

Balancing resident independence with safety is a key concern in senior living communities. Shared and negotiated risk agreements have emerged as valuable tools to empower residents to make informed choices about their independence while ensuring appropriate safety measures are in place. However, the effectiveness of these agreements depends not only on their initial implementation but also on ongoing communication, education, and documentation. This article highlights best practices for using these agreements as part of a comprehensive risk management approach that protects both residents and providers.



1. Risk Management as a Continuous Process

In senior living environments, residents often have complex health needs and varying levels of independence. Shared and negotiated risk agreements are tools to respect resident autonomy while managing safety. However, rather than one-time documents, these agreements should be part of an ongoing process, with regular updates—at least quarterly—to reflect changes in the resident's condition, preferences, or circumstances.

2. Comprehensive Education and Documentation

Effective risk management begins with thorough education of residents and their families. Facilities must implement structured programs that clearly communicate risks associated with resident choices. A clear understanding of risk is crucial, and obtaining signatures from the appropriate legal representatives (such as Power of Attorney or Healthcare Power of Attorney) provides essential documentation. This not only supports informed decision-making but also assists in defending the facility if legal issues should arise.

3. Involvement of Legally Authorized Representatives

Engaging the right individuals—those with legal authority—is vital. Their involvement in signing agreements and receiving education reduces the risk of legal disputes and ensures decisions are made ethically and in accordance with legal standards.

4. Integration into Care and Service Plans

Risk considerations should be a primary element of each resident's care and service plans. Clearly articulated problem statements and tailored interventions help staff understand and proactively manage risks, promoting consistency in care delivery and reinforcing resident autonomy within a framework of safety.

5. Documentation of Resident and Family Engagement

Documentation of any instances where residents or families choose to engage in risky behaviors, despite education from the facility, is essential. Proper documentation demonstrates that the facility has both fulfilled its duty to inform and has respected the resident's autonomy. This record-keeping is crucial in defending against potential legal claims.

6. Balancing Autonomy and Safety

While risk agreements empower residents, they do not eliminate liability. A single risk agreement is insufficient; ongoing education and documentation are necessary to show that the facility has taken reasonable steps to inform and protect residents.

7. Legal and Ethical Considerations

Properly executed risk agreements serve as valuable evidence in legal proceedings, showing that the facility provided education, obtained informed consent, and maintained ongoing engagement. This proactive approach can mitigate liability and strengthen the facility's defense in case of adverse outcomes.

Implications for the Senior Living Industry:

- **Policy Development:** Facilities should establish clear policies and procedures for implementing and documenting shared and negotiated risk agreements.
- **Staff Training:** Staff should be trained to deliver consistent education, maintain thorough documentation, and, again, respect resident autonomy while promoting safety.
- **Resident-Centered Care:** Emphasizing informed choice aligns with person-centered care principles, fostering trust and respect.
- **Legal Preparedness:** Maintaining comprehensive records of education and resident engagement is critical for effective risk management and legal defense strategies.

Case Study: The Fall and Subsequent Lawsuit at ABC Senior Living

Background: ABC Senior Living, a licensed nursing home, implemented a shared risk agreement with Mr. John Doe, an 82-year-old resident with mild cognitive impairment and a history of falls. The agreement acknowledged Mr. Doe's desire to continue ambulating independently in the facility's common areas, despite known safety risks. The facility provided education about fall risks, obtained signatures from Mr. Doe and his Power of Attorney (POA), and incorporated the agreement into his care plan.

Incident: Six months after signing the agreement, Mr. Doe fell while walking unassisted in the hallway, sustaining a hip fracture. The family filed a lawsuit against ABC, alleging negligence and arguing that the facility failed to adequately protect Mr. Doe or properly document his informed consent regarding the risks.

Legal Issues and Court Findings:

1. Inadequate Ongoing Communication and Documentation:

- The court found that the shared risk agreement was a one-time document signed at admission, with no evidence of quarterly updates or ongoing discussions about Mr. Doe's changing condition.
- There was no documentation showing that staff regularly reviewed or reinforced the risks associated with his independence, nor evidence of updated education or consent.

2. Lack of Evidence of Resident and Family Engagement:

- The facility failed to document any conversations or educational sessions with Mr. Doe or his POA after the initial signing.
- The court noted that the facility did not record instances where Mr. Doe or his POA expressed concerns or changed their minds about his level of independence.

3. Failure to Integrate Risk into Care Planning:

- The court observed that the risk agreement was not integrated into Mr. Doe's comprehensive care plan, nor were specific safety interventions tailored to his needs.
- The facility did not demonstrate that staff were trained to recognize and respond to changes in Mr. Doe's condition.

4. Legal and Ethical Shortcomings:

- The court emphasized that the facility did not provide sufficient evidence that Mr. Doe fully understood the risks or that his POA was adequately involved in ongoing decision-making.
- The absence of documented ongoing education and updates weakened the facility's legal position.

Outcome: The court ruled in favor of the plaintiff, finding that the facility's failure to maintain ongoing communication, proper documentation, and integration of risk management into care planning undermined the enforceability of the shared risk agreement. The court concluded that the agreement, as executed, did not demonstrate that Mr. Doe's autonomy was fully respected or that the facility took reasonable steps to inform and protect him.

Key Takeaways:

- Shared risk agreements must be part of a continuous process, with regular updates and ongoing education.
- Proper documentation of resident and family engagement is critical.
- Risk agreements should be integrated into comprehensive care plans.
- Courts scrutinize whether residents truly understand the risks and whether facilities have taken reasonable steps to inform and protect residents.

This hypothetical case underscores the importance of diligent, ongoing risk management practices to ensure that shared risk agreements are legally defensible and ethically sound.

Summary

Shared and negotiated risk agreements are valuable tools when used thoughtfully. Their effectiveness depends on diligent, ongoing documentation and communication. When integrated into the care process, they support resident autonomy, enhance safety, and provide legal safeguards for senior living providers.



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