

Long-Term Care Survey Alert

Policies and Procedures: UNREASONABLE POLICIES CAN BACK YOUR FACILITY INTO AN F TAG

A strong set of policies can be your best defense against the whims of surveyors but those same policies can work against you if you don't design them realistically.

"If a facility has no policy in place to address a regulatory requirement, then the survey team is free to interpret the regulation," says **Gene Larrabee**, principal of **Primus Care Inc.**, in Valparaiso, IN. "If, however, a facility develops policies, procedures and practices in accordance with its own interpretation of regulations, the survey team defers to the facility's interpretation."

Staffs response time to call lights is a good example. If the facility does not have a policy in place for responding to call lights, a survey team could arbitrarily claim that all call lights need to be answered within three minutes. "But if a facility has a policy that states staff will respond to call lights within five minutes, that is reasonable and the survey team will accept the facility's interpretation," Larrabee says.

"Reasonable" is the watchword. "The facility must develop policies and procedures that pass the reasonable person test," says Larrabee. If they don't, then the facility is once again exposed to surveyor interpretation of the regulations.

So, using the call light example, "if the facility's policy stated call light responses would occur within 60 minutes, that would certainly be deemed unreasonable and would expose the facility to citations," Larrabee explains.

Watch Out for Overzealous Policies

But tread carefully when putting new policies into effect: An overzealous policy that's "unreasonable" in the other direction, exceeding regulatory requirements, ironically could get the facility into hot water with surveyors. "Once a policy is developed and implemented, a facility can be cited for not adhering to its own policy, even if technically, the facility is in regulatory compliance," Larrabee cautions.

Internal staffing requirements, which are often hard to meet on every shift, are one example of where a facility may be setting itself up for a citation.

Annaliese Impink, an attorney with the **Law Offices of Bianculli & Impink** in Arlington, VA, reports on a case where a facility got an H-level deficiency (F353) for not following its internal staffing policies in a state that did not even set a minimum staffing ratio. "We are preparing to use informal dispute resolution to challenge this tag because the [federal] regulations only require sufficient staffing," Impink tells **Eli**.

Facilities should also watch out for internal written policies that require staff to monitor certain clinical conditions at a set frequency or for a designated length of time. "If the facility has a written policy or procedure that says staff will monitor residents with certain conditions for 48 hours and staff only do it for 36 hours, that opens the door for a deficiency," cautions long-term care consultant **Deborah Ohl**, principal of **Ohl & Associates** in Cincinnati, OH.

Defining Missing Resident

Resident elopement is another area where facilities can write policies in a way that protects them from what are usually immediate jeopardy-level citations.

As a first step, the facility needs to think through how staff define and document a "missing" resident, says Larrabee. "A

facility policy can actually define when a resident should be deemed missing," he says. "For example, the policy might stipulate that residents who cannot be located are not to be deemed missing until the staff has had enough time to search the building and grounds."

What tends to happen, however, is that unit staff panic and document in the chart that a resident is "missing" before looking in unoccupied rooms or other nearby areas to find the person. This documentation then starts the train rolling toward an IJ citation, which can even happen retroactively if a surveyor reviews the chart at a later date.

"If a resident has curled up on a bed in an unoccupied room, did that resident really elope and is he in immediate jeopardy? The answer, in most cases, is no," says Larrabee. "That's why it's important to develop policies that provide leeway in these types of situations."