

Long-Term Care Survey Alert

REGULATORY COMPLIANCE: Do Your Abuse And Neglect Policies Imperil Your Nursing Facility?

Follow this blueprint for what to include and forego.

They say the cover-up is what gets people in trouble. But in the case of F tags for abuse and neglect, nursing facilities often find their own policies and procedures prove to be their undoing.

Get out of the gate: Facilities that don't include the key components for preventing and addressing abuse outlined in the survey interpretive guidance won't pass the starting line with surveyors. These are:

- Screening of potential hires;
- Training of employees (both for new employees and ongoing training for all employees);
- Prevention policies and procedures;
- Identification of possible incidents or allegations that need investigation;
- Investigation of incidents and allegations;
- Protection of residents during investigations; and
- Reporting of incidents, investigations and facility response to the results of their investigations.

Tip: Nursing facilities don't have to collect the above items in one document or manual, according to the State Operations Manual.

Understand Interplay of Federal, State Requirements

Also make sure your policy and procedures address both state laws and the federal requirements in the State Operations Manual. "You have to understand what kinds of things to report and investigate under both laws," says **Chris Puri**, an attorney in Nashville, TN. "For example, something might be reportable under the state law but not federal and vice versa."

Remember: Follow the more stringent requirement, whether it's state or federal, says Puri. "A common example is the injury of unknown origin where states may require a facility to do one thing but the federal requirements are quite specific," he says.

Facilities must report an injury of unknown source "immediately," which means as soon as possible but not to exceed 24 hours after discovering the incident "in the absence of a shorter state time frame requirement," according to the SOM.

In addition, different state laws require the facility to report suspected or confirmed abuse to different state agencies-- and in some states to multiple state agencies in addition to the survey agency, adds nurse attorney **Janet Feldkamp** in Columbus, OH.

4 Additional Strategies to Head Off Trouble at the Pass

Craft your policies with these additional pointers in mind, suggest legal experts.

1. Think twice before spelling out requirements that exceed the regs. "Aspirational and over-promising policies tend to catch the facility in a regulatory bind," cautions Puri.

Example of an overzealous requirement: The facility's abuse investigation policy and procedure says the

investigator will obtain written statements from every employee who had access to a resident within 72 hours prior to any injury of unknown origin. In that case, "surveyors could cite the facility for not meeting that requirement ..."; even though the federal survey guidance simply requires the facility to conduct a reasonable investigation," says Feldkamp.

2. Demand "Just the Facts, Ma'am." Design investigative protocols that encourage witnesses to simply state what they have observed or heard, suggests **Adam Balick**, an attorney in Wilmington, DE. Basing conclusions on partial facts and speculation can take an investigation off course, he cautions. "And it can get investigators on survey teams off track," he adds.

Example: A staff person happened to walk by a room and glimpse a nurse aide with her hands above a resident's head on the same day that the resident developed a bruise on the back of his neck. When interviewed, the staff person should simply state what she saw rather than conclude that the aide must have hit the resident, causing the bruise.

3. Devise internal procedures for documenting an abuse investigation. A bunch of sticky notes chronicling the investigation won't cut it with government authorities demanding the exact dates and times you talked to people.

Feldkamp says she has "seen facilities end up with immediate jeopardy for failure to conduct an abuse investigation because the DON at that point can't remember exactly what she did when."

Solution: Use a standard format or form and document the investigation on that, Feldkamp suggests.

4. Use the quality assurance process to review incidents of suspected abuse or neglect. That's a good idea not only from a process improvement process, says Puri. "The facility can also take advantage of any protections that exist in state and federal law to protect records from discovery in lawsuits," he notes.