Dealing with disruptive visitors – I Advance Senior Care

March 25, 2016 |  by Alan C. Horowitz

According to federal regulations, residents in a skilled nursing facility (SNF) have an almost unfettered right to have visitors at any time. Specifically, the facility must provide immediate access to family members or other visitors of the resident "subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time." 42 C.F.R. § 483.10(j). The devil is in the details and what a facility considers a "reasonable restriction" may not be viewed as such by the Centers for Medicare & Medicaid Services (CMS).

What options exist for a facility when a resident's visitor is acting in a disruptive manner? The answer is not as simple as it may seem. In one case, currently under appeal, a facility restricted the visits of a resident's adult daughter after the daughter attempted to kidnap her mother from the facility. That resident was documented by the attending physician, consulting psychiatrist and several independent expert physicians as being incapacitated. Another daughter, who held a valid power of attorney (POA), approved the restriction on her sister. The facility also restricted the visits of an attorney who attempted to have the incapacitated resident revoke the valid POA held by the daughter.

When the State survey agency received a complaint from the lawyer who had been restricted, it sent a team of surveyors to the facility. The surveyors cited "immediate jeopardy" based on what it considered an improper restriction of visitors—the restriction of the daughter who attempted to kidnap the resident and the attorney who tried to get the incapacitated resident to revoke her POA. CMS imposed a substantial civil money penalty.

Most people would agree that it was reasonable to restrict the visits of someone who attempted to kidnap a resident. An attempted kidnapping constitutes abuse by even the most liberal definition of abuse. However, in this instance, CMS did not agree. (On appeal, an administrative law judge agreed with CMS and the case is on further appeal. In a future article, we'll discuss how the appellate panel addressed this case.)

In another case, a facility "prematurely" terminated the restriction on an abusive husband's visitation, and the Departmental Appeals Board upheld a finding of immediate jeopardy. In *Columbus Nursing &*

Rehabilitation Center (Columbus), DAB No. 2247 (2009), the Board held that a facility "failed to protect the resident" when it ended the restrictions on visitation by an abusive husband. The Board has repeatedly held that "protecting and promoting a resident's right to be free from abuse necessarily obligates the facility take reasonable steps to prevent abusive acts, regardless of their source" (*Pinehurst Healthcare & Rehab. Ctr.* DAB No. 2246, (2009)). Such reasonable steps to protect a resident sometimes entail restricting visits by a disruptive individual.

Mark Yost, COO and General Counsel, NMS Healthcare, says, "For facilities, our first priority is protecting our residents. Sometimes, regulators do not fully appreciate the inherent difficulty and competing interests involved with respecting resident rights while protecting their safety." But, Yost adds, "The provider community must always protect residents from disruptive visitors, even if that means having a judge subsequently determine if a facility's actions were appropriate."

CMS provides guidance regarding visitation and states the following: "'Reasonable restrictions' are those imposed by the facility that protect the security of all the facility's residents, such as keeping the facility locked at night; denying access or providing limited and supervised access to a visitor if that individual has been found to be abusing, exploiting or coercing a resident; denying access to a visitor who has been found to have been committing criminal acts such as theft; or denying access to visitors who are inebriated and disruptive. The facility may change the location of visits to assist care giving or protect the privacy of other residents, if these visitation rights infringe upon the rights of other residents in the facility."

Strategies for dealing with disruptive visitors

A proverbial axiom reminds us that an ounce of prevention is better than a pound of cure. Thus, it may be helpful to include a reference in the resident's rights document given to residents at the time of admission explaining how the facility will deal with disruptive visitors. A facility could provide examples of visitors' disruptive behavior, such as being intoxicated, illegal drug use, gambling or prostitution or any area that is illegal or endangers a resident's safety.

Some situations may be so extreme and dangerous to a resident that merely curtailing a visit may be

insufficient. In one tragic situation the author was involved with, the husband of a dying resident on hospice repeatedly was caught pouring concoctions he created into the feeding tube of his comatose wife. The husband was an 86-year-old retired pharmacist. When questioned about what he was doing, he said he had “a cure” for his wife’s cancer. The facility offered to have both a pharmacy consultant and an oncologist with a PhD in nutrition review the list of substances the husband prepared for his wife, one of which was belladonna. He was told that if the pharmacist or nutritional oncologist approved, the facility would allow the homemade preparation.

After expert pharmacological review, the homemade concoction was not approved and, based on the roughly two dozen elements, was considered very dangerous. After multiple attempts to pour the substance into his dying wife’s feeding tube, the husband was told that the facility would be forced to seek a restraining order to prevent him from attempting to administer the deadly brew to his wife. Attempts at supervised visitation were futile as the husband pushed nurses away and still tried to administer what he believed was a cure for his wife’s cancer. The facility provided counseling services for the emotionally distraught husband and fortunately, he gave up efforts at trying to cure his wife’s cancer. Had the facility not been able to work with the grieving husband, it would have had to proceed with a restraining order.

The above case is certainly extreme and hopefully facilities will not have to consider a court-approved restraining order. Less draconian suggestions are listed below.

“Luckily, examples of dramatic family/visitor behaviors that could make a facility consider limiting visitation are rare,” says Daniel Haimowitz, MD, CMD and a medical director of nursing facilities. “But, they are extremely difficult to deal with. Personally, my approach is to try to understand where the family is coming from—assuming their behavior is because they care about the resident even though it is dysfunctional—and give them support.”

The safety of the residents is always the top priority, Haimowitz adds. “The facility needs to carefully document all their discussions and what they’ve attempted (and why), along with what the disruptive visitor has done, has said and has been told. I know of a visitor who repeatedly ignored facility instructions—eventually this lead to the police becoming involved and this particular family member was arrested.”

Facilities should attempt to determine the cause of the disruptive behavior. If the cause cannot be

eliminated, consider supervised visits. For example, visits could occur in an activity room or with a staff member present. Note that residents have a right to privacy and if visits were supervised or restricted in any manner there would need to be a very compelling and documented reason. Some states may have additional requirements for supervised visits.

Lindsey Rose Neal, MD, CMD, shares her approach to dealing with disruptive visitors. As a post-acute, long-term care physician and medical director of nursing facilities, Neal notes the following, “In my experience, disruptive visitors are typically family members who don’t feel heard. Nursing facilities often react to these visitors or family members with defensiveness and run as far away from them as possible, which just fuels the vicious cycle.”

Effective and proactive communication with a disruptive family member can often prevent a situation from escalating, thereby mitigating related problems. “Once I am made aware of these disruptive visitors, I try to run towards them,” Neal says. “Mostly what they need is to express their concerns to someone who can either help make changes or who can at least acknowledge that their feelings, thoughts and opinions are valid. These are the family members that I try to call proactively, especially with good news or ‘no news.'”

Another useful suggestion is to involve the state long-term care ombudsman and/or the State survey agency. Long-term care ombudsmen’s offices are not unfamiliar with incidents of a well-intentioned or not-so-well-intentioned family member who can be disruptive and dangerous to a resident’s safety and can be a useful ally.

In some cases, a “behavioral contract” may be effective whereby the disruptive visitor agrees that if certain inappropriate behavior continues, he/she will forfeit the right to visit the resident. Here too, facilities need to remember that a resident’s right to have visitors is virtually unfettered and any restriction on that right must be compelling and the least onerous choice under the circumstances.

Educating the staff so they are prepared and know how to effectively deal with a disruptive visitor is a prudent form of risk management. Having the director of nursing, administrator, social worker or medical director discuss the unacceptable behavior and the consequences (restricting the visits) may be all that is necessary in some situations. Another useful strategy might be holding a family conference and enlisting the support of non-offending family members. Regardless of the approach used, thorough documentation will help immeasurably when surveyors show up.

Because of cases such as the first one noted above, where CMS determined immediate jeopardy in spite of the facility's genuine efforts at protecting its resident from harm, it may be necessary to involve competent legal counsel to help guide a facility through a situation fraught with potential liability.

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