

TIPS FOR AVOIDING AND DEFENDING COVID CLAIMS

PCH Counsel Donna Fudge from Florida who was recently appointed to the National COVID-19 Defense Counsel presented at a free webinar for all PCH insureds and counsel. Here are her recommendations and tips on *Long Term Care Challenges During The Covid-19 Crisis*.

Although some states have passed various immunity laws and the federal government is considering a similar measure, even if those immunities apply, they likely will not apply to conduct that is considered “gross negligence” or “willful misconduct.” So long term care facilities must keep a record to demonstrate their efforts during the pandemic to avoid such allegations.

Some allegations we’re seeing are:

- Failure to use proper infection control measures (infection protocol, PPE, etc.)
- Negligently allowing symptomatic caregivers to treat residents and/or without wearing proper PPE
- Violation of federal health guidelines
- Failure to have staff meetings to train/update staff
- Allowing Covid + residents to share a room
- Allowing residents to mingle with each other
- Requiring staff to maintain unmanageable workloads
- The facility is an outlier due to the high number of Covid cases
- Reports on employment websites like *Indeed.com* that facility is understaffed or an unfavorable/unsafe workplace

Tips for Avoiding or Defending Claims Against Your Facility

Pandemic Practices

- Be very careful about (try to avoid) taking and posting photos (may depict improper PPE usage, selfies depict parties not social distancing (even 6 feet now not considered enough in the ever-evolving studies and guidelines related to Covid-19))
- Staff should not post work-related photos on social media
- Review all marketing materials, including website and social media, view it through the lens of the post-pandemic world, i.e. no big groups, parties, touching
- Keep residents at a proper social distance
- Train all to properly don and doff PPE
- Print CDC Signage, document usage
- Train and retrain staff, i.e. on handwashing, PPE, cough etiquette, etc.
- Educate staff specifically about silent spread
- Limit “chit chat” and speak softly to reduce the spread

Create an Evidence Box – Document & Save

- Scan and store everything digitally if possible
- If you have a timeline of what you did and when specific to the pandemic, preserve it
- Document & Save your actions, i.e. training, preparation, protocols, infection prevention, anything PPE related, staffing, signage, communications, etc.
- Document & Save visitor protocols, logs, screening logs, etc. and how it evolved with the guidance
- Save video surveillance
- Document & Save employee screening and staff assignments
- Document & Save recommendations to staff on how to conduct themselves in off-duty hours to reduce threat of infection
- Document & Save all relevant communications, email and text messages, re: resident health, family communication, visitors, vendors, staffing, maintenance efforts, etc.
- Save a copy of communications with family in the resident's record/chart
- Save a copy of receipts and orders for supplies, i.e. PPE, equipment
- Document & Save all efforts related to testing, securing testing, etc.
- Save all resident assessments for Covid symptoms
- Save all Covid test results for staff and residents, put duplicate in their specific files
- Document & Save anything else you believe demonstrates your vigilance and best practices during the pandemic

Team Appreciation

- Make it a point to make your staff feel appreciated
- Encourage even short breaks, self-care and quiet moments to themselves