LNP 170
Nursing Home Surveys: What You Need to Know
Nina Latting

Pat: Hi this is Pat Iyer with Legal Nurse Podcasts. Today we're going to be talking about an area that generates a lot of litigation, which is long term care nursing. I brought with me on the show Nina Latting who is a registered nurse. She's a legal nurse consultant. She's a long-term care expert. She has over three decades of experience working with patients and taking care of patients through some of the most critical portions of their lives.

Nina's background encompasses critical care, home healthcare and currently she is working in long term care as a surveyor. She is a person that I have been working with in my LNC Academy and we have been talking about building her legal nurse consulting business. She's working in this field looking at medical records daily, going into nursing homes and determining whether the facilities are following the regulations.

Nina, welcome to the show.

Nina: Thanks for having me, Pat. I appreciate your invitation.

Pat: I asked Nina to come on the show specifically to talk about the substantial changes that have occurred recently in long term care regulation. Can you give us a broad overview of what has changed?

Nina: I can tell you that it's CMS, which is the Centers for Medicare and Medicaid that is responsible for the regulations for long term care. It's been about 20 years since they have made really any kind of major changes in the regulations for long term care. This is even bigger than usual because not only have there been revisions and additions to the regulations, but there's also been a change in the actual process of what the surveyors do during their annual surveyors at the facilities.

It's really been a long-term process that they have been going through. All the surveyors all over the U.S. have been in training for several months and as of November 28th of 2017 Phase 2, which is the

biggest phase of the changes has been in place. Since the beginning of that date all the surveys have been under the new federal regulations.

Pat: Can you tell us what's the rationale behind making those changes because this sounds like a big undertaking especially in terms of preparing the surveyors to go through these changes and letting the facilities know about the changes? What caused this?

Nina: Well, as I said it's been a long time. It's been at least a couple of decades. The federal process up until November was done in two different ways, meaning that in some states there was a paper process where the surveyors wrote their notes on paper and they turned in a big paper packet. That was called a traditional survey process. There then were some states where their surveyors used a computer process where they carried a small laptop or computer around with them and entered the information that they had from their observations, their interviews and record reviews into the computer process. That was called QIS.

Both of those processes have pros and cons. CMS decided that it would be a good idea to take the best from both processes and combine them into one in addition to the fact that there was a need for changes in some of the regulations. Even adding some regulations simply due to the way care is provided nowadays, so that's where we ended up as of November 28th with lots of changes. Not only did CMS have to educate the surveyors, but CMS also must educate the facilities and the providers so that they know what the changes are, what they can expect and what they need to do to be in compliance with the changes in the regulations and in the process.

Pat: As of the time of this recording the system is in place now. What kind of reactions have you seen among the surveyors or among the facilities in terms of adjusting to these changes?

Nina: Just like when there's a change in anything in life there's a variety of responses. Some of the surveyors, as well as some of the facilities, are excited because there's something new. Some of them are a little nervous because they don't want to miss anything. Everyone whether they're the surveyor or the facility side wants to do the best that they can do. Everybody wants to be up-to-date and up-to-speed, but I think we all know that we will be very careful on both sides in what we're

doing because the main goal is to make sure that the care that's provided to the residents is patient-centered care, and that it's safe and it's according to regulation.

Pat: You mentioned regulations, for somebody who is not involved in long term care can you give us an overview of the tagging system? Legal nurse consultants may have heard about F-tags with a letter "F" as in Frank. Tell us what does that mean?

Nina: The letter "F" I would imagine means "Federal" since these are all federal regulations. Each one of the states also has their own regulations for licensure. The federal regulations are for certification and by certification, I mean certification to receive funds from Medicare and Medicaid for the care of the residents.

The old set of regulations started with F150 and ended with F524. I think the reason that the tags are numbered is for ease of access for whichever side and even the public if somebody wants to look up a regulation. The regulation has an "F" number or an "F-tag" and it has a title, so if someone wanted to learn about resident rights they would know in the old system that they would be looking at the F150, 160s and 170s section.

In the new setup of the F-tags they would be looking under F550 through F586 because those are the new F-tags for resident rights in the new system. As a matter of fact, the numbering system as of November 28, 2017 starts with F550 and ends with F949. There are a lot of changes in the new F-tags and in addition there are a few F-tags that don't go into effect until November of 2019, so that's why maybe you heard me say we're in Phase 2 right now. Many of the tags are available as of November 28th, but there are a handful that won't take effect until November of 2019.

Pat: I know that people who have been involved in nursing home cases can think of some common allegations that come up in this area with a vulnerable population of dehydration, malnutrition, pressure sores, falls and elopements. Can you tell us from the perspective of doing the surveys and what CMS is concerned with are those the key areas of known compliance are or there other areas that really draw your attention?

Nina: Areas of noncompliance I think Pat what you might be referring to is a section in the tags. When a person goes to read the F-tag there is the actual regulation and then there is investigative guidance. That portion of the tag is not the regulation, but it helps to explain the regulation and n that section is the key areas of noncompliance. What that means is those are the things that the specific items that if the facility hasn't done those things then they will be most likely to be getting a deficiency cited.

Does that make sense?

Pat: It does.

Nina: For example, I was just going to pull one up for you. I'm looking at the F881 tag and that's the new tag for antibiotic stewardship. There's the tag and then there is the regulation. In the investigative guidance there's the intent of the regulation. There are definitions. There's guidance and then down at the bottom you will see "Key Elements of Noncompliance". It lists three things that if the facility failed to do anyone or more of those things then they will most likely be receiving a deficiency.

Just to go back to your original question, you were talking about things such as dehydration, falls and pressure sores. That general area of deficiencies generally came from the old F309 tag. It wouldn't be unusual to find a facility to have an F309 tag. That was a quality of care tag and it's called to provide necessary care and services to attain the highest practicable wellbeing. That also included pressure ulcers and a variety of other areas.

F309 - of course, since the new tags are now beginning at F550 - is no longer F309. It's divided into several different tags. I just wanted to have the numbers for you here, but I'm not able to get that to you just this second. Areas such as dementia care, pain and dialysis which used to be in the old F309 have their own areas in the F-tags now. For example, dementia residents are now in F744.

Pat: You mentioned that there are some new areas of clinical care that are being surveyed. I think you mentioned if I understood it correctly that antibiotic usage and monitoring was one of them. Is that correct?

Nina: Yes, there needs to be a policy for that and then a separate tag in the same area. The facility must show that they're following their policy and that they are monitoring the use of antibiotics. There is a long list of things that go into what they should be doing in that specific new tag.

Pat: What are some of the other areas that are new that are being launched?

Nina: There are behavioral health services and those regulations focus on the resident's behavioral needs. The regulations want to see that the residents are cared for and care-planned for in a person-centered manner so that each individual resident their care plan is focused on them, and the instructions in their care plan are followed through. That their medications are being monitored, that they are receiving the types of therapy that they should have and that they are assessed regularly to determine if those therapies, medications and treatments are being effective for that resident. Also, if there are any side effects that need to cause the resident to maybe need to have some changes in their therapies.

There's then a new area and that's called "Facility Assessment". That's really kind of an overall process of the observations that the surveyors will be making. That's to assess the services, support and resources that the facilities provide to enhance the resident's individualized care.

There's also more definition in the Advanced Beneficiary Notices. Advanced Beneficiary Notices come into play when let's say a resident was admitted to a facility to receive some kind of rehab therapy. Maybe they had a fall and they need some rehab, so they can be strengthened to go home. Well Medicare is generally going to pay for a specific number of days or a specific number of visits or a specific time limit for those therapies. The facility must notify the resident and/or their guardian or POA (power of attorney) when that time will be up. They can't just go in and say, "Today's your last day, no more services."

There are rules and regulations about how the facility should notify the resident and their family when the last day will be. Also, to advise them and help them to request some additional time and sometimes Medicare allows that.

There's also some clarification in the admission transfer and discharge F-tags. Those that are focused on the facility-initiated discharge versus the resident-initiated discharge, and also discharge planning. In the past there have been some concerns about maybe residents who were being discharged by the facility in a hasty manner without giving the resident a timely notice and then helping the resident to find what their next residence will be whether it's at another facility or if it's going to home. Again, focusing on patient-centered care CMS is concerned that the facilities are discharging their residents to a safe and healthy location, and that it's done in a way that the patient and the family are aware of every step along the way of what's happening with that planned discharge.

Before I continue, I need to share details of online training that directly addresses the setting of this case.

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Pat: I know there's been some changes on the survey process. I think it would help our listeners if you could explain what happened before these changes went into effect with a survey. I know that there are routine surveys that are done periodically and there's a whole lot of anxiety associated with when the surveyors are going to come and make sure that everything is in proper condition. There are complaint surveys, which our legal nurse consultant audience may encounter in medical records or in cases that a surveyor has gone in, in response to a family complaint about a situation. If you could give us the overview of whether those two pieces are still in place or what has changed because of the new regulations?

Nina: The annual surveys continue as they have before. They are called annual surveys even though there's a window of about 15 months from the previous survey. The facilities have an idea when their window is for their annual survey. That's a prime opportunity in my opinion as a surveyor for them to take the information from their quality care assessments and make sure that they have been and are providing patient-centered care. They have worked to improve and continuously improve areas where they may be deficient or not quite reaching what's required in the regulation so that they can get those practices and procedures in place before the surveyors show up because of course we always show up unannounced.

I think it's the unannounced aspect that causes the anticipation in the staff. They don't know and it's like when you're expecting company but you're not sure when they're coming so you really can't plan anything big. From this surveyors perspective I believe that if you're doing the right thing, meaning following the regulations and providing the patient-centered care, making adjustments in the care according to each individual resident all along the way, notifying their family, keeping the physicians notified, keeping the residents safe, watching their nutrition, making sure that their skin integrity is intact and all those kinds of thing all the time that when the surveyors show up we really just want to see what the facility is doing everyday.

It's not that they must change anything when we're there. We just want to see that the residents are being cared for according to the

regulations. As far as a timeframe, there's no change in the annual survey. The process is that now all the surveyors in all the states will be doing a computerized process. We already have some information about the facility in our computers before we arrive, and we get that information from CMS mostly. Some of our residents are pre-chosen by CMS, which previously the surveyors did that in our off-site research before the survey.

Basically, to give you the overview on that is that we're using a computer and we have new tags. We have new things to look at and our guidance gives us maybe a different way to look at that. Say for example if we see a deficiency in one area and we put it into the computer, the computer will say, "Well you see that then you need to look at this area because you may have a deficiency at F so-and-so." There are several prompts that help us to have a very much more global picture on the F-tags.

As far as complaints go, I've recently done some complaints and at this point I would have to say there's the fact that we show up unannounced and that the facility does not know who the complainant is. They might think they know who it is, but we do our best to maintain confidentiality of who the complainant is. They may not even know for sure who the main resident is that we're looking at because we don't just look at one resident when there's a complaint. We look at residents in similar circumstances as the main resident. Of course, we use the same new F-tags that are used in the annuals and we still work on paper. We don't use a computer process at this time and that's as of this taping, of course anything can change along those lines.

Pat: Do you know what changes are ahead in additional phases of adjusting the system?

Nina: I will say that with a caveat of I am the surveyor and CMS has been making changes all along through this process, but at this point I can say that the F-tags that will go into effect in November of next year are already listed on the new list of F-tags beginning with F550. A lot of it has to do with training. Some of it has to do with their quality assurance monitoring and some of the language regarding licensure, those folks who can write orders, meaning PAs (physician assistants) and NPs (nurse practitioners) and things like that.

The main F-tags are in place already and that's what we're working with. It's really an exciting time. For a person like me, I enjoy moving into a new process and so this is really kind of fun for me.

Pat: There are legal nurse consultants listening who work with attorneys to screen nursing home cases and others of them may be functioning in an expert witness capacity. I think everyone would be interested in knowing how they could access to the regulations that you're discussing.

Nina: That would be easy because they are online. One way to get a hold of them would be to go to my LinkedIn profile, which is under my name Nina Latting. If you just do a search there, I will have a link to what is called "Appendix PP", which is what lists the regulations that we're looking at now or your listeners can go to my website and there will also be a link there. My website is www.InsightMedicalLegalConsulting.com. I would be most happy to provide any help or answer any questions for your listeners that I could.

Pat: That's wonderful Nina. I appreciate you giving your contact information. As you can tell from listening to Nina, she has a deep understanding of the nursing home environment and the regulations. She does expert witness work and would be happy to assist our listeners in terms of sharing her knowledge.

Nina, thank you so much for being on the show.

Nina: Thank you Pat for having me. This has been great fun.

Pat: This has been Legal Nurse Podcasts talking with Nina Latting who is a nursing home surveyor and has shared with us the background about some of the changes that have direct impact on legal nurse consultants' analysis of cases.

Stay tuned we will have a new interview next week. Thank you for listening and being part of our audience in Legal Nurse Podcasts. If you know any legal nurse consultant who is not aware of our show, please be sure to pass on the information and tell them to tune in to Legal Nurse Podcasts.

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