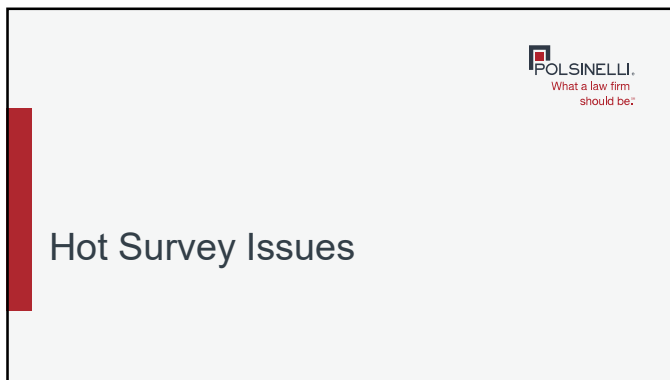


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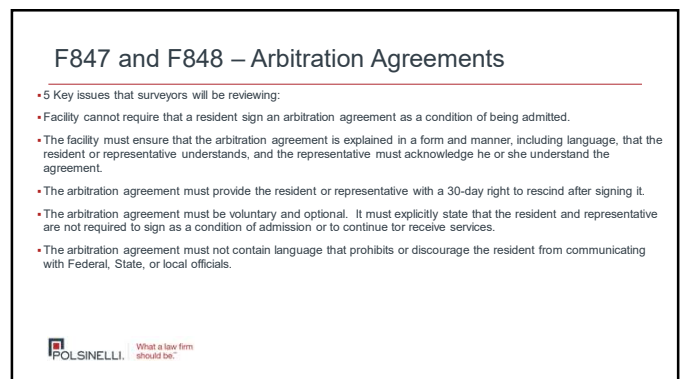
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6

## F847 and F848 – Arbitration Agreements

- When a resident or representative signs an arbitration agreement to acknowledge understanding, the surveyor is advised "additional evidence may be needed to establish that in fact the resident or their representative understood what he or she was signing. It may not be sufficient that the resident or their representative signed the document."
- Confirming email. Ditto for those that refuse to sign. Refusals may be your best evidence of compliance.
- Surveyors are instructed to confirm understanding through interviews with residents and representatives.
- Surveyors will also be interviewing residents and staff about what the arbitration agreement means. "How do you make sure that residents understand their rights?"

7

## F540 & F600 Abuse

8

## Abuse

- Defining Abuse **42 C.F.R. 488.300**
- *Abuse means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish*

9

## Top Five Errors with Abuse

- Staff fail to identify an incident or allegation of abuse.
- Staff fail to report an allegation of abuse.
- Once a report has been made, staff are not suspended pending investigation.
- Failure to conduct a thorough investigation.
- Failure to dig deeper.

10

## Three Golden Rules

1. Treat every allegation as if it were true and as if it were abuse.
2. Treat every allegation as if it were true and as if it were abuse.
3. Treat every allegation as if it were true and as if it were abuse.

11

## Staff need to know that whenever they have any concern at all they must:

- Immediately report it to the administrator.
- Immediately suspend staff pending the investigation.
- Initial report to IDPH within 24 hours.
- Conduct a thorough investigation.
- Send 5-Day Follow-Up Report.
- Discipline any staff as necessary.

12

## Conduct a thorough investigation

- Must be more than your determination as to what was the most likely cause.
- Interview:
  - Staff on duty at the time;
  - Room mate;
  - Family;
  - Other residents.
- Review prior notes.
- Interview staff for any other concerns.



13

## Abuse Survey Response File

- Original IDPH report.
- Facility Abuse Policy.
- Summary of investigation.
- 5 Day Follow-Up report.
- Inservicing Documentation.
- Copies of updated care plans if applicable.



14

## Abuse Plan of Removal

- Alleged perpetrator suspended or barred from facility.
- All staff inserviced on abuse policy and reporting responsibility.
- Report to IDPH.
- Initiate comprehensive investigation.
- Contact family and physician.
- Discharge of perpetrator resident.
- Repeat inservicing.



15

## F540 / F689 Elopement



16

## Elopement

- If a resident elopes, assume it will be an IJ.
- F540 – Adequate supervision
  - Timely and correct assessment?
  - Care plan developed to address concern?
  - Care plan properly carried out?

**Standard is not strict liability but not negligence either.**



17

## Elopement

- Elopement is presumed to be an IJ.
- Assessment is critical – is it accurate?
- Initial assessment upon admission, regardless of how long the facility has to complete the MDS.
- Does the initial care plan address the wander/elopement risk?



18

## Elopement

- Per IDPH Guidance, failure to supervise if:
  - Failure to monitor main entrance exit visually if door is not alarmed.
  - Failure to respond to door alarm.
  - Disabling of alarms.
  - Failure to maintain alarms in working order.
  - Staff are not aware that a resident has left the building.
  - Failure to follow a resident's care plan regarding wandering.
  - Failure to have a care plan for behavior.

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## Elopement

- An elopement happens, now what?
  - Find the resident.
  - Assess the resident.
  - Check all other residents.
  - Test all door alarms / repair if necessary.
  - Document everything you did.
  - Review resident care plan.
  - At a minimum pass out your elopement policy immediately and remind staff.
  - Inservice staff immediately.
  - Prepare your survey response file.
  - Thoughtfully draft your incident report.

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## Elopement

- Conducting the investigation
  - Interviews
  - Floor plans
  - Pictures
  - Weather conditions
  - Mental condition
- Documenting the investigation
  - Decide what you write very carefully. You will have to live with what you write.

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## Elopement

- What does your policy say about testing alarms?
  - Daily
  - Monthly
- Documentation of testing?
- How do staff respond to door alarms?
  - "Went to door didn't see anyone so reset alarm."
- Can your door alarms be disabled by staff?
- Are they?

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## Elopement Survey Response File

- Care plan.
- Documentation that resident was assessed.
- Documentation of any changes that were made – new interventions to care plan.
- Copies of alarm testing documentation.
- Policies on elopement and alarm testing.
- Instructions to staff.
- Reports sent to state.
- Inservice documents.

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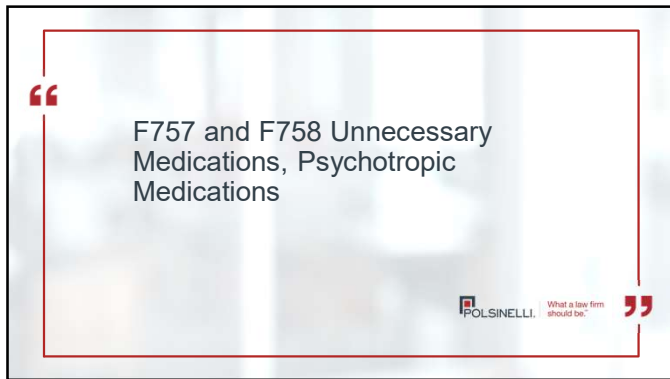
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## Elopement Plan of Removal

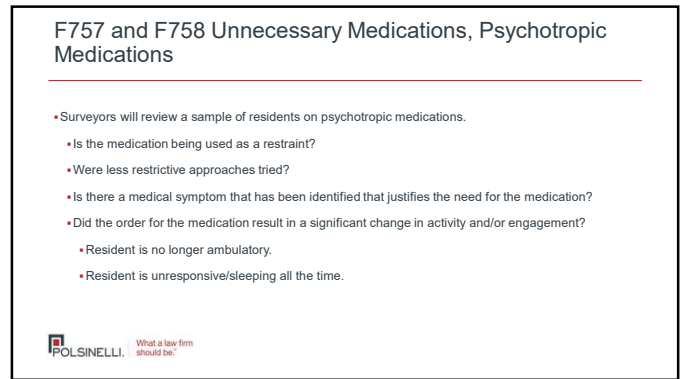
- Individual's care plan is updated.
- Door alarms are repaired (if appropriate).
- Elopement Policy has been reviewed and revised as necessary.
- Staff in-serviced.
- Additional alarms installed.

 POLSINELLI What a law firm should be.

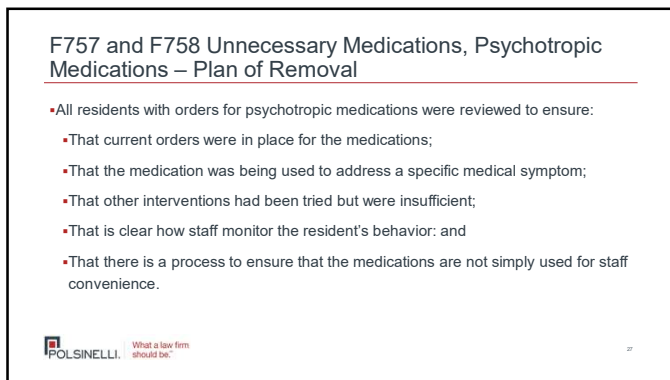
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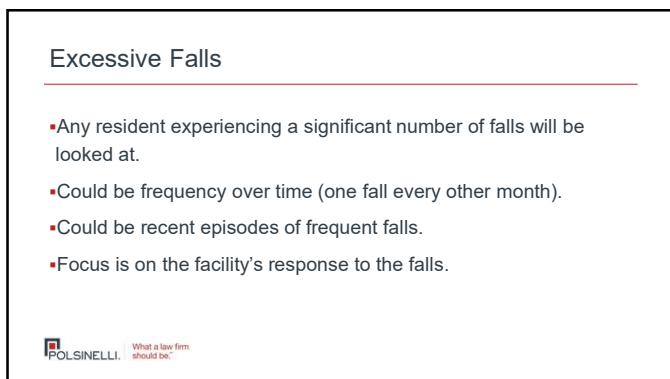
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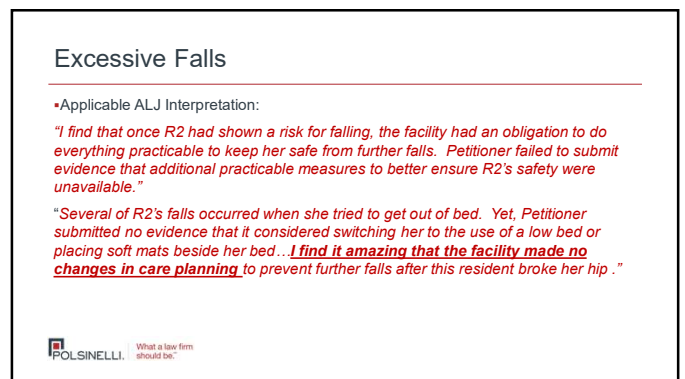
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30

## Excessive Falls

- Key to avoiding or contesting a citation:
  - Documentation that you assessed issue.
  - Documentation that you were communicating with MD.
  - Documentation that you were constantly trying new approaches.

31

## Excessive Falls Survey Response File

- Care Plan showing that new approaches were considered and/or implemented following each fall.
- Documentation showing that the falls were reviewed to determine if there was a trend and to identify possible causes.
- Policy on falls.

32

## Excessive Falls Plan of Removal

- Update of care plan for each resident identified.
- Review of care plans for all residents with falls in the past three months to ensure that they are up to date and adequately address risk.
- Review of all falls within the past two months by DON and administrator.
- Inservice staff.

33

“

## F658 and F686 – Skin Integrity

”

34

## Skin Integrity

- A Stage IV is presumed to be immediate jeopardy.
- Residents with repeated skin break down will be subject to review.
- The facility is obliged to go beyond what seems reasonable, to instead, always furnish what is necessary to prevent new sores unless clinically unavoidable, and to treat existing ones as needed." Crestview citing Koester Pavilion.

***Must show that the pressure sore was unavoidable.***

35

## Skin Integrity Survey Response File

- Copies of skin treatment orders.
- Documentation that treatments were administered.
- Documentation from physician that skin breakdown was unavoidable (*and if possible, that they felt facility provided appropriate care*).

36

## Skin Integrity Plan of Removal

- Treatment plan and care plan of any identified resident has been reviewed, revised and updated.
- Staff have been inserviced.
- Wound consultant has reviewed the residents identified by the surveyor.
- The treatment plan and care plan of all residents identified were reviewed and updated as necessary.

37

## Back to Basics

38

## Getting ready for a survey

- Review compliance for at least the past year, if not the past three to five years.
- Identify problem areas and problem employees.
- Confirm all prior Plans of Correction were completed.
- Have routine jobs been done, and documented?
  - staffs' licenses and certifications up-to-date?
  - in-services accomplished?
  - physical plant and maintenance records in a handy binder?

39

## Getting ready for a survey

- Conduct a dress rehearsal or mock survey, including interviews of staff.
  - Drill staff on policies and procedures. Can staff orally describe what they are supposed to do in certain situations?
- Gather important documents and have them ready.
  - You have the incident report handy, how about the Progress Notes, ISP, evaluations and assessments, behavioral programs, Physicians' Orders, etc.?

40

## Getting ready for a survey

- Review the critical issues that surveyors focus on:
  - Abuse / Neglect
  - Skin Breakdown
  - Falls/Accident Hazards
  - Elopements
  - Resident-to-resident altercations
  - Incident Investigations & Reporting

41

## Immediate Jeopardy

- If an IJ is called, #1 priority is to get it abated/removed (save arguments of why it should not be an IJ for later)
- Submit a Plan of Abatement/Removal to State survey agency
- Confirm that IJ has been removed
- Even when IJ is "removed," you are still considered to be out of compliance and must submit a POC after receiving the 2567. An In-site revisit will need to be done.

42

## Removal / Abatement

- The facility should begin immediate removal of the risk to individuals and immediately implement corrective measures to prevent repeat Jeopardy situations. (Removal / Abatement Plan)
- This should be your top priority regardless of whether you feel the citation is justified.
- Plan should be specific and contain specific dates for each action.
- Not a plan of correction, rather what actions are you taking to get rid of the immediate threat.
- Staff training takes the most time.
- Be very careful with removal dates. Days = \$

43

## The Statement of Deficiencies

- State survey agency's Initial Notice letter
  - Cover letter with 2567 attached
- Don't overlook the letter!
- Where do you stand?
  - Timing for POC and revisit?
  - Opportunity to submit IDR / Comments.
  - State licensure findings?
- Appeal rights?

44

## The Statement of Deficiencies

- Also called "2567"
- "F-tags" corresponding to federal regulations
- "K-tags" corresponding to Life Safety Code
- F9999 or other numbered sections? – preview of State licensure violation

45

## Scope and Severity

|   | Isolated | Pattern | Widespread |
|---|----------|---------|------------|
| Immediate Jeopardy                          | J        | K       | L          |
| Actual Harm                                 | G        | H       | I          |
| The Potential for more than Minimal Harm    | D        | E       | F          |
| The potential for no more than minimal harm | A        | B       | C          |

46

## Plan of Correction

### Required Elements:

1. Measures to address resident(s) specifically identified in the survey
2. Identify other resident(s) having the potential to be affected by the same alleged deficient practice
3. Measures the facility will take or systems the facility will alter to ensure that the alleged problem will not recur
4. Quality assurance plan to monitor facility performance and make sure that corrections are achieved and are permanent
5. Completion date

47

## Revisits

Possible outcome #1: Finds the facility to be in substantial compliance, clears all tags.

- State survey agency will issue a 2567B ("Post-certification Revisit Report"); this is a good document.
- Note the completion dates.

48



## Revisits

Possible outcome #2 - Re-citation of deficiencies

- Cycle stays open
- Remedies continue to run (getting closer to de-certification)
- Start over again with the process: get another 2567, submit a POC, need another revisit
- Will you get another revisit before de-certification?

49

## Revisits

Possible outcome #3 - Intervening surveys – a complaint or incident report investigation

- All deficiencies must be corrected and cleared, in addition to preexisting surveys, in order to close the cycle
- Additional deficiencies to totally clear before de-certification
- Time-crunch

50

## Date of completion

- Date of completion ≠ Date of compliance
- Documentation of compliance may become critical



51

## Date of completion

- On first revisit compliance is certified as of the latest correction date on the POC unless there is evidence that correction occurred earlier or later.

52

## IDR and Licensure Comments

- Refuting the survey – chance to argue that the tag is wrong
  - Keep this out of the POC.
- Ask, “why is the surveyor wrong?”
- Review the entire chart – was the information somewhere else?
- Show staff and physicians the 2567 – are they accurately quoted?

53

## Survey Cycles and Remedies

- “Cycles” apply to federal certification
- Survey Cycle opens upon the finding of a deficiency.
- Remedies run with the cycle.
- The cycle remains open, and remedies continue to run, until the next time the facility is found to be in substantial compliance with *all* requirements.
- State survey agency acts as CMS’ workforce/ agent for federal certification surveys.

54

## Remedies

### CMS Remedies

- "Proposed" – probably still an opportunity to correct the deficiencies and avoid the remedies.
- "Recommended" – Suggested by IDPH, may only be imposed by CMS, and likely will be.
- "Imposed" – remedy is in effect and running.

55

## Remedies

- Per instance CMPs
  - Can be implied even if there is more than "one instance" of noncompliance.
  - May be imposed for noncompliance that constitutes actual harm, or for noncompliance that has the potential for more than minimal harm.
  - In situations of past noncompliance can be used for serious noncompliance.
- Loss of Nurse Aide Training
  - Extended survey
  - SQC
  - \$5,000 or greater CMP

56

## Remedies

### Automatic Remedies (non-immediate jeopardy)

- Three months = Denial of Payments for New Admissions
- Six months = Termination

57

## Remedies

### Denial of Payments for New Admissions

- Close the cycle as soon as possible
  - Get a quick revisit
  - Pass the revisit
  - Documentation of completion of plan of correction
- When to start accepting residents?

58

## Remedies

### Immediate Jeopardy

- Fast track termination = 23 days or less.
- Plan of abatement must be filed.
- Immediate imposition of CMPs usually at \$3,050 level.

59

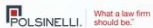
## State Licensure Violations

- Didn't we do this already???
- The *same* survey can be the basis for federal certification action **AND** State licensure violations and sanctions by State survey agency!
- Don't make the mistake that taking care of one automatically takes care of the other.

60

## State Licensure Violations: Illinois

- **Type AA**, violation of this Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that proximately caused a resident's death.
- **Type A**, a violation of this Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that (i) creates a substantial probability that the risk of death or serious mental or physical harm to a resident will result therefrom or (ii) has resulted in actual physical or mental harm to a resident.



61

## State Licensure Violations: Illinois

- **Type B**, a violation of this Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that is more likely than not to cause more than minimal physical or mental harm to a resident.
- **Type C**, a violation of this Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility that creates a substantial probability that less than minimal physical or mental harm to a resident will result therefrom.

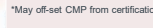


62

## State Licensure Violations: Illinois

|                   |   |
|-------------------|---|
| Type AA Violation | <ul style="list-style-type: none"> <li>• fine up to \$25,000 per violation</li> <li>• Conditional license for 6 months</li> </ul>   |
| Type A Violation  | <ul style="list-style-type: none"> <li>• fine up to \$12,500 per violation</li> <li>• Conditional license for 6 months</li> </ul>   |
| Type B Violation  | <ul style="list-style-type: none"> <li>• fine up to \$1,100 per violation</li> </ul>  |
| Type C Violation  | <ul style="list-style-type: none"> <li>• If 10 or more Type Cs in a single survey, fine up to \$250 per violation</li> <li>• If 1 or more Type C of a "high risk definition," fine up to \$500 per violation</li> </ul> |

\*May off-set CMP from certification deficiencies against State fines, up to 75% of the total State fine



63

## State Licensure Violations: Illinois

### Conditional licenses

- Automatic for Type AA and Type A violations
- For a Type B violation when the facility does not follow its POC



64

## State Licensure Violations: Illinois

### "Repeat" violations

- "Repeat violation" shall be a violation which has been cited during one inspection of the facility for which an accepted plan of correction was not complied with or a new citation of the same rule if the licensee is not substantially addressing the issue routinely throughout the facility.
- Repeat of Type AA or Type A violation may lead to *license revocation* and *triple fines*



65

## State Licensure Violations: Illinois

### License revocations:

- Termination from Medicare/Medicaid by CMS
- Two Type AA violations in a two-year period
- Repeat violation while under conditional license
- Certain criminal convictions of licensee
- Insufficient personnel or finances to operate



66

## State v. Federal

### One Survey, Two Agencies & Parallel Tracks

### The Key:

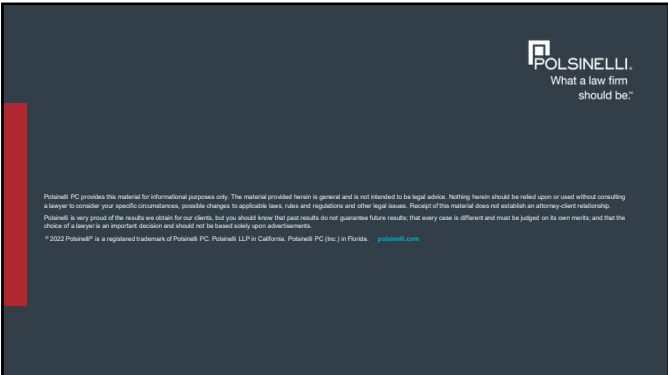
- Look at all correspondence
- Watch for deadlines
- Make sure you respond to both the federal and the state issues
- Correct once – get credit for it twice!



67



68



69