WALA ADVOCATE

WISCONSIN ASSISTED LIVING ASSOCIATION • WINTER 2022 VOL. 27 • NO. 3

INSIDE

CHAIRPERSON'S CORNER

By Crystal Miller , WALA Board Chairperson

I've just returned from the State of Wisconsin Focus Conference, and I enjoyed being with providers from across our state, both fellow WALA members and those from other affiliated facilities. I spent a few moments chatting with Dan Perron, Director of the Bureau of Assisted Living. He shared that his team is working hard playing catch up (just like we are some days!) and that much of their work gets delayed as they deal with complaints. It was interesting to hear him say that they find that a number of facilities address complaints, but that some leaders do not follow up with the complainant to report the resolution. He indicated that many concerns would not be reported to the State if facilities communicated better. It helped me think about ways to address this in my own facilities and reminded me of some tried and true tips in dealing with negative feedback.

The book Reality Based Leadership by Cy Wakeman has some great framework for "learning and growing from negative feedback". Applying this communication in our day-to-day work could make the difference in helping teams focus on quality service instead of fielding questions from a state surveyor! The author includes proven ways to respond to negative feedback:

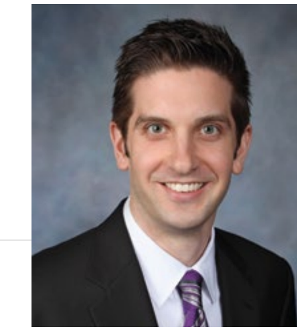
- Welcome the news. Woah – this doesn't sound very helpful at first! But think about it, it is so much better to know and be able to deal with the concern and work toward quality improvement. For many who complain, they won't be expecting this welcoming attitude and it might be a refreshing moment that could make the difference in the outcome.
- Check your ego and see what you can learn. Again, not our first response normally! But in every note of feedback, you will likely see bits of truth that will be helpful to you and your team in the long run.
- "Thank you for caring enough to share that with me." Even if you aren't yet ready to offer an apology, this could immediately change the tone of the conversation and get the relationship and conversation on a better path.
- Follow up with changes you will make. We know we can't fix everything overnight but designing our own proactive plan of correction is easier than being required to by a regulator. Our residents and their loved ones deserve to know what we are going to do to be better and strong communication is key in this.

As I write this, I see that some of these concepts can be applied to lots of situations in our work and personal lives, but we can work on personal development another day! For now, I hope that these tips are impactful and can proactively solve some challenges and make some of the tough days a bit easier.

Best wishes to you as you celebrate the holiday season with your family, friends, your team members, and the residents you serve. Looking forward to being with you soon – the WALA Spring Conference is right around the corner, March 8-10, 2023! See you then.

CEO CORNER

By Mike Pochowski, WALA President & CEO



Thank you for providing outstanding care and services to all of your residents and tenants. We know this is an unbelievably difficult time as you continue to deal with a staffing crisis that is the worst it has ever been. Please know you are doing an amazing job and we are truly thankful for everything you have done and continue to do.

As we look back on 2022, we have been happy to report a number of advocacy successes:

- Continuation and increased funding ($104m all funds) into the Direct Care Workforce Funding Initiative.
- Family Care rate increases of 4.24% and 5%.
- Enhancements to the Family Care program such as the upcoming implementation of a rate band/rate setting process.
- Media coverage regarding the long-term care workforce crisis
- Continuous meetings with leadership at the Department of Health Services (DHS), Division of Medicaid Services (DMS), Division of Public Health (DPH), and the Bureau of Assisted Living (BAL).

Looking ahead to next year, we will continue to advocate on your behalf.

One of the ways you can help is through the WALA-PAC. The WALA-PAC enables us to support elected officials, both

Democrats and Republicans, who understand assisted living and who are in a position to support policies that enhance the lives of assisted living residents. No contribution is too small and every dollar helps ensure that critical priorities are addressed. A more robust WALA-PAC will support these efforts. You can provide a personal contribution (corporate contributions are not allowed) at ewala.org/advocacy.

In addition, the 2023 membership renewal process is underway. Your WALA membership includes access to great benefits such as legal resources, insurance offerings, job board, and membership discounts. We hope you will continue your membership in 2023. Learn more at ewala.org.

I hope you and your loved ones have a wonderful holiday season. Thank you for your continued support and membership in WALA, we greatly appreciate it.

WALA

MISSION STATEMENT

Wisconsin Assisted Living Association's mission is to support providers in enhancing the best quality of life for residents in assisted living in Wisconsin through advocacy, education, communication, and quality initiatives.

WISCONSIN ASSISTED LIVING ASSOCIATION

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THE LEGAL EDGE

The Legal Edge is a regular feature column authored by the Assisted Living and Long Term Care Group at the Reinhart Boerner Van Deuren law firm featuring Bob Lightfoot, RN. Bob Lightfoot can be reached at 608-229-2257 or rlightfoot@reinhartlaw.com.

MAKE SURE YOU ARE SURVEY-READY

While we're not completely over the COVID pandemic hump, now, more than ever, you need to make sure you are survey-ready. I'm seeing a lot of requests for assisted living appeals coming across my desk. This article is a reminder of the importance of staying on top of the operational side of your assisted living business to ensure you don't end up with enforcement actions, some of which can have dire consequences for your business such as "Do Not Admit" orders. Let's start with the top citations thus far in 2022 from the Bureau of Assisted Living.

CBRFs:

1. ISPs not updated annually or with changes
2. Toxic substances not locked up
3. Employees not screened for communicable diseases
4. Resident right – problems with medications
5. ISP – not comprehensive.

RCACs:

1. Nursing services not provided where needed (health monitoring, medications)
2. Provide emergency services 24/7
3. The remaining number of cites all discuss lack of proper provision of services and problems with the risk agreements.

AFHs:

1. Not a homelike environment
2. Not a safe environment
3. Licensee and staff not screened for communicable disease
4. ISP reviewed
5. Staff 8 hrs training annually and fire extinguishers (tied)

For a complete "Top 10" list click here.

Being survey ready means being both knowledgeable and proactive. Be knowledgeable by being in the know about what BAL is likely to survey for. This means knowing the "Top 10" citations for your particular type of facility every year, and also knowing what your own in-house issues are.

Being proactive involves actually implementing change in your facility and regularly monitoring for regulatory issues and promptly correcting them. Useful tools include BAL's assisted living forum, attending WALA conferences and events, and becoming part of the Diamond program WALA offers. We're in a time of perceived heightened regulatory surveys for assisted living facilities. It's up to you to stay knowledgeable and proactive with your operations to avoid negative outcomes for your facility.

Reinhart
ATTORNEYS AT LAW

FASD: MORE PREVALENT THAN YOU THINK ONE PLATTEVILLE ASSISTED LIVING COMMUNITY OFFERS HOPE & PURPOSE

For almost three years, Americans have been living with the threat of Covid. Meanwhile, there's another significant public health crisis that doesn't command nearly the attention, but is also devastating: Fetal Alcohol Spectrum Disorder (FASD).

FASD impacts 5 percent of all newborns-- or one out of every 20 babies born in the U.S. -- a rate more than twice that of autism, according to the Centers for Disease Control.

In Wisconsin, an estimated 3,200 babies are born annually with this developmental disability. Our state ranks second in the nation for binge-drinking, a statistic that is on display every weekend, from college campuses to Packers games.

It's the rare woman who wants to hurt her baby, but many don't even know they're pregnant during the first six weeks, when exposure to alcohol is especially harmful to the developing brain and central nervous system.

"Of all the substances of abuse (including cocaine, heroin and marijuana) alcohol produces by far the most serious neurobehavioral effects in the fetus," reported the Institute of Medicine.

The result? Lifelong physical, mental, behavioral, social and learning disabilities, which impacts all areas of daily living.

If someone doesn't understand the link between "cause" and "effect" -- an almost universal symptom of the disease -- they are going to struggle with impulsivity, peer relationships and following rules. Kids can have blistering tantrums, triggered by even the most benign request, such as turning off the TV.

Starting in pre-school, these children get labeled as "oppositional" or "troublemakers" by teachers, coaches and other adults who have no training in how to make classroom accommodations so affected students can thrive.

Not surprisingly, these youngsters experience high rates of expulsion and often end up dropping out of school, which sets off a cascade of negative outcomes, including addictions, unemployment and homelessness. When they turn 18 and are no longer considered minors, they often find themselves in the criminal justice system, despite the fact that they typically function at half their chronological age. You may think you've never met someone with FASD or that affected individuals must have some kind of outward facial features, such as those with Down Syndrome. But chances are good that if you've ever met someone who is a perpetual "screw-up" -- who can't keep a job or an apartment (only 20 percent of this population live independently), you probably know someone with this invisible disability.

Despite an urgent need, FASD barely registers on the public's radar screen. Families who are struggling find few diagnostic, intervention or other support services available to them.

However, one solution is available right here in Wisconsin. FASD Communities, the nation's first FASD-exclusive assisted living residence opened in Platteville in 2018. Beyond housing, the four women -- all in their 20s -- get a feeling of accomplishment by raising crops, caring for animals and selling their produce and crafts at a local farmer's market. Even more important: They have found a purpose and friendship.

But the biggest reason that the home has been a success is because of the quality of the staff, which provides 24/7 care, according to CEO Gigi Davidson. "They have all the attributes of the best caregivers...compassion, a willingness to think outside the box and the desire to make a difference in someone's life," said Davidson, who launched the organization with other parents desperate to see their young adult children achieve stability.

Typically, staff turnover at group homes is a constant problem, but FASD Communities has kept many of the same employees they opened with almost five years ago. Additionally, the same four young women who moved in are still living there today.

"Hey, don't call us a group home," said Monica, one of the residents. "Really, we're a family."

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Interested in how a WALA Annual Sponsorship can bring visibility and value to your organization? Learn more here or contact hnovoselac@ewala.org

2023 UPCOMING WALA EVENTS

MARCH 8–10, 2023
WALA Spring Conference
Wisconsin Dells

APRIL 4, 2023
Legislative Day
Madison

MAY 2023
83.15 CBRF Administrator Course
Brookfield (Milwaukee Area)

JULY 2023
83.15 CBRF Administrator Course
Virtual

AUGUST 30, 2023
WALA Autumn Golf Classic
University Ridge (Madison Area)

SEPTEMBER 19-20, 2023
WALA Fall Conference
Brookfield Convention Center

OCTOBER 2023
83.15 CBRF Administrators Course
DeForest (Madison Area)

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STAY TUNED FOR ADDITIONAL EVENTS AND OPPORTUNITIES!

Not sure if you are on our mailing list? Contact us at info@ewala.org

EWALA.ORG

DO YOUR JOB POSTS SPEAK TO JOBSEEKERS?

By Cindy Schamber
Founder, JobLink Healthcare

Are you stuck in a rut when it comes to writing job posts? Not getting the response you hope for? Could you use some fresh inspiration and new ideas? You may even be uncertain about how much information to include in the listing. Should you lean toward less and risk omitting crucial details, or include more and risk applicants skimming and getting the wrong idea. It's a tricky balance, and there's no one right answer.

Can you relate to this? You've been talking to an applicant about a position and they give you a look like they have no clue what they are applying for. You wonder…did they even read the job post??? The fact is they most likely didn't! And here's some possible reasons. If your job post is too long most applicants will skim through and pick out keywords that are attractive to them. Too short, and the post won't give the crucial information they need to understand what they are getting into.

How should your company create job posts? Let's review the different styles currently in use today and see where you fit best:

1. Full detailed job posts- Includes a summary of the company, when it started, where it is today, and the full description of the position and expectations. This was popular in the past, however most applicants will not read the entire post.
2. Partial detailed job posts- Takes out the company summary but lists the tasks and responsibilities of the position along with requirements and expectations. Better balance - a higher chance that applicants will read the entire post.
3. No detailed job posts or known as "General" job posts, typically posted on social media sites, state what they are hiring for and what location. Apply Today and figure out the details later.

So, which job posts speak to jobseekers? What information ARE they looking for?

Studies show short job posts between 1-300 words with relevant information get more attention than long full detailed job posts. Relevant information includes the following:

- WORK HOURS
- BENEFITS - what will they gain from working with your company
- LOCATION
- WAGE (if you offer that information in the post - not everyone does)
- OVERVIEW of job responsibilities (NOT the entire job description)
- A final important consideration: the wording and tone of your job posts can impact the response as well. For example, do you tend to write your job posts talking about YOUR needs, or THEIRS?

- "JobLink Healthcare is hiring for a Marketing Assistant, apply today"
  Vs.
- "Are YOU looking for a Marketing Assistant position? Look no Further JobLink Healthcare wants to talk to YOU"

See the difference? When writing job posts talk to your prospective applicants and tell them why they want to apply to your company. Talk about the culture of the company. This is your first impression, make it a memorable one and stand out. Remember that job listings are marketing for the team you need and want to create the culture you envision.

Job listings are a fine art, and this is true now more than ever in our era of employee's markets. Furthermore, the ever-evolving digital landscape will force employers to continue to adapt as job seekers look for employment on new platforms and formats, so prepare to be flexible.

Remember, it's a balance, and you might not ever hit it quite right. But that's okay. Just keep experimenting and evaluating the results. The response will tell you what is too detailed, not detailed enough, and which listings strike the tone that is music to your prospects' ears!

Follow Cindy Schamber and JobLink Healthcare on LinkedIn for more resources to make your hiring practices even more successful.

WHEN WAS THE LAST TIME YOU LEFT YOUR COMFORT ZONE

Dave Molenda, Positive Polarity

Maybe you volunteered for something that was outside your norm, or you asked a difficult question to someone that you care for. If you have, congratulations, as most people tend to want to remain in their comfort zone.

While it is safe to stay in your comfort zone, there tends to be little challenge there. And when boredom sets in, engagement in life and work tends to decrease. So exactly when do we leave our comfort zone and what happens when we do?

As you read this, I think that you are probably in your comfort zone, where you feel safe and in control. This is not a bad thing. If you want to learn or grow, however, whether personally or professionally, you will need to consider leaving the comfort zone.

The challenge here is that in between the comfort zone and the growth zone, is a place called the fear zone. Here is where we find excuses, lack self-confidence, and are affected by other people's opinions. As we sit safe and snug in the comfort zone, we can see what the growth zone looks like. And for most of us, we have a desire to grow and to learn, yet we hesitate to jump in.

"Why would I jump out of a perfectly good airplane", you ask yourself, when contemplating skydiving. Or "why would I volunteer to lead that committee at work when I am perfectly content letting someone else do it"? These are thoughts that might come naturally to you, and they are not bad thoughts.

When it comes to life, if you have a growth mindset, then you will be forced to make these tough decisions. Do you want to acquire new skills? Do you want to find your purpose? Or maybe you want to deal with the challenges in your life, rather than continue to live with them. If so, then you will have to work past the fear zone before you can enjoy these. But why would I want to get out of my comfort zone in the first place? Three simple reasons:

1. You will grow – who doesn't want to grow in today's world?
2. You will improve your ability to adapt – with change being constant, adaptation is becoming more and more of a requirement.
3. You will increase your productivity which improves your outlook on life.

OK, so let's assume that your curiosity is piqued, and you are now open to consider jumping out of your comfort zone.

How can you do this in ways that are not too out of bounds? Here are some simple ways that you can step out of your comfort zone at work and "test the waters":

1. Ask for something new, by taking on a new responsibility and stretching yourself.
2. Address your fears head on. If you know that you struggle talking in front of a group, consider taking a course on public speaking, or join Toastmasters.
3. Consider learning a new technology. Are you intimidated by spreadsheets like I am ? Maybe it's time to take an online class to get past those fears.
4. Reach out to someone that you typically would not collaborate with. Open your mind to learn from them and see what they have to offer.

I think that Eleanor Roosevelt said it best, "Do something every day that scares you."

I know personally, two times that I have jumped out of my comfort zone. First was when I wrote my first book called, "Growing on Purpose", which turned out to be an Amazon #1 Best Selling Book. I lacked self -confidence and kept telling myself that I was not going to be a success. I found every excuse I could think of. Even after the book was released and it went to #1 in three categories on Amazon, I asked my parents if they bought a warehouse full of books! It wasn't until I saw the letter from Amazon that I truly believed and was able to realize and enjoy my goal!

The other time I jumped out of my comfort zone was when I started "The Positive Polarity Podcast". I thought no one would listen and no one would want to be a guest on my show. In the last two plus years, we have had guests from 6 of the 7 continents and listeners from around the globe tune in each week. We just received word from www.Listennotes.com that we are in the top 5% of all business podcasts on the planet!

Two times that I was able to jump out of my comfort zone and end up in the growth zone. Where would I be if I would not have done this?

Now it's your turn…
What is one thing that you can do that will get you out of your comfort zone at work this week? Start as small as you need to but start somewhere.

Why not join Eleanor Roosevelt and scare yourself today??

Hear more from Dave Molenda, founder of Positive Polarity, at the 2023 WALA Spring Conference! Join Dave in-person as he dives into this topic during his breakout session When it's Time to Leave Your Comfort Zone - A Practical Guide to Growth


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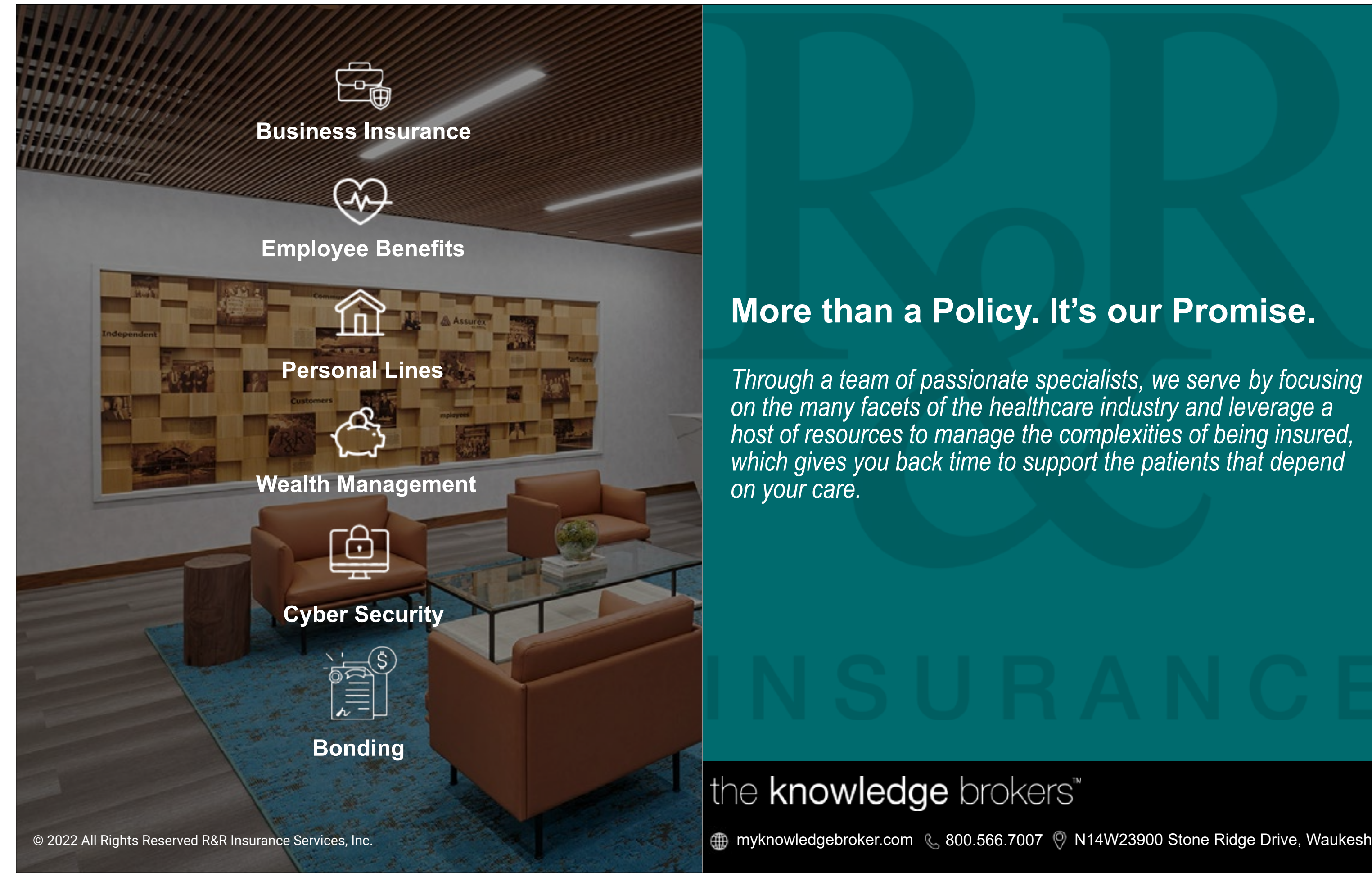
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THE SCIENCE OF CHANGING YOUR PLANS (AN EXCERPT FROM REVISIONARY THINKING)

Courtney Clark

As young children, many of us learn how to set goals. As we grow, we're taught how to work toward our goals. We're encouraged to put in effort, to try our best, and to never give up.

But we're not often taught what happens if life throws a roadblock in our path. We dedicate significant effort to going for the goal, but we spend little time learning strategies for what to do when the goalposts move. With a single-minded commitment to a goal and few skills to adapt, it's no wonder we get frustrated when change happens.

Resilient people can let go of a story that no longer serves them—a story that no longer makes sense. To be truly resilient in the face of change and challenges, we have to be less committed to a specific version of life and instead be willing to rewrite the story.

But we can't even start to rewrite our new story without first throwing away the old story. The old story has a tendency to creep back in and cloud our thinking. It can happen to individuals but also to organizations.

So how can you (or your organization) let go of your old plan and begin building a new plan?

Strategy 1: Recall What Worked in the Past
First, think about past experiences when you were heading into an unknown situation. If you struggle to start your list, remember that as children we faced unknown situations with much greater frequency than we do in adulthood. Kids walk into a new classroom with a new teacher every single year! Children try new sports and activities regularly. They make new friends or say goodbye when old friends move away. Teenagers pack up all their belongings and go off to college. They go to their first dance, or on their first date. Young adults start their first job and pay their first bill. Every time you do something for the first time, you're heading into the unknown and facing ambiguity. In fact, children may be better at letting go of the plan than adults are, maybe because they do it more often! (More on that later in this chapter.)

Being able to point to a list of times you successfully navigated an ambiguous situation is a good first step. Next, think about what actions you took in those situations that helped you get through it. Did you keep an open mind? Did you control your anxiety? Did you befriend and lean on someone else going through the experience? Remembering the strategies that worked for you in the past is a good tactic, because each person is unique.

Ultimately, remind yourself that each of those ambiguous situations was ultimately resolved. It was unknown and uncomfortable in the beginning, yet at some point your path became clear. Whether the end was enjoyable or successful (and I hope many of them were!), the situation didn't stay a mystery forever.

Strategy 2: Differentiate Between Plans and Goals
Another way to get more comfortable with ambiguity is to realize that letting go of the plan isn't the same as letting go of your goals. Being forced to change your plans doesn't lessen your chances of success. It may change your methods of success or your timeline. Or it may change the type of success you achieve. That's what happened for me.

When I left the world of performing arts, I thought it was for good. I put my creativity and communication skills into action in another way, working in public relations for corporations and nonprofit organizations. I gave TV interviews and built community engagement and marketing plans. But one day someone said to me, "I love the passion you have when you talk. You'd be a great motivational speaker." That moment shifted everything for me.

Now I'm back to using the performing skills I developed at NYU, but in a completely different way than I ever expected. This isn't the version of success I dreamed about when I was 12, but it's still success. In fact, I could argue that it's even better success, because I'm able to run my own business and create my own opportunities in a way that I'm not sure I would have been able to do in a traditional acting career.

There's always more than one route to your goals. You just have to be willing to find the best path for you.

Courtney Clark provides content-based motivation that helps individuals adapt faster, achieve more, and develop Accelerated Resilience™. She is the author of three books, including her most recent book "ReVisionary Thinking", a four-time cancer survivor, brain aneurysm survivor, keynote speaker, and founder of a nonprofit. www.CourtneyClark.com. Join Courtney in person at the 2023 WALA Spring Conference on Wednesday, March 8th when she presents her pre-conference educational workshop, ReVisionary Thinking: The Science and Strategy of Quickly Adapting to Change

A LEADERSHIP COURSE DESIGNED FOR ASSISTED LIVING PROFESSIONALS

WALA
WISCONSIN ASSISTED LIVING ASSOCIATION

Employee recruiting and retention is on everyone's mind. Increasing hourly wages only goes so far to recruit and doesn't do much when it comes to retention in this market. The pool of available workers seems to be shrinking and you know that if your employees are unhappy, they can find another position all too easily.

The biggest key to retaining current employees and attracting new ones is having direct supervisors and managers with excellent leadership skills. WALA recognizes the challenges you are facing and has teamed up with Leadership Development Group (LDG) to provide our members with effective, practical education and training to use in day-to-day operations.

Launched in November 2022, this course was designed with assisted living professionals like you in mind! Limited class size and a hybrid format means participants will have a hands-on experience that includes in-person and online instruction as well as tailored personalized coaching sessions to hone skills even further.

Course topics encompass a variety of important leadership skills including:

- How to increase personal responsibility within teams.
- The misunderstood role of clarity in improved team performance and accelerated growth.
- New coaching skills that eliminate the gossip.
- How to build trust with teams so they begin working together peacefully and exceed their goals.
- How to give constructive feedback in a way that eliminates your fear of confrontation.

Join WALA and the inaugural course participants at the 2023 Spring Conference to recognize the completion of the first Leadership Certification Course!

We encourage you to learn more by visiting our info page. Stay tuned for how you can apply for an upcoming 2023 course or contact WALA with any questions.

PROVIDING GREAT SENIOR LIVING SERVICE DURING THE GREAT RESIGNATION

Jennifer L. FitzPatrick, MSW, LCSW-C, CSP

Have you experienced inferior service during the last few years? Maybe you ordered a new dining room table, or washer and dryer and were told there were going to be massive delays. Perhaps you went to your favorite restaurant and couldn't get in for dinner because they closed earlier than usual. Or maybe you went to a hotel for vacation and were told that housekeeping wouldn't be available during your stay.
I'm guessing everyone reading this has experienced at least some version of these disappointing, frustrating events. Intellectually we understand that the pandemic, Covid-19 policies, supply chain issues and, of course, The Great Resignation are to blame. Still, customer service complications are incredibly annoying.
But delayed appliances, closed restaurants and a lack of turndown service are small potatoes compared to what our residents and families have been experiencing. Many of them logically understand why there have been changes in our services, but they are tired of excuses. While you are diligently working to staff up, here are five ways to ensure you are providing great service while hiring and retention is tough.

1. Be sure your residents and their families know what to expect. Senior living customers are not thrilled when you tell them dining room hours are limited or the van trips to the grocery store or shopping center are going to be available less frequently. But this news is certainly tolerated better when they're given a heads up. Do everything in your power to over communicate when amenities will be abbreviated. Put up signs, send emails, and do verbal reminders.

2. Train your staff to answer questions. Even though many residents and families "get" that there is a staffing problem, particularly in healthcare and senior living, they still may ask questions. When they ask why there's a service interruption or change, it's okay to share that staffing is the reason. But

be sure to follow that up with how it's your organization's highest priority to resolve it.

3. Apologize. Of course it's not your or your team's fault that the pandemic, Covid-19 policies, supply chain issues, and The Great Resignation happened. But it's important to keep apologizing for the inconvenience. It will go a long way to reducing complaints.

4. Ask your residents and their families for ideas on how to deal with the service interruptions. As stakeholders, they have a vested interest in improving the situation. Perhaps they have thoughts on how to attract talent, augment staff with volunteers, or how to ensure the most valued services are the least interrupted.

5. Thank the staff who are showing up and treat them as generously as you can. Happy, appreciated team members will be kinder and more patient with your residents and their families. Pay them as well as possible, offer unexpected treats and be sure they are taking their vacation and personal days. Even though it can be tempting to allow dedicated staff to work relentless hours to make up for staffing shortages, resist that urge. They will burn out and their attitude toward your senior living customers will be negatively impacted. Don't ever forget that your staff have lots of choices right now. Make sure they know you recognize their value.

Jennifer L. FitzPatrick, MSW, LCSW-C, CSP (Certified Speaking Professional) will be the opening keynote speaker at Kalahari Resort in March for WALA's 2023 Spring Conference. She is the author of the upcoming Reimagining Customer Service in Healthcare (Post Hill Press, February 2023) and Cruising Through Caregiving: Reducing the Stress of Caring for Your Loved One. Originally from Philadelphia, she will challenge anyone to a parallel parking contest. She can be found at www.jenerationshealth.com.

KEY TAKEAWAYS FROM THE 9TH ANNUAL HEALTHCARE DEFENSE STRATEGIES SYMPOSIUM

For nine years running, M3 has hosted an Annual Healthcare Defense Strategies Symposium to bring providers, attorneys, and insurance carriers together with the overall goal of sharing knowledge and experiences to help providers be more "defendable" against litigation. The 2022 symposium took place on October 5th with focus on "The Various Perspectives of Litigation", and various perspectives were indeed received from providers, attorneys, and carriers alike.

Provider Panel – Lessons Learned in Litigation

We kicked off the day hearing from three different senior living and social services providers about their organizations' experience with litigation. Key points made from the different providers include the following.

- Executing **arbitration agreements** with residents/clients upon admission greatly favored the outcome of litigation, and even led to a case being dropped in more than one occurrence.
- While an organization may have great policies and procedures on paper, the biggest challenge lies with the human element of **effective training, monitoring for compliance, and overall culture of communication and accountability.**
- In each case, documentation played a key role in the outcome of litigation, particularly surrounding monitoring and documenting changes of condition, as well as narrative charting.
    - In one example, during the discovery stage of litigation, the scope of the claim was expanded due to what was or was not found in documentation. **What system does your organization have in place for ongoing monitoring of documentation for completeness and appropriateness?**
    - Assignment sheets used by employees as well as staffing schedules were also used to the advantage of the plaintiff attorney.
        - Consider the need for assignment sheets. If you do utilize these, ensure that the assignment sheets consistently match the care plan/service plan.
        - Implement a process for updating employee schedules to be a true reflection of all the applicable employees to support adequate supervision, including agency staff and supervisors.
        - Do you have record retention practices surrounding "ancillary" documentation, and whose responsibility is it to ensure the retention policy is being followed?
- Information contained in **employee files** is a crucial factor in liability claims that may fly under the radar for providers. **Corrective actions** that contain descriptive information about employee behavior was used to the advantage of the plaintiff attorney. **Consider reviewing your internal process for how disciplines and terminations are being written and with what amount of detail, keeping in mind that an external party may be viewing these at some point.**
- It is essential to be genuinely empathetic to a resident/client and their representatives when a negative incident occurs. Multiple examples were given of families stating throughout the litigation process how frustrated and upset they were by the perceived lack of communication and care from the organization. **How a person is made to feel can significantly influence their decision of whether or not to pursue litigation.**
- Completing an **"After Action"** review after litigation wrapped up was a valuable learning experience for the organization to identify opportunities for improvement with operations and overall litigation management.

Jury Trials – Recent Attorney Experiences

Pat Sullivan and Ellison Hitt of Siesennop & Sullivan, LLP provided the rundown of two of their recent jury trials and honed in on the following.

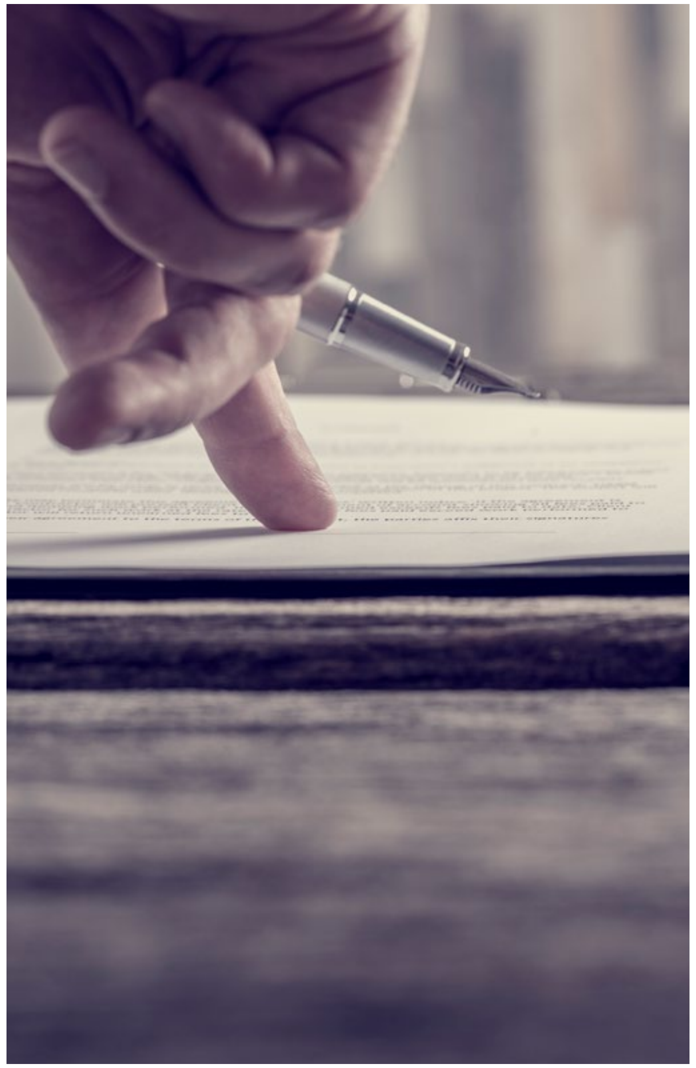
- To settle or not to settle? Dependent upon the facts of the case, it may be beneficial to take the case to trial. Plaintiff attorneys have to prove two pieces to a jury trial- **negligence and causation** (negligence caused injury). Defense attorneys often use causation to the advantage of the provider- just because there may have been negligence does not mean it caused the damages. In addition, willingness to try the case may aid in mediation and bringing down value of a case. **Work closely with your insurance carrier and defense attorney when deciding to settle or bring to trial.**
- Plaintiff attorneys will focus on the training of new employees in particular. It is vital that organizations maintain good documentation to support training that employees receive upon hire and throughout the course of employment.
- **Document, Document, Document!**– If it is not documented it didn't happen, **but if it is documented, it did happen.** Consider making it a practice to **document positive interactions with residents/clients** (good mood, making jokes, attending activities, etc.).
- Organizations are better served in litigation when **policies and procedures are not overly detailed or intricate**. Set realistic practices, and basic is better when it comes to written policies and procedures.
- **Utilize risk agreements** as part of the education process with residents/clients and representatives if a potential concern may be inevitable- frequent falls, risky choices made by resident client/etc.
- Use the **admission agreement to incorporate risk discussions and acknowledgement** with residents/clients and representatives. For example, consider adding to the admission agreement that the party understands that the resident/client will not be receiving one-on-one care or attention at all times.
- Utilizing **demonstrations during jury trials** can be very beneficial to educate the jury- i.e. how certain tasks are performed.

Legal Challenges and Risk Management Considerations with Admissions and Discharges

Tom Shorter of Husch Blackwell and Marleah Keuler of M3 Insurance explored with the group how the admission and discharge of a resident/client to and from an organization are heightened times of potential risk, and shared strategies to aid in mitigation.

- **Admissions agreements** are consistently referred to in the event of litigation. Consider reviewing your organization's admission agreement and incorporating language you want residents/clients and their representatives to sign off on, such as reasons for and of the process of **involuntary discharge**. Consider **reviewing admission agreements annually** to update the language to account for newly identified challenges with admission and discharges.
- The decision of whether or not to admit a resident/client is the first line of defense. Consider developing a **list of what type of care your community is able to accept and not accept** to be used both internally and externally. This guides admission staff around your internal parameters, and can be helpful in discussions with hospitals, Managed Care Organizations, and residents/clients and their representatives.
- The **readmission of a resident/client from a hospital** may indicate an increase level of care, so consider reviewing your organization's process for assessing readmissions to ensure the individual remains **appropriate for your setting**.
- **Clear communication** with residents/clients and their representatives regarding what services can and cannot be provided, changes in resident/client needs throughout the stay, and if the need for discharge is coming is crucial. Receiving an **involuntary discharge notice should not be a surprise** to a resident/client and their family.
- Documentation to justify the involuntary discharge of the resident/client will be needed. Ensure the documentation embodies the increase in care level and the communication had with family and providers. It is important when doing this, however, to **not include privileged quality assurance or incident investigation material in the medical record.**
- Develop an organizational **template for the involuntary discharge** notice that meets individual setting requirements (SNF, CBRF) per regulation and statutes to use in the event it is needed.
- Develop relationships with **community partners in varying levels of care** to establish a list of organizations willing to accept residents/clients that may need to be discharged for higher levels of care.
- The process of involuntary discharge in the event of a challenging resident/client or family situation can be a frustrating and a high-risk situation, so consider working with **internal or external legal counsel** in these situations.

Key Takeaways from the 9th Annual Healthcare Defense Strategies Symposium continued



Personnel Files and Employment Decisions Impact in Civil Litigation

Tom O'Day of Husch Blackwell provided many insightful nuggets on the maintenance of personnel files and how employment records can play into litigation.

- While there is no federal law requiring personnel files, WI Statute 103.13 and MN Sec. 181.961 states what personnel documents are to be maintained for employee access in the personnel file and confidential medical file. This includes personnel documents such as employee's qualifications for employment, promotion, transfer, compensation, termination or other disciplinary action, and medical records. Personnel records have different retention requirements, so ensure you abide by a record retention schedule accounting for the different types of files.
- **Personnel files are accessible to plaintiff attorneys** during the litigation process are not considered privileged information. This means that any investigative material (that may otherwise be privileged) which made its way into the personnel file would be accessible to the plaintiff attorney. **Consider implementing a checklist when pulling an employee personnel file** so there is consistency and practice and you are only pulling what is to be considered part of the personnel file.
- In the discovery process, if a personnel document may tie into a privacy matter, you may be able to redact or withhold the information. When releasing a file, it is recommended to **redact personal information**– medical conditions, social security numbers, etc.
- Be cautious of "shadow" or "soft" personnel files. Managers often keep certain records such as emails or notes on employees in a file outside the formal personnel file. It is recommended to **put parameters around what is kept in "shadow" files** and how long the information is retained.
- **Justification summaries** to support corrective action are likely considered a personnel file document. Document justification summaries in a manner to support the corrective action and not provide details that may compromise privileged investigative information. In addition, if there are documented performance issues in the personnel file and nothing was done to address them, this could help support a negligence case.
- Key documentation that is beneficial for future litigation include **orientation training documents**– (ensure complete and accurate), records of annually required and as needed training and education, and accolades from residents and family members (could be helpful in liability but hurtful in employment action)
- From an employment practices perspective, **arbitration agreements for employment** are worth considering as a risk transfer strategy for your organization. If an organization has over 250 employees, there is an exclusion in the insurance policy for wage and hour claims, so that risk cannot be transferred to insurance. Arbitration agreements make pursuing claims against an employer less appetizing for plaintiff attorneys. They often pursue class action suits for wage and hour claims, which they would not be able to do in the case of arbitration agreements.

Key Takeaways from the 9th Annual Healthcare Defense Strategies Symposium continued

Common Themes of the Day

The Caring Heart– Do not underestimate the importance of having empathy and strong relationships with residents/clients and their families. Build those positive relationships from the start so if something negative happens, you have a rapport with those individuals. When appropriate, apologize for their experience- WI I'm Sorry Statute. How a person is made to feel often means more than the facts of what happened. The involved resident/client and their interested parties' perception of indifference or lack of communication from the staff or organization is a significant factor in influencing whether an organization can expect future litigation or a complaint visit from the state department. **Consider reviewing your customer service training and grievance procedures to ensure a solid process (and person) is in place to be the "caring heart" communicating to the resident/client and their family.**

Turn Your Grievance Program Into A Customer Service Program

Documentation Practices– It's no surprise that the quality and completeness of documentation (or lack thereof) plays a huge part in your organization's ability to be "defensible" in the event of litigation. **Consider reviewing your internal ongoing monitoring process for various forms of documentation, as well training employees receive on documentation hygiene.**

Documentation Do's and Don'ts

Employee Records– Personnel files can be a vulnerability in the event of litigation. **Consider reviewing with your supervisory and HR teams what information should and should not be included in a disciplinary action (no detailed investigative material). Develop and abide by a record retention schedule, and identify what types of employee records are to be stored and where (personnel file vs. medical file vs. confidential legal file).**

RISK MANAGEMENT CONSIDERATIONS FOR RECORD RETENTION & RELEASE