

Long-Term Care Survey Alert

CMS AT CROSSROADS: WILL THE AGENCY VOTE QUALITY OVER PUNISHMENT?

The **Centers for Medicare & Medicaid Services** recently hosted a Webcast on resident quality of life and is promoting quality assurance activities as part of its **Nursing Home Quality Initiative**, which rolled out nationwide this month.

Its definitely a different emphasis for an agency that has long carried a big stick but providers aren't quite sure what to make of it. For one, CMS initiatives designed to help providers improve also hold punitive elements.

As part of the NHQI, CMS will report each Medicare/Medicaid-certified facilities scores on quality measures all of them negative outcomes except for one. (CMS plans to look at whether to reframe the QMs as positive outcomes.)

And as part of the NHQI, CMS has tapped state-run quality improvement organizations (formerly peer review organizations) to assist facilities with confidential quality assurance activities. Yet CMS recently clarified that QIOs are required to report facilities to the state when they uncover "substantial risks to public health" as part of QA efforts. (See the October 2002 Long-Term Care Survey Alert)

CMS upcoming Data Assessment and Verification Evaluation project, a.k.a. DAVE, is another example of a dual-edged initiative primarily designed to improve minimum data set coding which will also flag and report facilities whose MDS coding may have compromised resident care or payment compliance.

Set to roll out nationwide in 2003, DAVE is "insidious and dangerous," warns **Marie Infante**, an attorney with **Mintz, Levin, Cohn, Ferris, Glovsky & Popeo** in Washington, noting that the initiative is too embryonic at this point to determine what might happen. "But there are definitely some potential problems with DAVE that CMS needs to address," she adds. **(For the latest on DAVE, see an upcoming issue of Long-Term Care Survey Alert.)**

Industry experts say unless CMS wants to torpedo its own initiatives, the agency will have to issue a clear policy directing survey agencies not to use quality improvement activities as an opportunity to flag or penalize well-intentioned providers.

"If CMS would just amend the regulation to relieve the QIO of reporting facilities as part of quality assurance activities, it might enhance the QIOs ability to establish the type of trusting, collaborative relationship envisioned by the NHQI," comments **Harvey Tettlebaum**, an attorney with **Husch & Eppenberger** in Jefferson City, MO.

Kathy Hurst, a nursing consultant in Chino Hills, CA, believes CMS also needs to go back to the original focus of OBRA in its overall compliance approach, which was to look at resident outcomes.

"Surveyors should stop citing facilities that address near misses and potentially negative outcomes," Hurst maintains.

For example, facilities can get tagged with retroactive immediate jeopardy if surveyors find that they made quality improvements to prevent another close call or resident outcome that caused no actual harm, such as a fall. "Something has to give," Hurst emphasizes, "because nursing facilities don't have enough resources to both continually improve things and fight punitive actions."