

Long-Term Care Survey Alert

Survey Appeals: A Tale Of Two Survey Appeals Offers Lessons For Battling F Tags

How care planning can work for or against you in a court of law.

Sometimes surveyors are way out in left field, but if they are on the mark, don't count on winning an appeal -- especially if shortfalls in the care planning process provide the smoking gun.

That's the key message of a clever skit chronicling two real-life survey appeals, "The RAI Process: It's the Law with Judge Moody," presented at the recent **American Association of Nurse Assessment Coordinators** conference in Las Vegas. The skit starred **Andrea Platt, RN**, as Judge Moody, a consultant with **Thomas Healthcare Consulting** in Fisher, IN, and a host of other talented actors (nursing home staff and consultants).

In the first case presented, "Geri-Acres Nursing Home" was battling double tags at F272 (resident assessment) and F324 (adequate supervision and assistance devices to prevent accidents) after a resident fell for a second time within a month.

Surveyor "**Ivanna Taggem**" presented evidence that the facility had failed to prevent a resident's fall even though staff identified her as a fall risk at admission.

Surveyors also claimed the facility had failed to properly assess the resident, paving the way for her to fall twice in a short timeframe.

While the surveyors commended the facility for its initial falls-risk assessment and fall prevention plan, they felt the facility should have been more aggressive in preventing the resident's accidents. The survey team also believed the facility gave a cognitively impaired resident too much leeway to refuse the personal care alarm designed to help keep her safe.

Just the Facts Ma'am

The resident in question -- who had lung cancer and continuous oxygen therapy -- was admitted to the facility in January 2002 following a hospitalization for an upper respiratory infection. Her initial admission MDS identified her as a falls risk due to cognitive impairments (short-term memory impairment and moderately impaired decision-making skills), as well as an unsteady gait.

The resident first fell in April 2002, when she tried to get up one night and tripped over her oxygen tubing. The staff immediately sent the resident to the emergency room for evaluation and treatment of a minor injury. The interdisciplinary team reassessed the resident when she returned to the facility; less than 10 hours after the fall, they met with the resident and her daughter to discuss fall prevention options.

While the team suggested the resident might benefit from use of a personal alarm to alert staff when she got out of bed, the resident and her daughter said they felt the fall was a fluke, and refused the intervention. Geri-Acres honored the resident's choice, as recent assessments showed her cognitive status had improved to the point that she was no longer impaired. Staff updated the falls care plan, provided shorter oxygen tubing and advised the resident to call them for help when needed.

Talk About Bad Luck

Wouldn't you know it ... 30 days later the resident fell a second time in the hall -- right in front of the survey team. Naturally, the surveyors decided to review the resident's chart and, of course, they discovered the previous fall in April.

Surveyors also found what they believed to be conflicting assessments of the resident's cognitive functioning in April, which resulted from a mistaken assessment of short-term memory loss coded by the social worker on the MDS. The social worker had unknowingly assessed the resident 45 minutes after the resident took some pain pills. As a result, the resident couldn't remember where she was or her husband's name. The social worker concluded that the resident had a short-term memory deficit based on that one encounter, which generally runs counter to MDS instructions.

Yet the social worker's improper cognitive assessment fueled surveyors' arguments that the resident hadn't been mentally intact enough to understand or refuse the personal alarm. When questioned by Judge Moody, Geri-Acres personnel agreed that the social services director had made the two mistakes when completing a cognitive assessment on the MDS right before the resident's April fall. Yet they convinced the judge that the resident was cognitively intact in April and had the right to refuse their suggested safety intervention.

The bottom line: All that excellent care planning paid off: The judge ruled the facility had appropriately assessed the resident (with that one minor exception) and had care planned appropriately to prevent the resident's fall.

Lesson Learned: Once surveyors detect such documentation, it's generally very hard to convince them that the documentation was wrong, cautions attorney **Kimber Latsha**, shareholder with **Latsha Davis Yohe & McKenna PC** in Mechanicsburg, PA. "They generally take a 'gotcha' approach to that kind of thing. And you can hardly decide to change the MDS in a middle of a survey," he says. "But you can correct the MDS timely or even correct a chart entry if you follow appropriate procedures." (For more expert medical record documentation tips, see the next Long-Term Care Survey Alert.)

Follow That Care Plan

In the second case presented, "Happy Haven Retirement Community" wasn't so lucky in its appeal of several F tags for failing to follow a care plan, which led to a resident burning her hand. The care plan called for two staff members to help turn a quadriplegic resident over in bed when performing a dressing change on her back.

Yet a newly graduated RN repositioned the resident without staff assistance when doing the dressing change. As a result, the resident's hand ended up resting on the heating element on the side of the bed during the dressing change.

The RN admitted to surveyors that she had not read the care plan directing the two-person assist in moving the resident. But she blamed others for her actions, claiming she didn't have time to read the 20-page care plans produced solely by the MDS coordinator. The nurse also told surveyors that she was simply doing what she saw other nurses do in repositioning the resident single-handedly.

Lesson Learned: Coach staff to respond appropriately to surveyors' questioning -- and that includes not blaming other staff for a problem, advises attorney **Jerri Lynn Ward, JD**, with **Garlo Ward** in Austin, TX. (See Ward's survey preparation tool for staff in the March 2004 Long-Term Care Survey Alert.)

Surveyor "**Beatrice Fare**" calmly laid out her case to the judge as to why the facility deserved citations at F323 (accidents); F279 (comprehensive care plan with measurable objectives); and F280 (care plan developed by an interdisciplinary team). Judge Moody bought the argument hook, line and sinker.

The indignant Judge Moody reminded the RN that she must know and implement the interventions in the plan of care. Yet Moody also expressed concern that the facility's care plan process appeared to be a "one man show" run by the MDS coordinator, and challenged the young RN to become part of the care planning process.

Survey Preparation Tip: As part of survey preparation, make sure staff can describe residents' plans of care and how to use them to anticipate outcomes and problems, Platt suggests.

