program Planner as agent/employee</td><td>Name</td><td></td></tr>
<tr><td>Licensure Status</td><td></td></tr>
<tr><td>Employment Status</td><td></td></tr>
<tr><td>Contact Information</td><td></td></tr>
<tr><td rowspan="4">MDS Coordinator</td><td rowspan="4">Qualified Person/Program Planner as agent/employee</td><td>Name</td><td></td></tr>
<tr><td>Licensure Status</td><td></td></tr>
<tr><td>Employment Status</td><td></td></tr>
<tr><td>Contact Information</td><td></td></tr>
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[1] The PREP Act effectively establishes six categories of Covered Countermeasures: (1) Qualified Pandemic or Epidemic Products; (2) Security Countermeasures; (3) Drugs authorized for emergency use; (4) Biological Products authorized for emergency use; (5) Devices authorized for emergency use; and (6) Respiratory Protective Devices.

"Qualified Pandemic or Epidemic Products" must be a "drug, biological product, or device" and meet any of the following requirements:

(1) approved or cleared under the FD&C Act (21 U.S.C. §§ 351 to 360fff-7);
(2) licensed under 42 U.S.C. § 262;
(3) authorized for COVID-19 by an Emergency Use Authorization under 21 U.S.C. §§ 360bbb-3, 360bbb-3a, and 360bbb-3b (FD&C Act §§ 564, 564A, and 564B, respectively);
(4) Described in an in an EUI;
(5) Used under an IND; *or*
(6) Used under an IDE.

"Security Countermeasures" must be a "drug, biological product, or device" and meet any of the following requirements:

(1) approved or cleared under the FD&C Act (21 U.S.C. §§ 351 to 360fff-7) *and* determined by the Secretary of HHS to be "necessary" and a "priority";
(2) licensed under 42 U.S.C. § 262 *and* determined by the Secretary of HHS to be "necessary" and a "priority";
(3) authorized for COVID-19 by an Emergency Use Authorization under 21 U.S.C. § 360bbb-3 (FD&C Act §§ 564);
(4) Subject to an EUA; *or*

determined by the Secretary of HHS to be likely to qualify for approval or licensing within 10 years of a determination that it qualifies for funding from special reserve fund. 42 U.S.C.A. § 247d-6b(c)(1)(B)(i)(III)(bb).

"Drug" is defined under 21 U.S.C. § 321(g)(1) as: "(A) articles recognized in the official United States Pharmacopœia, official Homœopathic Pharmacopœia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C)."

"Biological Product" is defined under 42 U.S.C. §262(i) as a "virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein, or analogous product, or arsphenamine or derivative

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of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition of human beings . . . ."

"Device" is defined under 21 U.S.C. § 321(h) as "an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is-- (1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them, (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (3) intended to affect the structure or any function of the body of man or other animals, and [applicable to (1)-(3)] which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes."

A **"Respiratory Protective Device"** must have NIOSH approval pursuant to 42 C.F.R. part 84. A list of approved respirators published by the CDC can be found here: https://www.cdc.gov/niosh/npptl/topics/respirators/disp_part/default.html (last visited June 17, 2020).

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