

Long-Term Care Survey Alert

Compliance: Read The Signs That You Have A Whistleblower In Your Midst

Here's how to avert a potential survey disaster--or worse.

Even facilities running a tip-top ship can be sunk by complaints to the state from staff--or an undercover agent investigating what started as an inside complaint about care or other practices.

Case in point: Surveyors arrived at one facility recently for a regular survey. But they focused on one resident in particular because they'd received a complaint about her care from someone in the facility. The resident, who had never fallen before in the facility, slipped and fell in front of surveyors. The resident was unhurt, but the facility didn't fare so well on the survey, as you might imagine.

An employee may lodge a complaint for a variety of reasons, ranging from altruism to revenge to a desire for a windfall as a whistleblower. But you can learn to identify when someone from within the ranks is reporting or gathering information against your facility.

The nature of the complaint may hold clues. "Some complaints can only come from someone within the facility," says attorney **Joseph Bianculli** in Arlington, VA. He has a nursing facility client, for example, who received a complaint survey based on information that a resident had not received a nebulizer treatment as ordered. "The resident wasn't in a condition to call the state and complain," he says. "And the family didn't know the schedule for administering the nebulizer treatment. So the complaint had to either come from an employee or an undercover agent."

Another way to tell: You can look at the complaints to the state to see if they all come from the same shift or unit, Bianculli says.

A facility can't retaliate against a suspected informant or employee complaining to the state by firing the person, cautions Bianculli. "That approach runs afoul of state whistleblower statutes, for example, or union rules in unionized facilities. But the charge nurses should be on the lookout for employees going through residents' charts where they have no business doing so," he suggests.

If you do catch an employee going through residents' charts who has no legitimate reason for reading them, confront the person about the privacy issues--and if the person is a whistleblower or undercover agent, so be it, says **Adam Balick**, an attorney in Wilmington, DE. "Otherwise, the facility is remiss for not addressing the [privacy] issue."

Bring Your Suspicions Into the Open

If you do strongly suspect the facility has a whistleblower based on a pattern of complaints to the state, the administrator's best tack is to confront the issue head on. The administration can convene the staff and say, in effect, "If one of you is an undercover agent or complaining to the state, we aren't going to give you anything to report," suggests Bianculli. "And if someone is deliberately sabotaging the care, we will fire you." (Bianculli has heard of instances where nursing home staff have called the state to say they knew a resident wasn't getting good care because they weren't providing the required treatments.)

Evaluate Compliance With Self-reporting

Surveyors may be more likely to do a complaint survey on a facility that has failed to self-report a significant resident

injury or negative outcome in the past. "You don't want to fail to report an obviously reportable situation or injury because that makes it appear as if the facility has something to hide," says Balick. But over-reporting can also cause problems.

The solution: Periodically step back and take a look at what and how much the facility is reporting and ask, for example, why the facility has had so many (or few) reportable incidents. "Then get to the bottom of what's going on," Balick suggests.