Long-Term Care Survey Alert

CASE STUDY: Find Out How One Facility Challenged An H-Level Deficiency At IDR

Accepting a deficiency doesn't always mean buying the whole enchilada.

Certain deficiencies may seem like a slam-dunk for an actual harm deficiency. But even if everyone agrees a serious breach of care occurred, the facility might have a sturdy leg to stand on in challenging the F tag's scope and severity.

A case in point: A 71-year-old man in assisted living primarily for medication management fell and fractured his hip. After surgical repair of the hip, the man had trouble eating and drinking, so the hospital physician inserted a temporary G-tube to get the man over the acute hump, relayed **William Vaughan, RN, BSN**, chief nurse, **Office of Healthcare Quality** in Maryland. Vaughan presented the case at the March 2006 **American Medical Directors Association** annual meeting in Dallas.

In September 2005, the man entered a nursing home with a plan to receive speech therapy for his swallowing problem so he could eat again and return to assisted living. The speech therapist saw the resident at admission and documented that the resident was interested in eating. The physician wrote the order for speech therapy. But when the social worker went to see the resident, she found him in the throes of acute confusion caused by a UTI.

The resident received antibiotics and his mental status returned to baseline. He then received physical therapy to work on mobility issues. But the ST never returned to see the resident after his acute confusion cleared up. When the social worker prepared to discharge the man, his previous assisted living facility wouldn't take him back because of the G-tube.

The Surveyors Step In

A couple of months later on an annual survey, the surveyors began asking staff why the resident hadn't received the speech therapy. "Every- one blamed every other discipline--except one person who would not talk to us," Vaughan recounted. The attending physician was reluctant to talk to the surveyors.

The surveyors interviewed the resident whom they believed was mentally capable of saying he wanted to eat. "He wanted the pleasure of eating--and was not given the opportunity," said Vaughan. Once the surveyors expressed their concerns, the facility performed another speech evaluation that showed the man could eat, said Vaughan.

The net result: The facility got slapped with an H-level (pattern of harm) based on the individual case. What harm occurred? The resident had to remain in an institutional setting because he didn't receive therapy, explained Vaughan.

How could a single situation represent a pattern of actual harm? The case represented a system failure involving many disciplines that went on for three months, said Vaughan.

The case also represented part of a "bigger picture" of a facility with significant problems, he added. The survey agency imposed a "significant civil monetary penalty." After talking with Vaughan, the administrator of the facility agreed to voluntarily ban admissions to the facility.

The Facility Goes to IDR

The case may appear to be open and shut, but **Harold Bob, CMD**, serving as a consultant to the facility as part of its clean up effort, found the facility had a sound technical basis for challenging the deficiency's scope and severity through

informal dispute resolution (IDR).

The first step: Bob and the facility acknowledged that a deficiency had indeed occurred in that a physician's order went unheeded for three months. The facility's new administrative staff implemented systems to ensure such a failure would not happen again.

But when Bob reviewed the resident's hospital record, he found it said that the resident's dysphagia might be permanent, but acknowledged the resident's and his family's hope that he would eat again.

The record showed the resident "was fully aspirating and totally unable to eat when admitted to the nursing home," said Bob. And the man "failed the first ST evaluation" in terms of being able to eat.

Uncovering a key discrepancy: When the surveyor intervened, the resident received the second speech therapy evaluation. But the surveyor had not "quite accurately read that speech therapy evaluation," which said that the resident could attempt swallowing under close monitoring by the speech therapist, relayed Bob.

The evaluation didn't approve the resident going on a regular diet "as the deficiency" was written. The speech therapist noted that they were able to get the resident to take one teaspoon at a time with aspiration over 10 to 20 minutes, said Bob.

A risk not accepted: The resident had the option of eating with aspiration but neither he nor his family wanted to accept that risk, as Bob explained to AMDA attendees.

The bottom line: While a deficiency had clearly occurred, the resident hadn't suffered actual harm, which is required for an H-level citation. At no point could the resident "ever, ever, ever" have been fed safely except by G-tube--unless the family would have accepted the risk of aspiration, which they were not ever willing to do, said Bob. Thus, he could not have returned to the assisted living facility.

The outcome: The facility succeeded in getting the deficiency lowered to an E-level (pattern of potential for more than minimal harm). The survey agency didn't reduce the CMP, however, as it viewed the situation as a "near miss," according to Vaughan.

Lesson learned: "If you have something to say at IDR or in a written IDR submission about the scope and severity of a deficiency, it's worth saying," says **Ari Markenson, JD, MPH**, associate general counsel for **Cypress Health Care Management** in White Plans, NY. "You may convince someone that the surveyors made a mistake."