FLORIDA HEALTH CARE ASSOCIATION

PULSE

MARCH 2017

A PUBLICATION FOR FLORIDA'S LONG TERM CARE COMMUNITY

FHCA breaks ground on Education and Training Center

New addition will enhance member services and meet educational needs

Last month, Florida Health Care Association (FHCA) held the official ground breaking ceremony for its new Education and Training Center, which will expand the Association's current headquarters in Tallahassee. The event included several past FHCA presidents, members of the Board of Directors, staff, state dignitaries and community members, all taking part in the celebratory occasion.

John Simmons, FHCA President, recognized several key FHCA members who were instrumental in seeing this project come to fruition, including FHCA Immediate Past President Joe Mitchell, who chaired the Association's Building Task Force, and several past presidents in attendance — Bobby Rosenthal, Deborah Franklin and Scott Allen. "This incredible education and training center is going to add tremendous value to how we serve our members, and this project certainly would not have been possible without the foresight and leadership of [so many]," said John Simmons, as each past president and Task Force member was recognized for their dedication and hard work.

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Taking your team to the top

By John Simmons, MSW, NHA
FHCA President

Having a son who was a standout college basketball player always brings back to my mind the 1996 National Championship team from the University of Kentucky, of which he was a member. I have been exposed to the concept of team players for a very long time, both in sports and in health care. In our house, the month of March is always about the excitement of March Madness and watching teams play at their highest level to make it through the brackets to the championship game. As such, I wanted to focus this month's column on the importance of being and fostering team players in the long term care profession.

When you consider nursing centers and assisted living communities, you have to be struck by the fact that, if the team is not functioning at its highest level, then it's likely the residents aren't getting the best possible care and services either. A closer look might tell you that the team is quite diverse, which presents the need to be very aware of all the concepts of team building and developing. How do you get your team to work together and motivate them to achieve higher goals? What do a floor tech and an RN have in common, and how can you help both of them better serve your residents?

First and foremost in my mind is respect…think Aretha Franklin and go ahead and sing! Everyone in your center is important, and when you let them know that, the team can begin to come together. Having said that, I'm going to fast forward and highlight two areas where FHCA can help you in this area, particularly when it comes to your nursing staff, including your CNAs.

FHCA's Long Term Care Excellence in Nursing Awards are an excellent opportunity to recognize your RNs, LPNs, nurse administrators and CNAs. These awards honor exemplary nurses for their commitment and dedication in a number of areas, including clinical practice, person-centered care, continuous quality improvement, customer responsiveness, leadership and communication. By nominating your nurses and CNAs, you show them they are the best of the best among their peers. Even if they don't win, your acknowledgement of their work lifts them up among their coworkers (your team) and shows how much you value their contributions. FHCA is currently seeking nominations for these awards, which are due by March 27, so don't let this opportunity pass.

Next month, FHCA will begin asking Certified Nursing Assistants to submit personal stories about the care they provide. Our annual CNA Essay Contest is a meaningful opportunity to recognize CNAs at a very personal, "where they work" level. The contest helps to heighten the awareness about these caregivers and celebrate their contributions. Winning essay writers earn financial awards ranging from $500 - $200, which can be significant for a CNA.

But, we need your help encouraging your CNAs to participate, as many may be hesitant because they're afraid to put their words onto paper, saying, "I'm not a good writer." Help them, encourage them and remind them that it's not about having the best grammar, but rather putting their personal thoughts in a format that allows the reader to best understand the passion and commitment they have to helping their residents improve and find comfort each and every day.

I have had CNAs filled with pride after they submitted their essays, and the stories they shared were always inspiring. Even if they don't win, your CNAs will feel better about themselves for entering, and that helps your center give better care.

Phil Jackson, former coach of the New York Knicks said, "The strength of the team is each individual member. The strength of each member is the team." Your team is important, and lifting up each member will strengthen the group, boost morale, and foster an environment of selflessness and enthusiasm for the work they do. Your ultimate goal is to have every individual acts as one. Honor them and promote them at every opportunity, and I assure you success will be a slam dunk.◆

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The mission of FHCA is to advance the quality of services, image, professional development and financial stability of its members.

PULSE **March 2017**

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by J. Emmett Reed, CAE

FHCA/Our Florida Promise Executive Director

The serious business of session

March 7 begins my ninth Florida legislative session with Florida Health Care Association, and this, by far, is one of the most serious sessions we'll be facing.

Both the House and Senate have filed Certificate of Need (CON) bills, both of which repeal CON from every form of health care (hospitals, nursing centers, hospice, etc.). Just three short years ago, the Legislature voted, unanimously, on a CON bill that allowed almost 4,000 beds to be opened throughout the state based on a needs assessment. The program has been a huge success, and the state is seeing brand new centers being built at an investment that amounts to hundreds of millions of dollars.

The "free-market" drum beat always seems to be the genesis for these types of aggressive bills. Yet, the long term care community cannot be considered truly a free marketplace since the government sets providers' reimbursement rates. We believe the compromise bill from three years ago mirrors the closest thing to a free market system without turning the entire health care profession on its head.

A proposed Prospective Payment System was rolled out under orders from the Florida Legislature by the consulting group, Navigant, who developed the model for the Agency for Health Care Administration. Navigant's plan has caused dissention within the long term care community, and FHCA continues to make suggestions to modify the program so that it can work for most, if not all, of the skilled nursing centers throughout the state. It seems that most centers are willing to consider supporting a PPS structure as long as they don't have to sustain damaging financial losses. FHCA has been working tirelessly to request modifications to the Navigant plan, as well as funding to help provide a smooth glide path to the system upon implementation.

There has also been much discussion at the Capitol regarding managed care and its relevancy to long term care residents. Our members have already done a fantastic job of testifying in front of several Senate and House panels during committee weeks leading up to session. The message is that once an individual is deemed to be long-stay, meaning they cannot be safely transitioned to a setting outside the nursing center for their care, there is no more need for a managed care case worker to continue to manage that person's care. Nursing centers have been caring for these types of individuals successfully for many years. We believe that moving managed care companies out of the business of long term care eliminates duplicative services while saving the state $68 million.

As you can see, challenges and opportunities abound for the 2017 Florida legislative session, and we need your help now more than ever. FHCA will continue our grassroots initiatives this session, with opportunities for members to advocate with us here in Tallahassee and from back home.

This month will kick off our Lobby Wednesdays, and we expect another record participation with over 500 members traveling to Tallahassee over the next 60 days to advocate for these issues.

We'll also offer a number of ways for members to stay informed, with the Provider Program video, the Capitol Connection blog, our weekly *Focus on Florida* e-newsletter and the FHCA Facebook and Twitter pages.

And given the challenges we'll be facing this session, there's a good chance we'll be asking members to take action by emailing or calling their legislator to urge their support or opposition to a bill that impacts long term care.

Your membership affords you access to a team of highly regarded lobbyists and experienced government affairs professionals who work around the clock to represent your interests. But success during the legislative session can only come from a member driven effort.

Peter Drucker says, "The best way to predict the future is to create it." This session is serious business, and we have no intention of sitting back and watching our future be dictated by others. We follow the same approach with every risk or opportunity we face. We will play offense. We know what is at stake, will continue to fight the good fight, and as always, are honored for the opportunity to advocate on your behalf.◆

Stand Up & Advocate

Take part in FHCA's Lobby Wednesdays. Sign up yourself, your company or your district today.

Visit www.fhca.org/events/lobby_days for details.

MARCH 15, 22 & 29 and APRIL 5 & 19

The importance of facility policies and procedures

Use the KISS principle

By Karen Goldsmith

The advent of the latest round of Centers for Medicare and Medicaid Services (CMS) regulations has made it more important than ever that centers have well written and enforced policies and procedures (P&Ps). It is critical that providers write simple and precise policies and educate the relevant staff as to how to use them and, equally important, what to do if a P&P does not fit the facts.

The "Keep it Simple, Stupid" concept is extremely important here. The best P&Ps are meaningless if they are so complicated that staff do not use them.

The first step in developing P&Ps is to determine what areas need them. It is not necessary to have a P&P for every likelihood that may occur in your center. There are certain regulations in both state and federal law that either specifically require a P&P or scream out the need for one. However, there are other regulations that do not. You can write protocols in lieu of P&Ps for many of these. Others require nothing because they are the embodiment of community standards which a properly trained staff would know.

The difference between a P&P and a protocol is the degree to which you would require adherence. If you have a P&P, CMS expects that you follow it. If you do not, and staff has not articulated a proper reason why it was not followed, your P&P can create a deficiency for your center which might not have existed. Your protocol is more flexible. It is not a "rule" for your staff but rather a suggested process.

If either a P&P or a protocol is not followed, staff should document why that occurred. This helps you in two ways. First, it explains to your staff and surveyors why there was a deviation. Second, it gives the provider an opportunity to see if the P&P or protocol is working or needs changing.

Once you have the list of P&Ps you want, determine those already in place. Start developing the new ones you need. A good starting point is a set of already prepared P&Ps from either your home office or a vendor. Some of these can be adopted as written, others will require tweaking to bring them in line with the functioning of your center. Since you will be adding a number of P&Ps based on the new regulations, this may be a good time to review the existing ones to be sure they are still relevant to your operation.

The third step is to provide the new and modified P&Ps to your staff so they are familiar with them and start applying them to day-to-day operation. Handing out a page from your manual is not enough. Staff must be familiarized with the details of the P&P as well as the rationale, so they become part of their daily routine.

One round of training is not enough if the P&P is entirely new or signifies a significant change in how things are done. Remember that surveyors always ask staff about the policies and procedures used in your center. If the staff cannot answer questions, and the P&P is relevant to some act or omission, this could cause an additional deficiency or increase the scope and severity of an existing one.

You should do some type of return to ensure that staff has retained the information. Education is a never-ending process since you will be replacing staff from time to time, and circumstances (or law) may change.

The days of writing policies and procedures and leaving the books on the shelf until it's time for survey are long gone. P&Ps are an integral part of the operation of a nursing center. CMS reiterated this when they drafted the new regulations, which are peppered with the direction to develop P&Ps. Just as Rome wasn't built in a day, writing and integrating new P&Ps cannot happen overnight. It is an ongoing dynamic process which must be integrated into your center's daily operation.◆

Karen Goldsmith of Goldsmith & Grout, PA serves as FHCA's Regulatory Counsel. Her office is located at PO Box 875, Cape Canaveral, FL 32920. She is available to members by phone at (321) 613-2979 or e-mail at klgoldsmith@ggfllawfirm.com.

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Recruitment strategies for success

Thinking outside the box

by Deborah Franklin

As your Senior Director of Quality Affairs, I am committed to the needs of our members. During several committee meetings, we have heard you discuss difficulties in recruiting quality staff. The Quality Cabinet voted to create a Workforce Council, whose goal is to research and develop solutions and programs to address the nursing shortage across the state.

Skilled nursing centers are experiencing a workforce crisis. The baby boomers are living longer, creating an ever-increasing need for beds. At the same time, our current clinical workforce is heading to retirement. Employers must engage in creative recruitment strategies to attract qualified nurses and certified nursing assistants. According to the U. S. Bureau of Labor Statistics, the demand for registered nurses will rise by 26 percent by 2020. Centers are using various approaches to address the serious workforce issue, such as hiring bonuses, increased wages and benefits, lower selection standards, financial support for education and foreign recruiting. Yet, if not supported by a strong recruitment strategy, these efforts are a waste of money and resources.

Your foundation for success must include an effective recruitment strategy alongside your mission statement, budget and marketing plan. The core of your strategy should include how you position the company in the job postings and recruitment marketing efforts. It is vital to sell your organization's wonderful assets - low turnover, high employee satisfaction or good quality rating. You should also ensure your recruiting message aligns with your mission statement. If you want caregivers who understand quality care, your recruitment message should share that in every presentation. Your branding should paint the picture of the company culture. Human resources should collaborate with their marketing experts when they are developing the strategic recruitment plans. The employer's image weighs heavily in a job seeker's decision to apply.

An effective recruitment strategy will include innovative and outside the box strategies. One such strategy would be to offer retiring nurses alternatives to full retirement; they might prefer reduced-hour schedules, flexible schedules with time off for travel and opportunities for mentoring and training newly-hired nurses. Another strategy would be to provide education subsidies and tuition reimbursement for current employees to advance into higher education roles, such as a certified nursing assistant (CNA) becoming a LPN or a LPN becoming a RN. Recruit "up from within" by assisting any employee with career aspirations to advance. This will develop an environment that encourages education and builds employee loyalty but most importantly, the center will grow their own nursing staff.

Partnerships with nursing schools and CNA programs should be a vital part of your recruitment strategies. Join the board membership of area schools, host clinical site visits or assist in obtaining guest lecturers for the clinical classes. These relationships will not only improve the future clinical workforce by changing their perception and image of long term care, but will also give the center access for early recruitment. Through this involvement, you are able to hire the cream of the crop before they've applied elsewhere.

The primary goal of recruitment is to identify promising candidates and to fill open positions. It is possible that a good recruitment strategy can also reduce turnover. Your recruitment plan should include a method for rewarding employee referral; hires sourced from employee referrals usually have lower turnover than hire referrals from online job boards.

An often overlooked component of a recruitment strategy is the tracking and trending of different recruiting methods' effectiveness. Human resources can work with the marketing team to establish a system to track referral sources and eliminate the efforts that don't produce quality results. When an employee is hired, human resources should record how they were recruited. When they choose to leave, this should also be included in the tracking. Tracking data over time provides valuable insight into which recruiting sources will bring candidates who will stay with the organization.

One of the most important things in a recruitment strategy is to resist the idea of hiring "a warm body" to fill the open positions. Select the nursing staff based on the "unteachable" qualities vital to successful nurses and certified nursing assistants: empathy, sense of responsibility and motivation to be a caregiver. To the right candidate, it must be more than "just a job;" it should be a calling. Gallop discovered that the second most common reason top-performing nurses say they would leave their organization is "working with ineffective colleagues." By filling with "warm bodies," you may force your quality nurses to leave, causing a cycle of shortages to continue.

The workforce crisis begins with recruitment and continues with retention. As we continue our workforce series next month, we'll focus on tips and best practices for developing retention strategies. Together, we can reduce the nursing shortage across the state of Florida.◆

Deborah Franklin is FHCA's Senior Director of Quality Affairs. She can be reached at dfranklin@fhca.org.

EEOC Enforcement & Litigation Statistics

By Mike Miller

Miller Tack & Madson, FHCA Labor Relations Consultant

The Equal Employment Opportunity Commission (EEOC) recently issued its Enforcement & Litigation Statistics for Fiscal Year (FY) 2016. According to the EEOC, 91,503 charges were filed in the U.S. during FY 2016, which is an increase from 89,385 charges in FY 2015. Florida was second to Texas in the largest percentage of charges filed in the U.S., with Florida charges comprising 8.3% of the total charges filed, and Texas charges comprising 10.2% of the total charges filed.

As for Florida, in FY 2016, 7,610 charges were filed. Of those charges, 46.4% were retaliation charges, the bulk of which were filed under Title VII of the Civil Rights Act. Sex, race and disability discrimination charges were neck in neck, comprising 30.6%, 30%, and 29.2%, respectively, of all Florida charges. This is fairly consistent with the national breakdown of charges, in which retaliation charges comprise 45.9% of all charges filed, and race, disability, and sex discrimination charges range between 35.3% and 39.4% of all charges filed.

Significantly, this was the first year that the EEOC included statistics regarding LGBT-based sex discrimination charges in its year-end summary. The EEOC received 1,768 LGBT-based sex discrimination charges in FY 2016, more than doubling the amount of LGBT-based sex discrimination charges filed in FY 2013. The EEOC boasts a recovery of $4.4 million for LGBT individuals who filed sex discrimination charges in FY 2016.

Also, the EEOC filed 86 lawsuits in FY 2016, including 55 individual lawsuits and 31 lawsuits involving alleged multiple victims or discriminatory policies. Overall, the EEOC claims to have secured more than $482 million for victims of discrimination in private, federal and state and local government workplaces in FY 2016.

Third Circuit affirms regional director's finding in LPN case

Recently, the U.S. Third Circuit Court of Appeals (which does not cover Florida) affirmed the finding of the National Labor Relations Board (Board) that LPNs at a sub-acute care facility were not supervisors. In that case, a national health care union filed a petition to represent the facility's LPNs. The facility responded that its LPNs were supervisors, and therefore, could not form a collective bargaining unit. The Regional Director of the Board disagreed and issued a Decision and Direction of Election. Ultimately, the Board affirmed the Regional Director's finding that the LPNs were not supervisors, and the case made its way to the Third Circuit.

Supervisors are not entitled to the protections of the National Labor Relations Act (NLRA). Employees will be deemed supervisors if they have authority to engage in any one of the specified supervisory functions (such as, hiring, firing, assigning, disciplining, responsibly directing employees, adjusting employee grievances, and so forth); if the exercise of such authority requires the use of independent judgment; and if such authority is held in the interest of the employer.

In this case, although the LPNs assigned work to CNAs, the court affirmed the Regional Director's finding that these assignments did not involve independent judgment, but rather, they were "defined by the routine nature of the daily living functions with which [the CNAs] assist." The court further noted that the record did not evidence any analysis of the CNAs' skill sets in making the assignments. Next, the court concluded that LPNs did not "responsibly direct" the CNAs because there was no evidence that the LPNs "risk[ed] a real prospect of adverse action for CNAs' poor performance." In other words, the LPNs had to be subject to actual job detriment because of their failure to perform their supervisory duties in order for this factor to come into play. Although the LPN job description included supervising and coordinating nursing personnel, the court agreed that — in and of itself — this was not sufficient to establish supervisory authority. Also, contrary to the facility's claim, the court found no evidence of LPNs formally disciplining CNAs, except where the LPN was acting in the capacity of a Unit Manager (a supervisory role). LPNs temporarily and sporadically served in Unit Manager and other supervisory roles, but a regular and substantial portion of their work was not spent performing supervisory functions. Finally, LPNs adjusted minor grievances involving the CNAs, such as, personality conflicts between the CNAs or problems with a residents. But again, the court agreed with the Board that such minor grievances were not sufficient to confer supervisory status.

This case serves as an important reminder that supervisory status under the NLRA turns on the nature of an LPN's job duties.◆

Mike Miller is with Miller Tack & Madson, FHCA's Labor Relations Consultant. Learn more about MTM at www.peolawyers.net.

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A recipe for culture change

By Yale Metz

Friday night my wife and I went out to dinner at one of my favorite local restaurants. The restaurant offered a limited menu which I appreciate, as my tastes vary widely which can make meal selection a challenge. Their food always has great flavor, and the way the items are presented, in both description and plating, make the meal even more tempting. On this visit, I chose the herb-roasted chicken, creamy buttered mashed potatoes and a basil pea and carrot medley. As expected, the meal was thoughtfully plated and perfectly garnished. Our meal was delivered to the linen-covered table by a well-trained and courteous server. Our dining experience was enhanced by a beautiful table setting including a small vase with flowers. It was a memorable experience.

The following Monday, I was touring a long term care center and stopped to read the lunch menu posted in the hallway. To my surprise, it read "Baked Chicken, Mashed Potatoes and Peas," very similar to my distinctive dining experience on Friday night. My curiosity piqued; I made my way to the dining room where I found a presentation typical of institutional dining. The plate included a run-of-the-mill chicken breast alongside a rounded scoop of mashed potatoes, sitting in a pool of liquid from the adjacent peas. The meal was served on a dull, white rimless plate, placed upon an uncovered table with little visual appeal.

The difference from my previous experience was startling. It didn't look or sound nearly as appetizing as what I just had the prior evening, yet the meal was essentially the same. I took the time to taste the food that day, anticipating it would be nowhere near as good as my meal from Friday night. I was wrong. The food tasted great. This was the perfect example of the common saying, "We eat with our eyes first." With a little focus on description and presentation, this meal could have given a similar impression as my meal from Friday night.

Resident-centered dining is a significant factor in the long term care culture change movement. Resident populations are getting younger, have broader life experiences and higher expectations in regard to dining. From a regulatory perspective, there has been a shift in focus to a more resident-centered experience. Reimbursement rates may be negatively impacted if these factors are not taken into account.

In order to address these new challenges, it's important to assess the pros and cons of traditional institutional dining styles and transition to a more home-like or restaurant style service. This blending of ideals will provide a more enjoyable experience for the resident while still addressing any clinical needs. This means offering residents a variety of appropriate choices, flexible and/or extended dining times, and enhanced dining room or in-room experiences.

While this may sound financially unfeasible and operationally impractical, through proper training, utilization of technology and, most importantly, an interdisciplinary approach, the dining experience will become more resident-centered. Center level buy in and continued leadership endorsement will be necessary to sustain a change in culture. Just adding a tablecloth can bring a drab dining room to life. Instead of a "main" and "alternate," it can be "Chef's Specials" along with "Daily Offerings." Utilization of technology can allow staff to present menus each afternoon with the next day's offerings and enter their orders into the system for the following day. This allows for more offerings daily and provides dietary with real-time information for production, while still keeping food costs in line. As an additional benefit, it provides more one-on-one contact with residents and an opportunity to receive important feedback.

The recipe for culture change in dining service is not all that complex. With a little vision (seeing the end product through the eyes of the residents), and utilization of the technology and resources already available, a more resident-centered approach can be provided. This will result in a better dining experience which will lead to happier residents and improved survey outcomes.◆

Yale Metz is National Account Manager with Healthcare Services Group, an FHCA Service Corp member that providers members substantial savings and discounts on a wide range of products and services, including dietary, medical, maintenance, housekeeping, linens and more. He can be reached at ymetz@hcsgcorp.com.

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Infection prevention and control is everyone's responsibility

By Robin A. Bleier, RN, LHRM, CLC

We all play a role in the prevention and control of infections. One of the key elements is as simple as proper hand hygiene. The World Health Organization (WHO) and the Centers for Disease Control and Prevention (CDC) advise us that hand hygiene is necessary in order to prevent the spread of infections in health care centers, as well as in the community. Hand hygiene is an important skill for all team members regardless of their positions, not only for the residents and their colleagues, but also for themselves to include their loved ones.

To support the maximum quality for our residents, effective hand hygiene, as well as additional infection prevention and control practices or what is called "prevention bundle," must be in place. We've recently received questions about the prevention bundle. This includes the following of standard and transmission-based precautions, the appropriate management of and environmental cleaning and disinfection, and antimicrobial stewardship. Standard, transmission precautions are key for staff to be aware of and able to implement as indicated. These include:

Standard precautions: Starts with hand hygiene then use of personal protective equipment (PPE) and respiratory hygiene, also known as cough etiquette.

Transmission-based precautions: Contact, droplet and airborne precautions as well as cohorting of residents with infections due to like organisms when single rooms are not available, and dedicating equipment or ensuring the proper cleaning and disinfection of shared equipment.

Contact precautions: Requires the use of gowns and gloves for all resident interaction. Should droplet be involved, then the use of a mask when within six to ten feet of the resident is required. In the event of airborne precautions, a negative pressure room and the use of a respirator or the N95 mask is required.

Another very important consideration is the resident environment which, if not appropriately cared for, may contribute to the spread of infection. This includes that the proper processes and supplies for cleaning and disinfection products are implemented. Your Infection Preventionist should support your facility with review of the product labels to ensure the correct product goods are purchased and that the manufacturer directions are followed. Thus, our housekeeping services are extremely important, and we should focus on their training to adhere to the appropriate precautions prescribed for our residents.

In summary, it does take a team to properly implement and manage excellence in infection prevention and control. Our identified Infection Preventionist should be supported by proper education and training that includes evidenced-based measures created by qualified individuals. It is important to note that one size does not fit all in terms of isolation, and that, at times, more than one precaution may be required for additional infection control defenses.♦

Robin A. Bleier is the President of RB Health Partners, Inc. (RBH), a clinical risk Medicare and operational consultancy firm based in Tampa Bay. Robin and the team at RBH have a strategic partnership with FHCA and offer consulting support on quality affairs. She can be reached at (727) 786-3032 or robin@rbhealthpartners.com.

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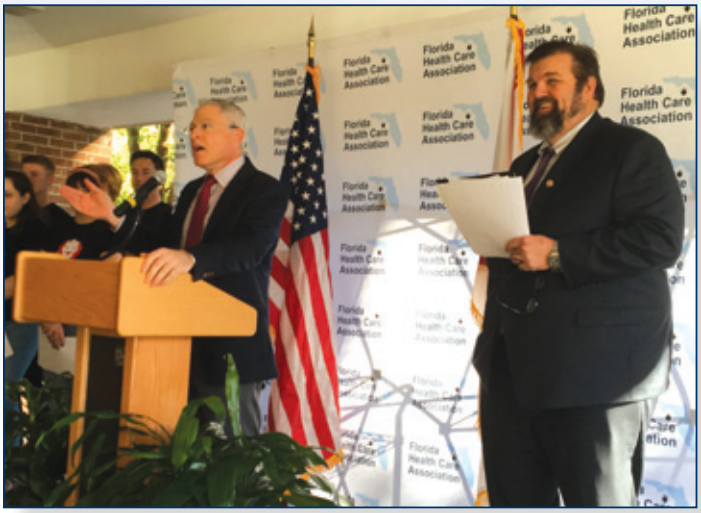
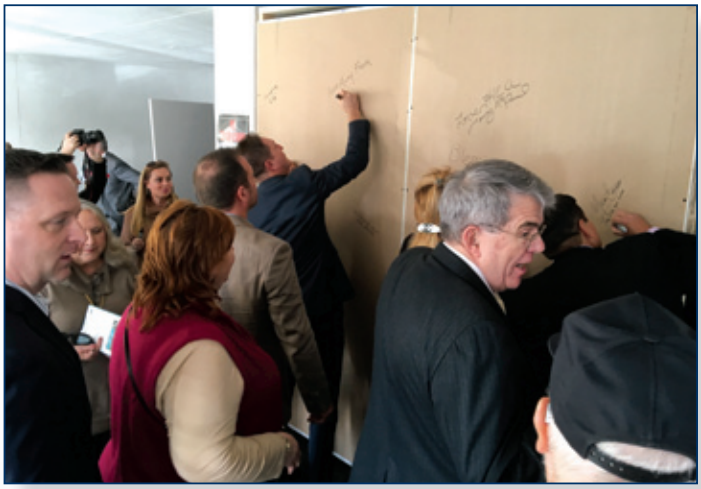
FHCA breaks ground on Education and Training Center





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FHCA's new Education and Training Center will add 6,000 square feet of accessible meeting space, state-of-the-art audiovisual equipment and an indoor/outdoor entertainment area for hosting networking events, all in the shadow of Florida's Capitol. The addition will give FHCA the ability to host nearly 200 attendees, while still having options to hold smaller meetings and events.

In December, FHCA launched the Foundation for the Future Campaign to give members an opportunity to be part of its growth and invest in the future of the Association. The Campaign allows individuals and organizations to support this endeavor through a tax-deductible donation to the nonprofit Florida Health Care Education and Development Foundation.

During the event, FHCA Executive Director Emmett Reed recognized Moore Stephens Lovelace, P.A. and McKesson, who each contributed a $100,000 donation to the project as Platinum Legacy Donors. Robin Bleier and RB Health Partners, Inc. led the Campaign as the first donor, with both a personal and company contribution totaling $10,000 as an FHCA Roof Raiser.

Guests also enjoyed incredible musical performances by the Leon High School Mane Event and an opportunity to share a special message by signing a piece of firewall that will be used in the construction of the new addition. After a champagne toast, FHCA President John Simmons and Executive Director Emmett Reed gathered with donors, past presidents and Executive Committee members to officially "break ground" on the new project.

To stay up to date on the FHCA Education and Training Center's building progress and learn more about additional giving opportunities, visit the website at edcenter.fhca.org. ◆

FAMILY FORUM

"On behalf of my sister and I, we would like to express our sincere appreciation to [your nurses] for their unwavering support, professionalism and respect shown to our father...[they] could always be counted on...they provided us with an outstanding representative of Seven Hills Health and Rehabilitation Center."

Sandy J. to the team at Seven Hills Health and Rehabilitation Center in Tallahassee

By Lorne Simmons, Moore Stephens Lovelace

CMS issues final rule on Medicare claims appeals process

In January, the Centers for Medicare and Medicaid Services (CMS) published a final rule titled Medicare Program: Changes to the Medicare Claims and Entitlement, Medicare Advantage Organization Determination, and Medicare Prescription Drug Coverage Determination Appeals Procedures. The rule finalizes proposed changes made to the Medicare appeals process.

The new rule becomes effective March 20 and is aimed at reducing the ever-increasing workload at the administrative law judge (ALJ) level of appeal. As of September 2016, over 650,000 appeals were pending at the Office of Medicare Hearings and Appeals (OMHA) for adjudication, whereas adjudication capacity under current regulatory standards is 92,000 per year. The final rule outlined challenges to the Medicare appeals process, noting that the number of requests at the ALJ level of appeal increased 1,222 % from fiscal year 2009 through 2014.

As a reminder, once an initial claim determination is made, providers have the right to appeal the decision as long as the provider does not take assignment on the claim where appeal rights are limited. There are five levels in the appeal process: 1) redetermination by MAC; 2) reconsideration by Qualified Independent Contractor (QIC) panel; 3) hearing by an Administrative Law Judge (ALJ); 4) Medicare Appeals Council/Review; and 5) Federal District Court hearing.

The new final rule implements significant changes to the appeals process. The first major change is a provision to permit certain decisions from the Departmental Appeals Board (DAB)/Medicare Appeals Council to be binding on all CMS components, HHS components that adjudicate matters in dispute (OMHA, ALJs) and entities that render initial determinations, redeterminations, and reconsiderations.

The authority rests with the Chair of the DAB. CMS included factors the Chair of the DAB should consider when determining whether to identify a decision as precedential. Those factors include decisions that address, resolve, or clarify recurring legal issues, rules or policies, that may have broad application or impact, or involve issues of public interest.

The final rule confirmed that the precedents will be published via the Federal Register, and the opinions will be made public. This would not add precedential weight to all decisions — only those made by the Council and that the Chair of the DAB explicitly selects as precedential.

The final rule also allows for "attorney adjudicators" at the ALJ level of appeal to handle non-hearing decisions, such as withdrawals and dismissals. Attorney adjudicators are defined as "a licensed attorney employed by OMHA with knowledge of Medicare coverage and payment laws and guidance."

Another change to the ALJ level of appeal finalized in the final rule is the criteria for when a party may submit evidence for the first time at the ALJ level of appeal. A party may submit evidence for the first time at the ALJ level of appeal if good cause exists, as determined by the ALJ or attorney adjudicator pursuant to four separate criteria. An ALJ may accept good cause when; a) the ALJ or attorney adjudicator finds that the new evidence is material to an issue addressed in the QIC's reconsideration decision and the issue was not identified as a material issue prior to the QIC's decision; b) the new evidence is material to a new issue identified in the QIC's decision; c) the party was unable to obtain the evidence before the QIC issued its reconsideration decision and the party submits evidence that establishes the party's reasonable attempts to obtain the evidence before the QIC's decision; and/or d) the evidence was submitted by the party to the QIC. In this case, the party can supply evidence that the evidence was submitted to the QIC, but not included in the administrative record.

In addition to these four circumstances, the final rule outlines a fifth example wherein the ALJ or attorney adjudicator determines that the party demonstrated that it could not have obtained the evidence before the QIC issued its reconsideration decision.

Providers should carefully review the final rule's provisions and consider how these changes may affect their strategies for Medicare audits and appeals.◆


Lorne Simmons and Sandy Swindling are with Moore Stephens Lovelace, P.A., FHCA's CPA Consultant. Learn more about MSL at www.mslcpa.com.

Florida's Constitution allows medical marijuana use in assisted living facilities

By Deborah Franklin

With the passage of Florida Constitutional Amendment 2 legalizing medical marijuana, Florida assisted living facilities and their leaders must educate themselves, their residents and families on how — and if — medical marijuana use will be permitted in facilities. Discrepancies exist between federal law, Florida statute and the Florida Constitution, leading to a legal argument about which law applies when.

Florida voters passed the amendment to allow use of medical marijuana with certain medical diseases and conditions, including glaucoma, cancer, HIV/AIDS, Parkinson's disease, Crohn's disease, Hepatitis and Multiple Sclerosis. Florida is the first state to enact a constitutional amendment allowing the use of medical marijuana; other states have legalized it through state law. Just as a company can decide if they want to have a smoke-free facility, in other states, a company can decide if they want to allow medical marijuana. In Florida, the citizen now has a constitutional "right" to use medical marijuana to treat their diseases and conditions listed above.

The Florida Department of Health is currently drafting a rule to guide the constitutional amendment, holding statewide public meetings for input. Additionally, bills have been filed in the Florida Senate that would change regulations and allowances currently permitted. Regardless of whether the Legislature passes a law, or Department of Health implements a rule supporting the constitutional amendment, assisted living facilities can't move forward.

Despite Florida's statute or constitution, the U.S. Government still lists marijuana as a Schedule I drug, which means it is considered to have no medicinal value. Under the constitutional amendment, physicians are allowed to recommend it, but this conflict causes confusion for assisted living facilities and medical providers.

If the assisted living facility has made the decision to allow the use of medical marijuana by their residents, then it is important to develop supporting policies and procedures. Where do they store the marijuana? Who assists the residents with it? Does a resident possess and store it in their room, or does the staff maintain the prescription? Other states' facilities have implemented a policy of "Don't Ask, Don't Tell," as it is easier to look the other way than address the issue head on. It is important to have the policies and procedures reviewed by legal representatives to navigate the state and federal regulations.

The uncertainty and confusion surrounding the legal use of medical marijuana can lead assisted living facilities and medical providers to be unsure of residents' legal rights. As Florida continues to clarify the issue, membership in Florida Health Care Association ensures you will receive education, advocacy and guidance.◆

Deborah Franklin is FHCA's Senior Director of Quality Affairs. She can be reached at dfranklin@fhca.org.

WELCOME NEW MEMBERS

ASSISTED LIVING FACILITIES

Bay Breeze ALF, *Gulf Breeze*
Dayspring Senior Living, *Hilliard*
Five Star Premier Residences *of Pompano Beach*
Gulf Coast Village Assisted Living, *Cape Coral*
Heartland Health Care Center, *Kendall*

ASSOCIATE MEMBERS

Bradley & Associates, *Indianapolis, IN*
Capital Funding Group, *Baltimore, MD*
CareServ Technologies, LLC, *Alpharetta, GA*
Fusion Healthcare, *St. Petersburg*
***National Health Rehabilitation,** *Edgewater, NJ*
NovoPharm, *Tampa*
Preparedness & Response Partners, LLC, *Tallahassee*
Progressive Medical Concepts, *Fernandina Beach*
Simple LTC, Inc., *Richardson, TX*
Wellness Robotronic Industries, *Nebo, NC*

**February Pulse correction*

good news

florida health care association around the state

When Life Gives You Lemons

Consulate Health Care of Orange Park employees Virginia Korth (Gina) and Robin Dake hosted a lemonade day for residents and staff, raising money for the center's activities department. Residents like Flo were encouraged to wear yellow and enjoyed lemon-themed baked goods, as well as homemade jars of lemon sugar scrub.

Leading the Way in Quality

The Carroll Center Team at the Glenridge on Palmer Ranch stands proudly to display recognition as a CMS Five-Star nursing center, acknowledgement by US News and World Report as one of the Nation's Best Nursing Homes 2016-2017 and an Award of Excellence from the Health Services Advisory Group (HSAG) for a superior Quality Measure Composite Score.

Port Orange Nursing & Rehab Center was recently recognized by Florida Governor Rick Scott and the Agency for Health Care Administration for earning the Governor's Gold Seal Award for Excellence in Long Term Care.

Capitol Advocates

Representatives from Consulate Health Care joined FHCA last month to meet with legislators and show support to members testifying before two House committees on Certificate of Need and the Nursing Home Prospective Payment System.

UPCOMING EVENTS

Some meetings noted herein may also carry CE credits. Additional information and registration can be found at www.fhca.org.

MEETINGS/EVENTS

MARCH

March 15, 22 and 29, 2017
FHCA Lobby Wednesdays
Tallahassee, FL

APRIL

April 5 and 19, 2017
FHCA Lobby Wednesdays
Tallahassee, FL

CONTINUING EDUCATION/TRAINING

MARCH

March 23-24, 2017
FHCA NIPPing Infections in the Bud
Specialized Training in Infection Prevention & Control
MorseLife Health System • West Palm Beach, FL

APRIL

April 7, 2017
FHCA CMS Requirements of Participation Seminar
hosted in collaboration with American Health Care Association
Tampa Airport Hilton Westshore • Tampa, FL

April 25-27, 2017
FHCA RAI-MDS-PPS Bootcamp
Hawthorne Health and Rehab of Brandon • Brandon, FL

MAY

May 31, 2017
FHCA Nurse Leadership Program Pre-Sessions
Don CeSar Hotel • St. Pete Beach, FL

JUNE

June 1-3, 2017
FHCA Nurse Leadership Program
Don CeSar Hotel • St. Pete Beach, FL

Still Time to Nominate Your Nurse Leaders

Nomination deadline is March 27

FHCA is seeking nominations for the annual Long Term Care Excellence in Nursing Awards, which recognize nurse leaders who daily demonstrate their commitment to quality care through their dedication to residents and staff. Awards will be presented in each of the following categories: Nurse Administrator of the Year, Registered Nurse of the Year, Licensed Practical Nurse of the Year, Certified Nursing Assistant of the Year and the Rising Star in Nursing Award.

Nominees in the Nurse Administrator, RN, LPN and CNA award categories must have been employed at an FHCA member skilled nursing center or assisted living community for at least two years and have held a license/certificate for at least 30 months. The Rising Star in Nursing Award recognizes an emerging nurse leader who has demonstrated excellence in nursing and person-centered care practices and has worked in an FHCA member center or at the corporate level for five-to-ten years. For all award categories, individuals may nominate more than one nurse/CNA from their center.

Award winners will be recognized during the Long Term Care Excellence in Nursing Awards Luncheon on Thursday, June 1, during the 2017 Nurse Leadership Program, which takes place May 31 - June 2 at the Don CeSar Hotel in St. Petersburg Beach.

The deadline to submit nominations is March 27, 2017. For more information about the Long Term Care Excellence in Nursing Awards, including a nomination packet, visit the Nurse Leadership Program link under the Events tab of FHCA's website at www.fhca.org.◆

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Bouchard Insurance is one of the largest privately held insurance agencies in the country, serving over 14,000 clients throughout the U.S. and in many countries around the world. They specialize in the senior living industry and manage all lines of insurance, including general and professional liability, property, workers' comp and group health. Bouchard helps clients to identify and analyze risk within their organization. Once they have identified the issues, they develop and implement cost-effective solutions to reduce risk and improve efficiencies. Bouchard has created a systematic approach to managing every line of coverage for their clients, giving them the confidence to focus on their business, rather than the insurance business. Contact Jeff Welch at (727) 451-3195 or jeffwelch@bouchardinsurance.com for more information, or visit www.bouchardinsurance.com.

EDGE INFORMATION MANAGEMENT INC.

Since becoming an approved service corporation company for FHCA in 1993, Edge has helped over 250 FHCA members meet their background screening requirements and kept them informed of pertinent legislative issues. Edge offers a variety of background checks including: drug screening, fingerprints, criminal, sexual offender, license verifications and references. Contact Nate Archibald at (321) 676-8822 or by email at natea@edgeinfomation.com, or visit www.edgeinformation.com for more information.

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HPSI PURCHASING SERVICES

HPSI Purchasing Services, one of the nation's fastest growing Group Purchasing Organizations, is privately owned and has served the senior health care community for over 50 years. HSPI leverages the purchasing power of over 15,000 members to provide substantial savings and discounts on a wide range of products and services including: Dietary, Medical, Maintenance, Housekeeping, Linens, Capital Equipment, Technology, Administration, Pharmacy and more. What sets HPSI apart from its competition is the personal service provided by 40 Purchasing Consultants located nationwide. Call your Purchasing Consultant for a free cost analysis to get you started on your pathway to greater savings. East Florida: Mike Donohoo (407) 928-5870; West Florida: Russ Holmes (407) 719-0229; Panhandle: Bill Bayhi (985) 718-7830; Corporate and National Accounts: MaryClare Soliman (540) 589-2772; or visit www.hpsionline.com for more details.

OFFICE DEPOT

Office Depot offers Florida Health Care Association members extra discounts and services due to the cooperative purchasing power of FHCA. We offer a wide variety of benefits, including 50 items which have been reduced based on volume ordering up to 80 percent off the list prices (the "High Use Item List"); next-day delivery on everyday office products; an award-winning Web site which links you to your pricing and into the warehouse and keeps 12 months of tracking information at your fingertips. For more information or to set up an account contact Terry Bush at terry.bush@officedepot.com or (850) 624-9979.

SENIOR CRIMESTOPPERS

The Senior Crimestoppers program is a proven, effective, proactive crime prevention system that combines proven components to help provide safe, crime-free facilities for residents, staff, visitors and vendors. Personal lock boxes for use by residents and/or family members, an around-the-clock, completely anonymous "tip line" call center, cash rewards of up to $1,000 posted on any and all incidents that occur and educational materials for residents, families, management and staff members are a few of the components that make up the program. More details can be found at www.seniorcrimestoppers.org or contact Kay Joest at (800) 529-9096 for more details.

THE REQUIREMENTS OF PARTICIPATION:

Bringing Them to Life in Your Center

APRIL 7, 2017

HILTON TAMPA AIRPORT WESTSHORE
TAMPA, FLORIDA

This one-day seminar, hosted in conjunction with the American Health Care Association (AHCA), will help long term care centers prepare to make necessary changes to comply with the CMS Requirements of Participation that will be enforced in Phases I and II. Attendees will also learn how existing resources and priorities - including the AHCA Quality Initiative, the Quality Award program and Long Term Care Trend Tracker - can assist them in meeting these new requirements.

SPEAKERS

Lyn Bentley, Vice President of Quality & Regulatory Affairs,
American Health Care Association

Holly Harmon, Senior Director of Clinical Services,
American Health Care Association

www.fhca.org/events/CMSROPseminar

AHCA
AMERICAN HEALTH CARE ASSOCIATION

Florida Health Care Association