

Long-Term Care Survey Alert

Regulatory Compliance: To Report Or Not To Report An Incident to The State: Err On The Right Side Of This Difficult Decision

Weigh whether telling on the facility pays.

Talk about one of those doomed if you do or don't scenarios: Facilities that fail to report a resident's fall or other adverse incident to the state can end up hit with big fines - or worse. But those that report every little thing may become like the mouse inviting the cat in for one visit too many.

"Surveyors can go ballistic if they find a facility didn't report an incident that they think it should have," cautions attorney **Jay Adams** in Tallahassee, FL.

Yet over reporting can trigger surveys that lead to citations. "Some states are fair and will tell a facility it isn't required to report a certain incident," says **Annaliese Impink**, associate general counsel of **Mariner Healthcare** in Atlanta. "But other state survey agencies will [accept the report] and say to themselves, 'Good, this gives us another reason to get into the facility and see what we can find.'"

Compare Statutes to Reality

You can walk this compliance tightrope by nailing down the official - and unofficial - rules for reporting incidents in your state.

Start by obtaining a copy of the state's self-reporting requirements for nursing facilities, if you haven't already. For example, the Colorado occurrence reporting program requirements are posted on the state's Department of Public Health and Environment Web site, along with forms for reporting various types of incidents.

"Sometimes state survey agencies will give facilities guidance on what to report," advises **John Lessner**, an attorney with **Ober/Kaler** in Baltimore, MD. But to get the "rest of the story" about how states actually interpret and enforce the statute and regulations, also talk to your state trade association, counsel and consultants, advises Lessner.

For example, Adams hasn't found that Florida facilities that report incidents tend to be targeted for surveys. Facilities do, however, get automatically fined if they file an initial incident report but then fail to submit the follow-up 15-day report with the conclusions of their root-cause analysis and any corrective actions, he says.

But if a facility reports a fall and concludes the fall was out of its control - and surveyors believe the facility already has a problem with falls - they'll likely pay the facility a visit, says Adams.

Watch out: "Virtually every departmental appeals board survey appeal takes the government position (for a deficiency under F 324) that the facility could always have done something more to have prevented a fall in a resident with a known risk of falls," cautions attorney **Marie Infante** in Washington, D.C.

Just the facts 'mam: Facilities should follow the law in reporting incidents but be very cautious about reporting more than just the facts on the initial report, cautions attorney **Adam Balick** in Wilmington, DE.

The classic example: A staff person sees a resident on the floor who can't say how he got there, and no one else saw how it happened. In such a case, "simply report when and where the nurse found the resident on the floor, his assessed condition at the time and what action the staff took [to evaluate and treat him, if necessary] following the discovery,"

advises Balick.

"But don't report your conclusions about the possible cause(s) of an incident until the facility has fully investigated it," he adds.

Use Your QA Process

Investigate all incidents through your quality assurance process, regardless of whether you have a good faith rationale for not reporting a particular incident to your state, advises Lessner. "Have the documentation to show the process and outcomes - and any changes the facility implemented as a result," he adds.

Example: Say a resident starts to slip out of his chair, but the caregiver catches him and gently lowers him to the floor unhurt. Following RAI manual instructions, you would code that incident on the MDS as a fall, although a facility wouldn't normally report it to the state.

Yet if the facility doesn't investigate the intercepted fall internally "and that resident subsequently falls from his wheelchair and gets seriously hurt, the facility is in big trouble," Adams cautions.

Care plan tip: Coding falls on the MDS lets you know to care plan the problem, observes **Vickie Blackburn, RN**, vice president of **ElderCare Risk Management** in St. Charles, IL. "That way you can bring the issue full circle with the care plan and evaluation," she says.

Include the physician or physician extender in your fall investigation and ask that person to document (if they concur) that the fall was not within the facility's control, advises risk management expert **Robin Bleier, RN, CLC, LHRM**, in Crystal Beach, FL.

Don't Drop 'Hot Potato' Issues

Pay special attention to incidents that have garnered the most publicity or survey scrutiny in your state. For example, Florida facilities should definitely report fire ant bites to the state agency, advises Adams.

"Residents don't usually get bitten by fire ants in a facility without suffering multiple bites," he says.

Abuse allegations can turn into your worst survey and public relations nightmare - especially if you don't follow the rules for reporting the problem to the state.

"Federal requirements say facilities must report any allegation of abuse, neglect or misappropriation of a resident's property in accordance with state laws," advises Infante. "And some states want facilities to report every bruise, skin tear, etc., no matter how predictable the injury might be," she adds. "For example, rough handling [of nursing home residents] is the 'cause de jour' in the District of Columbia."

In Georgia, the statute requires facilities to investigate an allegation of abuse and report it to the state only if they substantiate the allegation, says Atlanta attorney **Jason Bring**. "But surveyors will tell facilities to report even a suspicion of abuse before they investigate the allegations," he says.

Thus, Georgia facilities have had an ongoing battle with surveyors over what the statute says versus the standard to which surveyors hold a facility accountable. "And administrative law judges haven't come down on the issue one way or another at this point," says Bring.

Know the Golden Rule

Facilities should also carefully evaluate whether to report an incident involving the potential for a lawsuit or complaint - even if the facility believes it's done nothing wrong or the resident's family is just out for money.

"If there is a golden rule for deciding to report, it's this: Seek legal or risk management advice any time the facility has a situation brewing that could turn into a complaint or malpractice action," urges **Kurt Haas**, former Ohio survey bureau chief and currently a consultant in Lithopolis, OH.

An example might include a very disgruntled employee or family member who appears ready to lodge a complaint against the facility related to an incident.