

Long-Term Care Survey Alert

Resident Abuse: This Abuse Investigation Policy Will Keep Everyone Out Of Harm's Way

It's better to be safe than sorry.

The next time your facility receives an allegation that a staff person abused a resident, consider this: What you do next could determine whether the facility ends up with an immediate jeopardy tag or other survey and malpractice litigation woes.

"If the facility removes the staff person from the facility immediately, it might abate immediate jeopardy, especially on appeal," says Atlanta attorney **Jason Bring**. He recommends facilities develop and follow a protocol where they automatically suspend the staff person with pay or some form of compensation until the administration can investigate the matter.

In addition, ask the staff person to sign a document that clearly indicates the suspension is part of a protocol for investigating an alleged incident - and not an acknowledgement on the facility's part that the staff person did anything wrong, Bring advises. "That way the surveyors can't say the facility is admitting a problem," he says.

The suspension period gives the facility administrators time to investigate the incident completely and consult with their legal and management team about how to proceed. "The approach is analogous to what police do when there is a shooting or other incident in the line of duty," Bring notes. And it prevents surveyors or malpractice attorneys from alleging that the staff person posed a danger to more residents during the investigative period - especially if the investigation confirms that abuse occurred.

"If the facility administration decides the situation warrants, they may terminate the employee and then conduct training on resident abuse prevention and behavioral management for all staff," Bring says.

But if the investigation reveals that the allegations have no merit and you allow the person to return to work, the facility should still provide (and document that it provided) training on abuse prevention and detection to all staff, Bring suggests. "Also document that you supervised the staff person appropriately."

Beware keeping a staff member employed when the investigation by the facility shows the abuse allegations have some merit. "In fact, a facility could be subjected to another separate F tag for doing so," Bring cautions. "The facility would be taking a great risk because surveyors or a plaintiff's attorney could then argue that the facility knew about the problem but chose not to correct it."

How to Handle Multiple Suspects

Sometimes abuse allegations involve more than one potential suspect, which gets tricky. One facility confronted that situation when a cognitively impaired resident reported that someone on staff had sexually assaulted her. The woman's vague description of her alleged assailant fit that of several CNAs, a supervisor, some housekeeping staff - and several residents. Even so, the facility suspended all staff members with pay who resembled the description, reports attorney **Adam Balick** with **Balick & Balick** in Wilmington, DE, whose firm represented the facility.

Balick suggests facility administrators confronted with serious criminal allegations ask the state survey agency how it wants the facility to handle the investigation. That's what Balick did in the case involving the resident's rape allegation, and the Delaware survey agency agreed that in that particular instance, the police should conduct the investigation

before the facility interviewed any of the people who met the resident's description of her assailant.

Ask for Local Guidance

The facility must also document its investigation of abuse or neglect and the steps its administrators took to protect residents from further harm. Unfortunately, there are no documentation requirements that will appease surveyors and other agencies in all cases, Balick notes.

"The scope of the documentation required depends on the surveyor or the regulatory agency that comes in to investigate, which is frustrating," Balick says. Surveyors can cite facilities for not documenting their investigation properly. Yet each incident warrants a different approach geared to that situation, Balick adds. "For example, an injury of unknown origin requires a different investigation than a specific complaint of abuse or theft."

Thus, facilities might be wise to head off an F tag at the pass by seeking local guidance from the survey agency on how to document an investigation before they have to do another one. "It'd also help if the **Centers for Medicare & Medicaid Services** would issue some guidance on the issue," Balick adds. (See the sample staff incident statement.)