Federal regulations clearly specify that administrators of long-term care facilities are responsible for ensuring adequate and safe care for residents of their facilities (42 CFR 483.25, 1992). The facility is responsible for the physical, nutritional, and psychological needs of the residents. Gerontological nurses, however, must frequently translate the facility's legal obligations into the daily management of a resident's care.

Scheduling care for patients with multiple needs is a routine challenge for most nurses in long-term care facilities. However, when providing essential care during predictable times of increased demand, some options that seem to meet increased staffing needs have questionable legal ramifications.

Meal time, for example, routinely places increased demands on nursing staff that may exceed the staff's ability to promptly assist residents with care. In order to efficiently provide timely nutrition for all residents, some gerontological nurses have requested volunteer assistance from family members during meal times. This seemingly practical solution to a recurrent problem has several interesting legal issues associated with it.

If volunteer assistance is solicited from a family member, the questions that arise are, "Has the request for volunteer services modified the responsibilities of the long-term care facility for providing the feeding assistance needed by the resident?" and "Does the presence of the volunteer family member relieve the facility from the responsibility of having a staff member available for this specific skill?"

The response to both of these questions is "No." The responsibilities of the facility to provide care remain regardless of the assistance provided by the concerned family member. The gerontological nurse cannot abrogate the facility's responsibility for feeding the resident, but must continue to provide assistance if it is needed.

Another question that occurs is, "If a volunteer family member assists with feeding, does the gerontological nurse, as a representative of the long-term care facility, need to provide training for the family member?" The federal regulations indicate that if the skill is being performed by a volunteer, no training is required (42 CFR 483.75(e)(1)). Although no training is required by federal statute, it is reasonable to assume that the nurse would want to explore the level of complexity involved in the specific skill and to examine potential liability issues associated with having a family member perform the feeding (i.e., the resident choking or aspirating fluid).

Two final questions that may arise are, "Has the facility received illegal supplementation from the care provided by the family member?" and "If the time and skill spent feeding the resident has been solicited from the family member, could this be viewed as a request for supplemental payment in exchange for the care provided by the long-term care facility?"

While the long-term care facility has not asked for the payment of an increased amount of money from the family, the request for services could be viewed as "payment in kind" by the family in exchange for the other care provided by the facility. If the request for assistance is made for a resident covered by Medicare, the request for assistance may be an illegal supplementation of payment, which is prohibited by the federal regulations (42 CFR 483.12(d)(2)).

Gerontological nurses who are responsible for scheduling and performing daily care for residents may seek multiple, practical, and efficient solutions to providing appropriate and timely care. It must be remembered, however, that a simple request for a family member to assist with care may have multiple legal ramifications.

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