

## Long-Term Care Survey Alert

### Survey 202: Tap the Survey Interpretive Guidelines to Stamp Out F Tags

**You won't have a leg to stand on if you get IJ for this.**

If you're looking for an ace up the sleeve to keep pace with surveyor expectations, check out the survey interpretive guidelines (IGs) in Appendix PP of the State Operations Manual. "The IGs contain oodles of information," stresses attorney **Meg Pekarske**, with Reinhart Boerner Van Deuren in Madison. For example, "a facility has little room to argue when it ends up with immediate jeopardy for an example [provided] in the interpretive guidelines for an F tag."

Key to avoiding serious citations: The IGs integrate the concept of unavoidability, says Pekarske. In fact, she knows of one facility grappling with an F314 citation because its documentation failed to make the case for what appeared to be a "truly unavoidable" pressure ulcer. To demonstrate unavoidability, you document the person's risk factors and all the care plan interventions the team tried to avoid the problem, which occurred despite the care team's best efforts. Nursing home defense attorney **Chris Lucas** agrees that the IGs can help facilities comprehend the survey process and "conform their care" to how surveyors view the federal regs.

His favorite interpretive guidance is the quality assurance privilege for F520. The IG for that tag "advises surveyors to survey clinical documentation so they aren't tempted to ask for the facility's QA documentation to cite the facility for a clinical problem" based on the latter, says Lucas, in Mechanicsburg, Pa.

Recognize This Difference

Some of the guidelines represent what CMS calls "permissive duties or tools," which are simply the agency's recommendations, observes attorney **Howard Sollins**, with Ober/Kaler in Baltimore. "Facilities should understand the distinction and be willing to seek other sources of guidance and support" to demonstrate compliance.

Watch for this wording: "Words like 'should' or 'may' create permissive standards versus words like 'shall' and 'must' that indicate requirements," notes CMS in a survey & cert memo on interpretive guidelines ([www.cms.gov/SurveyCertificationGenInfo/downloads/SCLetter08-10.pdf](http://www.cms.gov/SurveyCertificationGenInfo/downloads/SCLetter08-10.pdf)). As an example of a permissive action, CMS notes that the guidance for F314 says the care plan for a resident at risk of friction or shearing during repositioning may require lifting devices. But this doesn't "create a requirement that facilities use lift devices in order to prevent pressure sores, as the facility may have other interventions in place to avoid shearing and friction," the memo instructs. "The lack of use, by itself, does not create a deficient practice for a facility."

CMS further notes in the memo that "surveyors must base all cited deficiencies on a violation of statutory and/or regulatory requirements, rather than sections of the interpretive guidelines."

Get real: Attorney **Joseph Bianculli** says he can't think of an instance where an IG isn't consistent with a reg. "But there are plenty of examples where IGs go far beyond a reg," says Bianculli, in private practice in Arlington, Va. The bottom line, however, in his view: "Any facility with common sense will study the IGs and carefully document any deviation, since that is what the surveyors use to cite deficiencies."

Resource: Read the survey interpretive guidelines at [www.cms.gov/manuals/Downloads/som107ap\\_pp\\_guidelines\\_ltcf.pdf](http://www.cms.gov/manuals/Downloads/som107ap_pp_guidelines_ltcf.pdf).