

HOW CAN A  
**LEGAL NURSE  
CONSULTANT**  
ADD VALUE TO YOUR  
**ABUSE AND  
NEGLECT CASE?**



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# The Role of a Legal Nurse Consultant

The legal nurse consultant can play a vital role in identifying poor quality and lack of compliance which can constitute abuse and neglect. The role of the legal nurse consultant is to review, organize, and analyze the medical record in a care setting litigation case. Their knowledge and understanding of standards of care, scope of practice, policy and procedures, and incident investigation can prove to be a powerful asset to attorneys.

These professionals know where and how to dive deep into the medical record to search for compliance and oversight issues as well as define a trail of poor quality. Legal nurse consultants will review nursing notes, progress notes, and physician orders that do not match the condition of the residents, resident change in condition that was not addressed timely, dysphagia that goes unnoticed, physician treatment orders that are not followed, and non-adherence to the care plan and policy and procedures. The legal nurse consultant supports a successful litigation process by constructing a comprehensive event chronology, researching medical literature, and identifying gaps in information.

## Elder Abuse in Nursing Homes

As reported by the [U.S Department of Health and Human Services \(HHS\) Office of Inspector General \(OIG\)](#) more than 1.4 million individuals live in over 15,500 Medicare and Medicaid certified nursing homes across the nation. These elders deserve quality of care and to be protected from adverse events that occur in nursing homes; however, many times nursing home residents face substandard care, staff shortages, system breakdowns, and lack of oversight that can constitute abuse and neglect.

Substandard care can result in harm, such as pressure injuries, infections, weight loss, dehydration, and falls with major injury. CNA provides insurance coverage for provider liability. According to their [2021 CNA Aging Services Claims report](#), there has been an increase in severity of falls and pressure injuries as well as a noted increase in severity of allegations of delays in seeking medical treatment, medication errors, resident abuse, elopements, improper care, and failure to monitor.



The Biden Administration has put forth a set of reforms to improve the safety and quality of nursing homes and to hold them accountable for the care that is provided. Nursing homes have been a long-term focus for OIG, and over the past years, they have uncovered widespread challenges in providing safe and high-quality care in nursing homes. In fact, during the COVID-19 pandemic, OIG has seen a spike in the number of reports of elder harm and neglect. OIG's key goals for nursing home oversight are:

- To protect residents from fraud, abuse, neglect and to promote quality of care.
- To promote emergency preparedness and response efforts.
- To strengthen frontline oversight.
- To support federal monitoring of nursing homes to mitigate risk to residents.

*More information can be found on the [U.S. HHS OIG website](#).*

## **Improving Quality of Care and Preventing Abuse**

The Center for Medicare & Medicaid Services (CMS) has the ongoing responsibility to oversee the nursing home survey process to meet both federal and state regulations for quality and safety. Both OIG and CMS will identify instances of potential abuse or neglect using Medicare data that is submitted by Medicare and Medicaid certified nursing homes.

OIG works with the Department of Justice (DOJ) to address allegations of abuse, neglect, fraud, and substandard care through False Claims cases. The DOJ's enforcement is focused on nursing homes that fail to deliver adequate services to residents based on Medicare and Medicaid provider agreements.

## **What Can Constitute Neglect?**

A nursing home has multiple sources of potential liability such as injuries due to falls, resident-to-resident altercations, serious burns, medication errors leading to harm, abuse, and neglect by caregivers, acute change in condition that goes unnoticed, pressure injuries reflecting inadequate care, and errors in infection control and prevention practices.



Neglect occurs when a facility knew to provide care and oversight to meet the resident's needs but failed to act. Neglect also occurs when a facility was aware that the resident required goods and services, but the facility failed to provide what the resident needed which resulted in harm. The facility may be cited for neglect if the facility fails to implement an effective communication process across shifts that address the required information to deliver quality of care and quality of life to the resident. It is also important to remember that neglect may not only result in a negative physical outcome but also impacts the resident's psychosocial wellbeing. All these liabilities need to be thoroughly investigated, documented, and in most instances, reported. OIG states that many

incidents reported lack the information needed to prioritize the investigation. Nursing homes should utilize a method such as a root cause analysis to review clinical errors, improve processes, and help prevent reoccurrence.

The legal nurse consultant, as an expert in standards of care and practice, policy and procedure, and daily operational flow of the nursing home, can identify gaps in the process and non-adherence to policy and procedure. The legal nurse consultant will review the copious amounts of medical records and know where to expect to find things in a disorganized record. Creating a chronological timeline and identifying missing documentation can be key to a case.

## The Importance of Knowing the Most Cited Deficiencies

Information can be a valuable asset in increasing your knowledge of nursing homes most cited deficiencies and can assist you further in understanding the nursing home industry which includes using the survey process to identify deficient practices. Survey findings can point out a lack of compliance and poor quality of care within the nursing home. This information is made available to the public; however, having the knowledge of the most commonly cited deficiencies and partnering with a legal nurse consultant who has experience in the survey process and can interpret the findings as they relate to abuse and neglect is a great benefit. and partnering with a legal nurse consultant who has experience in the survey process and can interpret the findings as they relate to abuse and neglect is a great benefit.

LeadingAge has recently published [Part 1](#) and [Part 2](#) of the most cited deficiencies in nursing homes for 2022. Many of these deficiencies are recurrent from year to year as the most common and represent a great potential risk for harm to the residents in the nursing home due to the deficient practices.

## **F-Tag 880 Infection Prevention and Control**

Not surprisingly the F-Tag 880, Infection Prevention and Control ranks high in most cited deficiencies. Over the past 24 months, the pandemic has presented new challenges to nursing homes and the ultimate effects upon litigation remain uncertain as we move forward. The number of COVID-19 related cases has continued to rise with mask and vaccine mandates, workers' compensation cases, negligence, and wrongful death. The F-Tag 880 states that the facility must establish and maintain an Infection Prevention and Control Program designed to provide a safe, sanitary, and comfortable environment to help prevent the development and transmission of communicable diseases and infections. This tag encapsulates all infection control practices within the nursing home, and the state and federal government continues to issue penalties to nursing homes with unsafe infection control practices.

## **F-Tag 689 Free of Accidents, Hazards, Supervision, and Devices**

A highly cited deficiency is F-Tag 689, Free of Accidents, Hazards, Supervision, and Devices. This regulation states that the facility must ensure that the resident environment remains as free of accident hazards as is possible and that each resident receives adequate supervision and assistance devices to prevent accidents. Under this regulation, nursing homes must do everything possible to minimize the risk of accidents involving residents including burns, falls, access to hazardous materials, and elopement. The [2021 CNA Aging Services Claim report](#) states that falls with major injury continue to be underreported with only 57.5% reported on resident assessment data. Allegations of improper care have driven the sharp increase of fall-related claims data such as dropping a resident during transfer, failure to follow the care plan regarding the resident transfer, and failure to identify a resident as being at risk for falls.

## **F-Tag 684 Quality of Care**

Another highly cited deficiency is F-Tag 684, Quality of Care. This regulation states that quality of care is a fundamental principle that applies to all treatment and care provided to facility residents; based on the comprehensive assessment of a resident, the facility must ensure that residents receive treatment and care in accordance with professional standards of practice, the comprehensive person-centered care plan, and the residents' choices. This regulation includes, but is not limited to, not providing care and services to a resident who has declined, not providing services as identified as a need, delay in treatment and services required, lack of assessment and re-evaluation of resident condition, failure to follow the residents care plan, and failure to adhere to clinical policy and procedures and standards of practice. Substandard care and services fall into this regulation as deficient practices.

## F-Tag 686 Treatment/Services to Prevent/Heal Pressure Ulcers

One final deficiency that is commonly in the top ten most cited is F-Tag 686, Treatment/Services to Prevent/Heal Pressure Ulcer. This regulation states that the facility must ensure that a resident receives care, consistent with professional standards of practice, to prevent pressure injuries and does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable such as in an end-of-life situation. The facility must ensure that the resident with a pressure injury receives necessary treatment and services, consistent with the professional standard of practice to promote healing, prevent infection, and prevent new injuries from developing. It is paramount that nursing homes identify at-risk residents, appropriately identify the pressure injury, document the care and treatment, reassess the wound, and re-evaluate the plan to heal the wound. It is important to understand that pressure injuries are preventable and should be "never events" unless in special end-of-life situations. Delay in initial identification and poor assessment and care can result in worsening pressure injuries and constitute neglect.



## Case Examples

The [Attorney General of Massachusetts](#) recently secured resolutions with five nursing homes over claims of patient neglect, insufficient staff training, and inadequate care for vulnerable nursing home residents. These cases involved preventable harm such as failure to turn and reposition a high-risk resident for pressure injuries, failure to maintain preventive skin care, failure to comply with long-term care regulations, failure to provide quality care to residents, failure to implement a continence care program, and failure to report a significant health decline.

## Additional Scenarios

A nursing home resident sustained a closed head injury from a fall after being pushed by another resident with known aggressive behaviors. The legal nurse consultant was hired to screen the case for merit and after reviewing the medical records, the nurse identified several potential key factors that possibly could have prevented the incident from occurring. One key factor identified was a physician order for behavior monitoring and close observation rounding that was a current order since admission. It was identified that nursing discontinued the close observation rounding without consulting the physician on the resident that had aggressive behaviors. Adhering to the physician's order of close observation rounding may have prevented this event. This information was communicated to the attorney, and he proceeded with the case. Providing the attorney with candid opinions and outlining the key issues with strong rationale will assist them in accepting or declining a case.

A nursing home resident had several admissions to the hospital for a wound infection that would not heal. The resident passed away after several months of wound infections and treatment. Because of the complexity of the medical issues, the attorney decided to hire a legal nurse consultant to review the medical records and develop a chronological timeline of care and events that had occurred throughout the resident's nursing home stay. The legal nurse consultant's review and timeline helped the attorney to build a stronger case by identifying that although wound care and treatment were provided, most of the time, it was not consistently provided as ordered, particularly on weekends. This showed a trend of healing vs worsening over the course of several months.

## How Can a Legal Nurse Consultant Work With You to Build a Strong Case?

There are multiple sources of potential liabilities within the nursing homes and leaders must be proactive in their compliance and oversight efforts to ensure professional standards of practice are met when delivering quality of care and quality of life for the 1.4 million residents who reside in their care. Continued focus and oversight is imperative to sustain a high level of quality care and compliance. Failure to do so can result in poor outcomes, such as resident harm, abuse and neglect litigation, civil money penalties, and even wrongful death.

As shown, a legal nurse consultant can assist the attorney in a variety of ways including screening cases for merit; reviewing and analyzing medical records; organizing copious number of disorganized medical records; providing an understanding and interpretation of regulatory guidelines, chronological timelines, and medical research; attending independent medical reviews; and, as the case moves into deposition and trial phase, preparing deposition questions.



It is important to determine the role of the legal nurse consultant early in the case because of discoverability rules. Their role could be either as a consulting expert that provides written reports or as a testifying expert that will provide verbal opinion and expert testimony at the trial.

Teaming up with a legal nurse consultant can be a time saving and cost-effective method to get a clear confident direction for a successful case. The legal nurse consultant can work to determine whether appropriate care was rendered, if documentation was complete and accurate, and whether policy and procedures were followed. The legal nurse consultant's work-life experience, and knowledge of the industry, can be a valuable asset to any litigation involving nursing homes. It takes a team—the attorney is the expert in law; supported by the legal nurse consultant as the expert in healthcare!

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## About LWCI

For nearly two decades, LWCI has delivered operational and compliance improvements to acute, post-acute, and sub-acute providers and government entities involved in healthcare. This expertise is also applied to compliance actions and legal proceedings, with a specialty in serving as an independent review organization (IRO).

As part of our practice, LWCI offers interim staffing, executive placement, and compensation review services for healthcare organizations, with positions across all levels of the business. Harnessing the power of data, coupled with our real-world, provider-side experience in senior living, our consultants are poised to assist your organization in a variety of ways.

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## Resources

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