***TIPS FOR AVOIDING AND DEFENDING COVID CLAIMS***

PCH Counsel Donna Fudge from Florida who was recently appointed to the National COVID-19 Defense Counsel presented at a free webinar for all PCH insureds and counsel. Here are her recommendations and tips on *Long Term Care Challenges During The Covid-19 Crisis.*

Although some states have passed various immunity laws and the federal government is considering a similar measure, even if those immunities apply, they likely will not apply to conduct that is considered “gross negligence” or “willful misconduct.” So long term care facilities must keep a record to demonstrate their efforts during the pandemic to avoid such allegations.

Some allegations we’re seeing are:

- Failure to use proper infection control measures (infection protocol, PPE, etc.)

- Negligently allowing symptomatic caregivers to treat residents and/or without wearing proper PPE

- Violation of federal health guidelines

- Failure to have staff meetings to train/update staff

- Allowing Covid + residents to share a room

- Allowing residents to mingle with each other

- Requiring staff to maintain unmanageable workloads

- The facility is an outlier due to the high number of Covid cases

- Reports on employment websites like *Indeed.com* that facility is understaffed or an unfavorable/unsafe workplace

Tips for Avoiding or Defending Claims Against Your Facility

*Pandemic Practices*

- Be very careful about (try to avoid) taking and posting photos (may depict improper PPE usage, selfies depict parties not social distancing (even 6 feet now not considered enough in the ever-evolving studies and guidelines related to Covid-19)

- Staff should not post work-related photos on social media

- Review all marketing materials, including website and social media, view it through the lens of the post-pandemic world, i.e. no big groups, parties, touching

- Keep residents at a proper social distance

- Train all to properly don and doff PPE

- Print CDC Signage, document usage

- Train and retrain staff, i.e. on handwashing, PPE, cough etiquette, etc.

- Educate staff specifically about silent spread

- Limit “chit chat” and speak softly to reduce the spread

*Create an Evidence Box – Document & Save*

- Scan and store everything digitally if possible

- If you have a timeline of what you did and when specific to the pandemic, preserve it

- Document & Save your actions, i.e. training, preparation, protocols, infection prevention, anything PPE related, staffing, signage, communications, etc.

- Document & Save visitor protocols, logs, screening logs, etc. and how it evolved with the guidance

- Save video surveillance

- Document & Save employee screening and staff assignments

- Document & Save recommendations to staff on how to conduct themselves in off-

duty hours to reduce threat of infection

- Document & Save all relevant communications, email and text messages, re: resident health, family communication, visitors, vendors, staffing, maintenance efforts, etc.

- Save a copy of communications with family in the resident’s record/chart

- Save a copy of receipts and orders for supplies, i.e. PPE, equipment

- Document & Save all efforts related to testing, securing testing, etc.

- Save all resident assessments for Covid symptoms

- Save all Covid test results for staff and residents, put duplicate in their specific files

- Document & Save anything else you believe demonstrates your vigilance and best practices during the pandemic

*Team Appreciation*

- Make it a point to make your staff feel appreciated

- Encourage even short breaks, self-care and quiet moments to themselves