

Long-Term Care Survey Alert

Survey Compliance: GET YOUR POC ON THE FAST TRACK TO COMPLIANCE

The best time to plan your plan of correction is long before your facility has to do one.

The State Operations Manual says facilities have 10 days from the date they receive a statement of deficiencies to submit their POC addressing each deficiency cited at level "D" through "I." That's not much time, so facilities should map the pitfalls beforehand.

"One of the biggest mistakes facilities make with their POC is submitting an incomplete response," cautions **Barbara Miltenberger**, an attorney with **Husch & Eppenberger** in Jefferson City, MO. To be accepted by the survey agency, the POC must include four elements that describe:

1. the corrective action that will be implemented to address the issues raised for residents identified during the survey;
2. how the facility plans to identify any other residents who may be affected by the alleged deficient practice;
3. an explanation, in some detail, of the corrective measures the facility will implement to ensure that the deficient practice will not recur; and
4. How the facility intends to monitor the corrective action and incorporate the corrective action into its quality assurance system. "If the facility does not include all four elements, the survey agency may find the POC unacceptable and require the facility to revise it," warns Miltenberger. In her experience, facilities most often omit identifying other residents who may be affected by the alleged deficiency.

Rejected POCs cost a facility in delays and possible monetary penalties. Also, since many states have resource shortfalls, the delay may cause the surveyors to miss the scheduled revisit survey date, which then means the surveyors must work in the revisit. Any scheduling problems on the part of surveyors could push back the revisit date even further.

Avoid Boiler Plate Language

"Boiler plate" statutory language may lend an official ring to POCs, but it can also backfire, experts warn.

"Facilities often submit paragraphs, for example, that say, We will assure that all residents who have pressure ulcers or who have signs or symptoms of dehydration will receive the necessary care and services to meet their needs," reports **Annaliese Impink** with **The Law Offices of Bianculli & Impink** in Arlington, VA. "This statement is a regurgitation of the federal requirement and does not explain in any meaningful way what specific measures the facility intends to implement to assure that this is so.

"While regular POCs don't require the level of detail that a credible allegation of compliance requires in immediate jeopardy situations, facilities should still provide a description of exactly what they are going to do and why they believe it will be effective to resolve the cited deficiencies, Impink advises.

Don't Set the Bar Too High on Correction Deadlines

Legal experts also advise facilities to avoid the following traps in formulating and implementing their plans of correction:

Setting unrealistic deadlines for corrections. Each aspect of the plan of correction must include the date by which

the facility believes the corrective action will be completed.

In Impink's experience, however, facilities are often so concerned about the potential for an enforcement remedy or the length of time a civil monetary penalty will run that they rush to include a "date certain" for making corrections that they cannot meet. "The implications of rushing to meet the date certain are far greater than letting a CMP run for another day or two or three," she says.

Leaving the quality assurance team out of the loop. Experts agree that the **Centers for Medicare & Medicaid Services** is showing much more interest these days in the quality assurance process. "CMS regional office staff are looking more critically at POCs to assure that providers have effective quality assurance committees that are meeting routinely and addressing concerns as they arise," Impink warns.

Impink advises facilities to promptly convene quality assessment or performance improvement committees after a survey resulting in more than just a few D-level deficiencies to discuss the findings and corrective action. "The QI or PI committee should also be involved in monitoring ongoing compliance," she adds.

Being unable to prove to surveyors the POC has been implemented. One good way to show surveyors that the facility came back into compliance before the revisit date is to assemble a three-ring binder that includes the statement of deficiencies and all the POC materials separated by tabs for each F tag, suggests Miltenberger.

"For example, if the facility received a F314 deficiency for pressure ulcers and the facility conducted inservice training, the binder would include ... all the inservice materials, the sign-in sheets documenting who attended, and verification of the date the inservice was held," she suggests. "That way, the facility has credible evidence that correction occurred before the revisit date."

Address Kernel of Truth

Finally, make sure not to get so wrapped up in contesting survey findings that you don't pay enough attention to the underlying quality of care issues, cautions **Peter Mellette**, an attorney with the Richmond, VA, office of **Crews & Hancock**. The facility has to submit a POC whether it appeals the deficiency or not.

"Facilities have to simultaneously evaluate the need to contest a survey deficiency and what they need to do as part of their QI process to address the deficiency," he says. "Even if there's only a kernel of truth to the deficiency, the facility should address it."