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Nursing Homes Face Serious Liability Risks from COVID-19, *Healthcare Risk Management, ft. Barbara Schabert*

Barbara Schabert, KD attorney, was quoted in this article written about nursing home liability published in Healthcare Risk Management on June 1, 2020.

Nursing homes are at risk for liability related to the COVID-19 pandemic. The high number of deaths in nursing homes may prompt lawsuits.

- *Some states are immunizing nursing homes against such lawsuits.*
- *The standard of care during the pandemic will be a key issue.*
- *Documentation of a nursing home's response and limited resources may determine the outcome of lawsuits.*

Nursing homes and affiliated health systems may face an onslaught of lawsuits alleging they failed to properly care for residents during the COVID-19 pandemic. Limited resources and the vulnerability of nursing home residents led to many deaths in nursing homes, and families will question whether those deaths could have been prevented.

Families will allege the nursing home did not adequately care for the resident once he or she contracted COVID-19. They also will claim the nursing home did not prevent the spread of the virus in the facility, Sullivan says. But she has seen a lawsuit in which the family claims the nursing home did not adequately communicate with families about the presence of the virus.

CMS Rules Apply

Although most nursing homes already put CMS-mandated infection control protocols in place before the nationwide spread of COVID-19, nursing homes remain under constant pressure to implement the rapidly evolving and increasingly detailed protocols issued by the CDC and CMS, notes Barbara R. Schabert, JD, attorney with Kaufman Dolowich Voluck in Fort Lauderdale, FL.

Recently, CMS issued updated rules and standards for health inspectors who are inspecting thousands of CMS-participating facilities. CMS directives focus on monitoring a nursing home's pandemic plan with an emphasis on the effectiveness of the facility's infection control policies and procedures.

These stricter inspection standards already have led to civil monetary penalties for nursing homes' failure to comply with infection control protocols, she says. Additionally, certain nursing homes have faced losing their Medicaid certification based on a lack of pandemic control efforts.

"First and foremost, nursing homes should maintain complete documentation as to all infection control policies and procedures, staff training on such procedures, efforts to adhere to such procedures, and records as to the necessary updates to such procedures," Schabert says. "In addition, nursing homes should document their implementation of, and efforts to comply with, all updated CDC and CMS guidelines and regulations. Overall, the nursing home should maintain sufficient documentation demonstrating the nursing homes' efforts in protecting staff and residents from COVID-19."

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