Lessons Learned from Princeton’s Experience Defending Claims with Pressure Ulcers

Documentation
Princeton’s claims consultants agree that good documentation is the single most important factor to help defend a facility when being sued by a patient alleging that negligent care led to their pressure ulcer(s). Documentation becomes even more critical in light of Medicare’s new policy of non-payment for certain hospital-acquired conditions, including pressure ulcers.

Checklists are used to document various types of nursing care, and they can be a time-saver for noting repetitive activities, such as turning at-risk patients at regular intervals. However, plaintiff’s counsel reviews these checklists closely and will question the nurses at depositions, to determine whether the action was truly performed. Ideally, to aid in defense, checklists should be supplemented with information about change in position (i.e. “turned patient from left side to right”), use of side rails and time. Credibility can be lost if such details cannot be established.

Written Protocols for Skin Assessment
Does your facility have a policy that includes assessing all patients upon admission for their risk of developing skin problems? If not, then you should consider creating a policy/protocol. If a policy is in place, be sure that it addresses which tool or scale is being used to measure the level of risk, frequency of repeat assessment and interventions to be done based on the risk level. Consider pro-active strategies for risk prevention or reduction. For example, you could train LPNs and Nurses’ Aides to regularly monitor, and report to the RN team leader, changes in patient skin integrity.

Remember: When there is a document in the record - whether it's an assessment protocol, physician order or nursing care plan - the staff must adhere to it; if they don't or if the actions to comply are not documented, then it will be impossible to defend the facility.

Use of Wound/Skin Care Specialists
Many facilities are finding that it is helpful to utilize specialists for certain conditions, such as wound and skin care. The decision to involve such practitioners on your care team will require a cost-benefit analysis for your organization. If you have this type of practitioner (or team), however, then you need to establish guidelines for issues such as how the nursing staff will communicate with the specialist, obtain back-up when they are not available, and establish criteria for which patients are seen by the specialist or would consultation with a wound specialist require a physician order.

Use of Other Types of Specialists
It is well known that patients who develop pressure ulcers often have multiple, complicating medical factors (e.g., obesity, circulatory and mobility issues, nutrition/anemia, incontinence, etc.) It may be cost-effective to consider bringing in other specialists, such as nutritionists, to contribute their expertise to the care plan. Doing this can be helpful to the facility’s defense, as it shows that the team did all that could be done, but still wasn’t able to prevent pressure ulcers in that particular patient. Again, complete documentation by that specialist is key. A downside is that plaintiff’s attorney may argue that a higher Standard of Care applies.
Use of specialized devices/equipment
Consider using specialized equipment such as the mattresses (various types available) designed to protect skin integrity. While this usually requires a physician order, and may involve additional cost, it could enhance the outcome and the facility’s defense. Again, if used, then document it!

NJ Nursing Home Act Impact on Defense Cost
New Jersey's Nursing Home Resident's Bill of Rights law delineates specific patient rights and establishes responsibilities for nursing homes with regard to resident care (Statute: N.J.S.A. 30:13-1 et seq.; Regulations: N.J.A.C. 8:39-4.1). This law creates a basis for a suit against nursing homes where residents are injured due to poor care, neglect and/or abuse. Risk managers should be aware of the “fee shifting” provision, by which a successful litigant can recover actual, and punitive damages, plus attorneys' fees and costs, if the facility violates the law. (N.J.S.A. 30:13-4.2).

Since it is difficult to defend against pressure ulcer claims under this law, most cases are settled rather than tried. Discovery costs can get high because plaintiffs' attorneys tend to name all nurses who appear in the medical record at any time during the patient's admission. When the facility is a “for profit” entity, the financial exposure is even greater because the Charitable Immunity “cap” does not apply to limit liability damage awards.

Use of Photography
The use of photography as an aid to document the assessment and care of patients who come with or develop pressure ulcers during an admission is still limited, but the issue is one of great interest among health care providers. As with other interventions (noted above), this process will have its own advantages and disadvantages and should be undertaken with due care.

While Princeton does not recommend nor discourage photography, we present the following pros and cons for your careful consideration.

Advantages and Potential Benefits
- Protocols for photography can promote consistent examination of all body surfaces at risk of skin breakdown during the admission assessment.
- Photography can support the written record, to demonstrate that a wound was “imported” to the facility; a continuing (series) visual record verifies staff attention to the problem and thus may help reduce liability concerns.
- Photography may offer a more accurate means for assessment of wound dimensions and baseline characteristics over time. Rates of healing, and therapeutic efficacy, are more readily appreciated when the data are saved in a visual format.

Disadvantages
- It is important to recognize that deep tissue injury may not be evident on admission; initial photographs may not capture the full extent or severity of the damaged tissue. Moreover, equipment used only upon admission may result in inconsistent application. A photograph taken at a single point in time may undermine faith in the treatment plan if the condition worsens.
- Photographs of large pressure ulcers can be inflammatory to a jury despite compliance with all reasonable standards.
- The need for consistency emphasizes the importance of staff training and credentialing.

Technical Challenges
- Serial photography as a means for measuring pressure ulcer healing and to assess the efficacy of therapy requires a higher level of technological accuracy. Therefore, there may be greater initial costs for the equipment and on-going costs for data storage. As with all things digital and electronic, the technology is always changing.
- Technical challenges are also different for the various applications. An admission photograph needs only to be able to depict the skin surfaces, and there is greater flexibility in format, e.g. Polaroid® or regular photographic film, or digital photography (see below). The NPUAP encourages that the protocol include a means for patient identification, date and
time marking and a sample measure (e.g. a 10 cm strip of paper tape) in each frame, and that the photographs become part of the medical record.

- Photographic standards for serial measurements used to document ongoing care needs to be more stringent. The NPUAP strongly recommends digital photography with a density of at least 1.5 megapixels, while >3 megapixels is preferable and offers the best ratio of picture clarity versus the cost of equipment. These protocols should include explicit criteria that standardize the equipment, aperture settings, distance from the wound and field of view, as well as a means for patient identification, date and time marking, and a sample measure in the frame of the picture. Implementation of any program should include in-service training with demonstrated competencies and periodic studies of inter- and intra-rater consistency.

A resource for information on pressure ulcer-related issues is The National Pressure Ulcer Advisory Panel (NPUAP). Materials can be found online at: http://www.npuap.org.


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