

## Long-Term Care Survey Alert

### DOES IT REALLY PAY TO BE PROACTIVE WITH SURVEY AUTHORITIES?: You Bet, If You Follow These Rules

To achieve the fairest survey outcomes, nursing facility providers have to be proactive with the regulatory powers that be...but without burning their bridges.

Start by keeping in mind that even though providers have a voice in the system and the right to appeal survey authorities hold all the F tags.

"Surveyors are authority figures empowered by the government to write citations like police do," cautions **Beth Klitch** with **Survey Solutions** in Columbus, OH. "When an officer pulls you over, you don't come charging out of the car saying, 'I wasn't speeding. How dare you?' Instead you want to calmly state your case and ask: 'Are you sure it wasn't the car in front of me? I try hard not to exceed the speed limit.'"

Of course that's sometimes easier said than done in the heat of the survey. "Sometimes providers' frustration levels get so high they just want to vent their anger with little other goal in mind," Klitch agrees. "But the more productive approach is for providers and surveyors to understand each other's point of view and find common ground in order to improve care for residents."

To get the best results with survey agencies, you can't maintain this "them v.us" mentality where they are the enemy, agrees **James Schuster**, an attorney with the **Council for Regulatory Compliance** in Cincinnati and Washington, D.C. In fact, listening to what surveyors have to say can sometimes take you along way toward resolving survey woes.

Real-world challenges, real-world solutions: Schuster recalls, for instance, working with one facility tagged with 36 deficiencies. "As the result of listening to what the surveyors had to say about the direction the facility was heading, the facility got a tonelaw-grade deficiency on the survey in 2002," he says.

Of course, there are cases where you disagree with surveyors, but you have to do so respectfully, Schuster emphasizes. He cites a case involving a resident fall in which the facility and surveyors disagreed completely about the situation.

So the facility administrators said to the surveyors: "We have a different conclusion and we are going to IDR this, and if we don't get relief, we will go to the **Centers for Medicare & Medicaid Services**, but we want you to know that up front."

**Tip:** People doing survey and enforcement may be better clinicians than you might think, so it's wise to get a clinician involved to help the facility when battling F tags, Schuster advises.

Whether you win or lose a challenge, keep your credibility in tact it's your most valuable asset. It really is about how you play the game.

"You don't want to become known as the facility that 'cried wolf' too many times," cautions **Joseph Bianculli**, an attorney with **Bianculli & Impink** in Arlington, VA. And that could happen, for example, if a facility were to challenge its D deficiencies without doing anything about the G-level (actual harm) ones, he says. And disagree when you must but do so in an agreeable way. "If a situation calls for someone to get disagreeable, let your attorney do it," Bianculli suggests.

