

LTC PROTOCOLS:



LTC Issues and Insights in 250 Words or Less

Week of May 25, 2003

ISSUE: What Are The Powers Of Agents?

DOH recently imposed a CMP for a resident rights violation where a facility refused to allow an attorney to meet with a resident because, among other things, the resident's daughter objected to the visit. Resident's daughter held a power-of-attorney. Therefore, the daughter was not only a "responsible person," but also an "agent" or "attorney in fact." An agent or attorney in fact generally may assist a resident by acting in the resident's stead, but may not supplant a resident's decision. DOH regulations refer to a class called "responsible persons." While the powers and duties of "responsible persons" are not defined, their status is akin to family members. Family members have no power to make decisions contrary to the resident's wishes. By contrast, a Guardian is a judicially appointed person that generally is the decision maker for the resident.

PROTOCOL: Provide Staff With Functional Definitions

Follow the resident's rights provisions in spirit as well as letter. Treat all residents with the dignity that is afforded by presuming them to be capable of making their own decisions until and unless a court of law determines to the contrary and appoints a guardian. Thereafter follow the instructions given by the guardian. Develop functional definitions of the terms "agent/attorney in fact," "responsible person" and "guardian," post these definitions in staff break rooms, nurse's stations and other places where staff can refer to in their day to day interaction with each class of persons.

Brought To You By:

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