



Senior Living Risk Alert

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If a Fall Becomes a Lawsuit, How Will Your Defense Add Up?

Plaintiff's law firms have come up with a very effective formula for suing assisted living communities. Let's face it! Litigation, for perceived wrongdoings, is more prevalent during poor economic times. Systematic steps to defend against lawsuits should be ongoing at your community, so if litigation takes place long after a resident has left, the record will stand on its own.

How does your mobility management program and related documentation measure up to legal standards? The **seven most common allegations** made against assisted living communities in a fall related lawsuit are below. Use them as a score card with your residents who have fallen to see how you will fair in a court of law.

- 1. Failed to implement adequate and appropriate fall precautions**– Do you investigate falls and determine interventions to prevent recurrence? Do you document the interventions in the service notes and on their current service plan?
- 2. Failed to adequately assess claimant fall risk on a continuing basis**– Do you assess for fall risk as part of your comprehensive assessment? Do you ask about previous falls at move in?
- 3. Failure to protect client from falling**– Do you have good interventions? Are your interventions realistic? Example: An intervention of counseling an Alzheimer's resident to call for assistance is not a feasible intervention. Are the interventions in place? Example: How do you ensure that bed/chair alarms are in place and working properly?
- 4. Failure to provide timely care to claimant**– How long did the resident lie on the floor before they were discovered by staff? Was the resident checked on periodically per their care plan, community policy or the community's best practice?
- 5. Failure to keep family and physicians informed of claimant condition**– Are the family and physician notifications documented on the incident reports and in the service notes? Note: In most cases, the incident report is an internal quality assurance document that is not discoverable in a lawsuit, therefore, needs to be documented in the service notes and a copy of any faxed physician notifications should be part of the chart.



- 6. Failure to assess claimant continued appropriateness as a resident**– Can you safely supervise the resident with the interventions in place and your staffing ratios?
- 7. Failure to provide access to adequate health care**– An authorization for emergency medical treatment needs to be part of your residency agreement. It is true that a resident has a right to refuse treatment. It is a good practice to have the resident refuse to EMS and obtain a copy of the refusal (or have them sign a copy of the communities refusal form). Additionally, if the resident has multiple falls within a short time frame, is your community sending them out for observation to determine if there is an underlying condition? It is common for falls to be caused by underlying conditions such as a UTI.

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