



Hafernicks Perspectives

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Nursing Home Litigation Understanding the MDS

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(condensed by Deborah Hafernicks, RN)

We must take a step back in order to understand the MDS and begin by looking at the Resident Assessment Instrument [RAI]. The RAI is in essence the nursing process. It helps facility staff to gather information on a resident's strengths and needs, which must be assessed in the resident's individualized care plan.

The RAI consists of 3 basic components: MDS, Resident Assessment Protocols [RAPs] and Utilization Guidelines. The MDS are a core set of screening, clinical and functional status elements including common definitions and coding categories which forms the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicare and Medicaid. In fact, this is how they get reimbursed.

RAPs are structured, problem-oriented frameworks for organizing the MDS information. RAPs help identify social, medical and psychological problems and form the basis for the individualized care plan.

RAPs have 4 components:

- o Triggers – The triggers identify residents that are at risk and require further evaluation [i.e. falls, dehydration, malnutrition, decubitus ulcers]
- o Trigger Legend – A two-page form that summarizes all of the triggers
- o RAPs – Analysis that assists the staff member to draw a conclusion to proceed or not to proceed with a plan of care
- o RAPs – Documents the decisions made during the evaluation process or whether to proceed with a plan of care

Utilization guidelines are instructions concerning when and how to use the RAI. Once a RAP is triggered, use the utilization guidelines to evaluate the problem and determine whether or not you continue to care plan for it. The individual's care plan must be evaluated and revised, if appropriate, each time a comprehensive or quarterly assessment is completed.

There are many components of the MDS sheet that must be taken into careful consideration. MDSs are essentially a comprehensive assessment. A clinical assessment requires the full MDS, RAPs and Utilization Guidelines. They must be completed within 14 days of admission, then quarterly and annually, and when there is a significant change of condition and when the facility does a significant correction of a prior full assessment.

Although CMS has always accepted the MDS as a primary source of information and duplicative documentation is not required, it is ALWAYS expected that information contained in the clinical record supports, rather than conflicts, with the MDS. Completion of the MDS does not remove the facility's responsibility to document a more detailed assessment of particular issues of relevance for the resident.

Consider the steps of the nursing process:

- o Assessment [MDS]
- o Decision Making [RAPs]
- o Care Plan Development
- o Care Plan Implementation
- o Evaluation

The importance of accurately completing and submitting the MDS cannot be overemphasized. The MDS information is the basis for: the development of an individual care plan; Medicare payment; Medicaid reimbursement; quality monitoring activities and research and policy development. Once completed, it cannot be changed.

Nursing home cases can be extremely complicated and it will be pertinent for you to have a legal nurse consultant on your team to help navigate the mountains of paper and build your winning case. *Hafernicks Legal-Nurse Consultants* is skilled in LTC cases and are here to help.

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Hafernicks Legal-Nurse Consulting is locally owned by Deborah Hafernicks, RN. Her company has been providing quality services nation-wide since 2002. Deborah has been a registered nurse for over twelve years with experience including:

- Critiquing medical records
 - Creating programs for continuing education
 - Quality assurance and performance improvement
 - Developing and revising policies and procedures
 - Nursing and patient education
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THE LNC AS A MEMBER OF THE MEDICAL LITIGATION TEAM

If any aspect of your casework touches on medically related issues is there a legal nurse consultant (LNC) on your team? Legal nurse consulting has become an essential part of case analysis and trial preparation. Without an LNC, many aspects of a medically related case may not be fully discovered and available for the most efficient use. Preparation is the key to a successful outcome for the client.

Legal nurse consultants combine medical expertise with legal knowledge. Using their nursing background and sound clinical experience, an LNC will analyze medical records in relation to causation and damages. LNCs define medical terms and procedures for the legal team, identify deviations from the standard of care, and render informed opinions on the delivery of medical care.

Legal nurse consultants apply their specialized knowledge and clinical experience by analyzing the medical facts and applying the information to offer a greater range of supporting data. An LNC may prepare summaries, reports, and chronologies to help assess the merits of a case. LNCs provide litigation support, prepare charts and demonstrative evidence, and identify the need for expert witnesses. Quite often the LNC can locate the expert witness, evaluate his or her credentials and assist the attorney in determining the expert's suitability for the case.

There are many areas of litigation in which a legal nurse consultant may assist the attorney. Examples may include case management, personal injury, medical malpractice, products liability, workers compensation, rehabilitation, risk management, toxic tort, and insurance review. Within the area of trial preparation an LNC may assist with client interviews, deposition assistance, and independent medical exam attendance. The LNC works with attorneys on a case-by-case basis to review medical records and treatments. They may work in-house as a salaried employee for law firms or as an independent contractor.

LNCs are able to educate attorneys and those in the legal arena regarding the standards of medical treatment, the standards of nursing care, explain medical procedures, and assist with trial preparation, deposition questions, and selection of expert witnesses. LNCs can determine if any omissions are present in the medical records or if medical records may be missing and must be obtained to facilitate a thorough case review and preparation. They can turn the records into an interesting case narrative that an attorney can understand, is able to follow, and present persuasively for an audience - the jury. In the past, attorneys have used physicians to review medical records at an expert witness review rate. However, LNCs are much more cost effective. (Bevans, 2003) The cost of an LNC is minimal compared to the cost a physician expert to review medical records.

The role of the LNC is very different from the paralegal. The paralegal is a highly trained individual who must be adept at shifting gears from phone interviews to research to billing flawlessly and within a short time frame. (Bevans, 2003). The National Federation of Paralegal Associations defines a paralegal as a person who performs "case planning, development and management, legal

research, fact gathering and retrieving information, drafting and analyzing legal documents, collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney". The paralegal receives delegated tasks by the attorney and assists the lawyer in preparing for closings, hearings, trials, and corporate meetings. They identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. (U.S. Dept. of Labor, 2004). This work is absolutely essential to prosecute a case.

The role of the LNC is different from a paralegal yet these roles complement each other. (Bevans, 2003) The paralegal can draft pleadings and motions where the LNC can educate the legal team about medical procedures and terms. The LNC can determine how a treatment course was unusual and where to concentrate the discovery requests upon which the paralegal can act. In medically related casework, an LNC is essential to the litigation team.

LNCs use their nursing experience and medical knowledge to clarify health-related issues for attorneys. (Courson, 1999). For example, an LNC can define a chart entry such as "Pt. VSS, AF, no change in PE" which translates to patient vital signs stable, atrial fibrillation, no change in physical exam." LNCs define terms that are common in the medical field.

Legal nurse consultants receive training in a variety of ways. These may include a university based certification program or an independent program. Some LNCs have gained experience through the mentorship of an attorney. LNCs may have specialty areas of practice such as workman's compensation, criminal and forensics, life care planning, long term care, elder care, psychiatry, and many more. When considering an LNC, the most important qualification is years of medically related experience and the ability to translate the medical world into a format that is applicable to the legal arena. **Having a legal nurse consultant available during preparation and prosecution is invaluable.** The opposing team most likely has one. Are you comfortable approaching a trial without full knowledge of your case?

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database!"*

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The best time to call a consultant is **BEFORE** you really need one.
Hafernicks Legal-Nurse Consulting is on call for you
anytime from intake to trial!!

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