

Long-Term Care Survey Alert

SPECIAL FOCUS ~ Make Your Plan Of Correction A Ticket To Get Out Of F Tags Fast

Follow these 5 rules to error-proof your POC.

So ... the survey's over, you just got the CMS 2567 and have 10 days to submit your plan of correction (POC). Now what?

Your next task: Untangle the regulatory ropes for preparing the POC without leaving loose ends that can tie the facility up in more F tags or even lawsuits. Of course, that can be a tough tightrope to walk. But these simple rules will help you write and implement an effective POC that doesn't lead to more problems down the line.

Rule No. 1: Keep the POC focused on the statement of deficiencies (CMS 2567). One way to stay on course with your POC is to write out the elements from the CMS 2567 stated in the cover letter -- and then answer each one, advises **Matthew Murer**, an attorney with **Foley & Lardner** in Chicago.

Remember: The POC asks how you plan to address a specific resident, Murer says. "The staff has no doubt reassessed that resident and perhaps the physician changed orders," he points out. "The next question asks what other residents did you identify as being at risk for the problem. You should look at identifying similar residents by condition -- for example, skin breakdown -- or by treatment -- and/or all residents with wheelchairs, as an example. Sometimes the answer may be all the residents or all the residents in a particular area or in a particular wing."

Next address what systematic changes you plan to implement to correct the issue, advises Murer. Also spell out how you are going to monitor continued compliance. "Choices might include review in your QA program, chart audits, direct observations of care or treatment, resident interview, etc."

Rule No. 2: Know what your particular state expects to see in the POC. Attorney **Brian Purtell** notes that in Wisconsin, for example, the state is asking for more specifics and looking for more far-reaching, systemic changes to address issues -- strategies that regulators think will stick. For example, "the POC may now need to say that the facility has incorporated the improvements or corrections in the QA process and will review it quarterly," says Purtell, director of legal services for the **Wisconsin Healthcare Association** and also in practice with **DeWitt Ross & Stevens** in Madison, WI.

Rule No. 3: Set a reasonable date for implementing corrections so you don't end up with your back to the wall later. Murer counsels facilities to "get focused and fix what you can as quickly as possible." He agrees there's a "tricky balance" in making sure you have time to make the corrections. "But you don't have the luxury to do elaborate plans that take the facility 80 days into the future where the facility is well into the 180-day cycle for butting itself up against automatic imposition of denial of payments."

The facility can do more as a quality improvement effort to address a problem than what it describes in the POC, Murer adds.

Good question: What if the facility discovers as part of an internal investigation that it has a bigger issue on its hands than the deficiency cited on the SOD? You want to "focus on getting in substantial compliance and work on the side to address" any bigger issues, advises **Jason Lundy**, also an attorney with **Foley & Lardner**.

Example of a "bigger issue": The facility may find that its CNAs aren't documenting repositioning or hydration issues, says Lundy.

Rule No. 4: Don't admit to wrongdoing in the plan of correction. From a regulatory standpoint, sometimes "it's an appropriate strategy" to admit to a shortcoming, says **Chris Lucas**, an attorney in private practice in Mechanicsburg, PA. "But the fear most lawyers have is that the POC is going to be used either as an admission of wrongdoing -- or a declaration against [a facility's] interests," he says. Lucas has seen situations where a facility admits something that upon closer examination wasn't completely accurate.

Attorney **Joseph Bianculli** advises his clients to be careful about how they word responses in the POC -- for example, the POC might state, "The facility will continue to do X according to our policies and procedures," he suggests.

Definitely do this: "Always include a general disclaimer to the effect that the POC is not an admission of any of the facts and allegations and is submitted in accordance with federal requirements, etc.," advises Bianculli, noting he's never heard of a state that didn't allow a general disclaimer. Purtell advises putting the disclaimer language at the beginning of each F tag that you address in the plan of correction.

Rule No. 5: Implement and monitor staff compliance with the corrections moving forward. Surveyors look at past plans of correction as part of off-site survey preparation, cautions Purtell. "They will look to see if staff has followed through and maintained the changes in a POC," he adds. "That's why you have to implement realistic and achievable corrections so that surveyors can't come back a year or two later and hold your lack of implementation against you."