Legal Update: Respite Care Issues

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A number of RCFEs offer short-term respite care services. These services often focus on people with Alzheimer's or other forms of dementia, although respite clients may cover a wide range of disabilities. Respite stays typically range from as short as one or two days to as long as several weeks. For families that are caring themselves for a loved one (especially those with Alzheimer's), the availability of RCFE services can be a godsend enabling caregivers to, for example, attend out-of-town family functions or simply take a needed vacation.

From a provider's prospective, respite programs offer two significant benefits. First, they provide a revenue source and can be a profitable use of unused beds. Second, and more importantly, many providers find that residents who start out in their respite programs ultimately become fulltime residents.

The provision of respite services is clearly contemplated by RCFE law. Section 1569.5 of the Health and Safety Code states:

"The director shall adopt regulations authorizing residential care facilities for the elderly . . . to fill unused capacity on a short-term, time-limited basis to provide temporary respite care for frail elderly persons, functionally impaired adults, or mentally disordered persons who need 24 hour supervision and who are being cared for by a caretaker or caretakers. The regulations shall address provisions for liability coverage and the level of facility responsibility for routine medical care and medication management, and may require screening of persons to determine the level of care required, a physical history completed by the person's personal physician, and other alternative admission criteria to protect the health and safety of persons applying for respite care. . . ."

The above-quoted statute was implemented in 1986, yet no respite regulations have ever been promulgated. As a result, providers have no guidance from the Department as to how to deal with respite residents.

In light of the absence of regulations pertaining to respite residents, we have consistently advised clients to treat respite residents like any other client. In other words, since there are no relaxed standards for respite residents, RCFEs should provide the same level of care and supervision to a respite resident as they would to a long-term resident, albeit for a shorter period of time.

This means that all respite residents should submit a current physician's report and should undergo a preadmission appraisal to determine the resident's functional capabilities and care needs. Many respite residents are repeat customers. Where a respite resident is returning to an RCFE, we recommend that, prior to each visit, the provider discuss with family members any relevant changes in condition since the prior visit. Such discussions should be documented in writing.

The fact that respite residents are only in your community for a short stay, does not relieve you of the responsibility to provide appropriate care. As with any new resident to an RCFE, respite residents may require greater monitoring to determine whether their care plans are appropriate and to determine whether they are adjusting appropriately to the community. Depending on how well they adjust, repeat respite residents may require somewhat less supervision during subsequent stays.

Because there are no special rules pertaining to respite residents, providers are best served by utilizing their regular admission agreement for respite residents and then adding a "respite addendum" to deal with deviations from the standard agreement. For example, most RCFEs that charge preadmission fees have different fees that pertain for respite care residents. In addition, provisions regarding the term of the agreement and termination may need to be modified. It may also be appropriate to provide that if the resident remains in your community beyond the anticipated respite period, they become a "regular" resident and the respite addendum terminates and any required preadmission fees become due and payable.

Providers should take care to review their respite policies to ensure that all required disclosures are made in clear and unambiguous terms through the admission agreement (or respite addendum).■

What's New on the CALA Website?

CALA's been busy this summer updating our website. The Members Only Section offers...

- DSS New Law Implementation Plans
- Sample Exercise Room Agreement/Policy
- Criminal Background Check Guide
- Recent CALA Alerts

CALA members and visitors to our website have access to information on...

- Priority Legislation
- Medicaid Waiver for Assisted Living Pilot Project
- Medicare Part D – Prescription Drug Coverage
- Alzheimer's Association's Dementia Care Practice Guidelines
- Ordering the MCI-Dementia Brochure ■