

# Long-Term Care Survey Alert

## Survey Compliance: Conduct Abuse Investigations That Cut To The Chase

### 4 ways to protect residents - and keep surveyors off your case.

A resident alleges abuse or develops a suspicious injury of unknown origin. Now what?

Experts outline the steps below that will make all the difference to your residents' well-being and your facility's survey record.

**1. Define a "thorough" abuse investigation that satisfies government requirements.** That can get tricky because federal requirements say facilities must conduct a "thorough" investigation of allegations, but they don't define that term, says **Marie Infante, JD**, with **Mintz Levin** in Washington, DC. "So develop your internal policies/procedures to follow in accordance with state law," she advises.

**Remember:** Federal requirements for reporting abuse allegations to the state survey agency within 24 hours trump more lax state rules in that regard, according to a recent clarification from the **Centers for Medicare & Medicaid Services**.

Develop a step-by-step procedure that ideally differentiates between initial fact-finding and a more objective second level analysis of the findings, Infante suggests. For example, "most 'incident report' forms are faulty in that they ask for conclusions and speculation by first responders," she cautions.

Facilities can use a layered approach with a preliminary investigation that has detailed steps. And if that doesn't provide answers, conduct a separate, more comprehensive investigation, suggests attorney **Adam Balick**, with **Balick & Balick** in Wilmington, DE.

**Survey Tips:** Keep a dialogue flowing with surveyors and state agencies about the practical realities of conducting investigations with limited resources. For example, Balick has had some luck in negotiating with the survey agency in individual cases by providing a rationale for why a facility targeted certain incidents for more detailed investigations than others.

**2. Incorporate standardized best practices for identifying and investigating suspicious injuries of unknown origin.** That way you can stay a step ahead of surveyors. CMS has already done Webcast surveyor training, "Forensic Wound Identification and Documentation," which you can view by registering at [www.cms.internetstreaming.com](http://www.cms.internetstreaming.com).

Now CMS is teaming up with researchers in forensic investigations at the **University of Maryland** and **Johns Hopkins University** Schools of Nursing to design potential training to strengthen surveyors' skills in investigating abuse and neglect.

"We are currently doing a study to determine surveyors' skills in the abuse and neglect investigative area," a CMS official tells **Eli**. The agency may provide a "distance learning tool" but hasn't decided the format of the training to ensure surveyors use the latest investigative techniques. (See "Every Wound Tells A Story ... Make Sure It's Not One Of Abuse" later in this issue.)

**3. Don't put the cart before the horse in your investigation.** If you draw conclusions that abuse occurred up front, you may have to back off that initial impression after the investigation, which can raise surveyors' suspicions, warns

Infante.

**Just the facts ma'am:** To ensure an objective conclusion, teach witnesses to stick to what they actually saw, heard, etc., and leave the analysis to the trained investigators.

**Example:** A CNA saw a nurse with her arms raised near the resident's head on the day that the resident developed a bruise of unknown origin. "The correct response in that case should be: 'I was walking by the room at such and such time and saw the nurse with her arms raised over the resident,'" Balick says. The CNA should not say, "The nurse obviously hit the resident and caused the bruise."

"The witnesses' statements can include hearsay, but the investigator should only accept that as a reason to go talk to the people mentioned," adds Balick.

Allowing employees to put pen to paper with their statements can open a Pandora's box of opinion and speculation, caution legal experts. "And not all employees have the same ability to write clearly," says **Carol Rolf, JD**, with **Rolf & Goffman Co.** in Cleveland, OH.

The investigator should interview the employee first and help him/her focus on factual information pertinent to the investigation, which the employee can then include in a written statement, offers Rolf.

**Don't make this mistake:** Beware questioning employees in a group setting, which can contaminate your witnesses' objectivity. "The people in a group setting who tend to speak up first can set the tone and message that the group tends to follow," warns attorney **Jason Bring** in Atlanta. "Instead, administrators should talk to caregivers, residents and other witnesses individually and ask for a fair and full disclosure."

**4. Use trained, objective investigators.** The first responder to the incident (usually the person filling out the incident report) can best collect fresh facts, says Infante. "But someone in administration (perhaps in consultation with an outside party) should conduct the investigation."

In fact, an investigation conducted by former surveyors or trained investigators may hold more sway with the state survey agency - especially when the investigators conclude an allegation is unsubstantiated, says Bring.

"The investigation by the outside agent with experience in investigating abuse may also provide more credible evidence at an administrative law judge hearing or informal dispute resolution," Bring adds.