

## Long-Term Care Survey Alert

### Survey Compliance: Stay One Step Ahead Of Surveyors In 2004

**Hints: Implement your POCs carefully, target nutrition.**

Look out: The government has nursing home survey enforcement and quality of care on its mind, and nursing facilities that don't heed what the OIG work plan has in store could be in for a rough year.

The recently released annual Health & Human Services' **Office of Inspector General** work plan provides a clear roadmap to what surveyors will be targeting next. For example, the work plan reveals the OIG plans to "examine the effectiveness of the **Centers for Medicare & Medicaid Services** and state enforcement actions against noncompliant nursing homes." That means "providers should be hypervigilant about successful implementation of their plans of correction," cautions Washington-based attorney **Marie Infante**. "The failure to implement the POC can be construed as a false statement or false claim," she notes.

Here are the other key survey-related initiatives and strategies that'll help you stay out of regulators' crosshairs:

**Compliance with dietary requirements.** The work plan makes specific reference to nutrition and hydration, noting the rise of deficiencies in this area of care. The plan also specifically mentions that nursing facilities must assess residents whose dietary intake drops below 75 percent. Thus, make sure you have the systems to measure food intake consistently and accurately. For example, dietary staff at **Bayard Nursing and Rehab Center** measures food intake by making rounds through the dining room and resident rooms. "It's a collaborative effort between dietary and nursing where each discipline brings information to the care plan conference," says **Sylvia Bandow**, administrator of the Bayard, IA facility.

"Be very clear in identifying residents at risk of dehydration and malnutrition or poor intake and document not only the facility's care but also efforts to respect a resident's competent choices in eating/drinking," advises attorney **Howard Sollins** with **Ober/Kaler** in Baltimore, MD. "This is particularly an issue for residents who are at the end of life but who have not elected hospice care," he adds. **Tip:** Advance directives also figure into nutrition and hydration, so make sure you address these issues at admission and as a part of ongoing careplanning, Sollins advises.

**Facilities' use of Medicare monies for quality improvements and staffing.** The OIG says it will examine aspects of the prospective payment system, including nursing homes' use of Medicare funds and quality initiatives underway. "A key justification for enhanced funding ... is an expectation that nursing facilities will use the money to improve quality, such as through enhancements to staffing - either the ratios of staffing or quality of staffing," Sollins says. The OIG will also be studying nursing home best practices, functional outcomes and staffing issues (salary, training, recruitment and retention).

Of course, that doesn't mean surveyors are likely to be asking you to pull out your accounting spreadsheets to see how you spent the recent PPS increase. But a creative government prosecutor might bring up the issue in dealing with a facility hit with serious deficiencies, predicts **Ari Markenson**, an attorney with **Epstein Becker & Green** in New York.

In such a case, a prosecutor might argue: "Not only do we pay you to provide good care but the PPS gave you a bump up in the rate - and look at the quality of care in your facility," Markenson offers. **Tip:** If you decide to put more money into staffing, address your facility's particular needs to get the biggest bang for the buck. One facility might have a recruitment and retention issue, for example, while another facility might want to integrate a multicultural staff by focusing on problems with English proficiency and work place conflict that detract from efficient caregiving, Sollins notes.

**A look at informal dispute resolution trends.** "The OIG will look at the types of deficiencies more likely to go to IDR

and what types of nursing homes are more likely to use the process. The agency will then evaluate the implications of those findings for the survey process," reports attorney **Barbara Miltenberger**, a member of a CMS-commissioned technical panel looking at IDR. Miltenberger notes that the OIG's inquiry into IDR follows the agency's March 2003 report documenting the inconsistency in deficiency citations among states and even within states. Thus, "the OIG may be looking to see if facilities are challenging these inconsistencies through IDR, such as deficiencies in subjective areas like quality of care or quality of life," she predicts.