

Long-Term Care Survey Alert

Survey Management: CAN YOU ASK SURVEYORS NOT TO COME BACK?

What nursing home provider hasn't occasionally felt like showing a surveyor the door? Many nursing home providers may believe they're stuck with an unprofessional or unknowledgeable surveyor, but that's not completely true, according to legal and survey experts.

"Federal and state administrative and residents' rights regulations do support a facility being able to ask a surveyor not to come back," notes **James Schuster**, an attorney with the **Council for Regulatory Compliance in Healthcare** in Cincinnati, OH.

Schuster reports one incident where a surveyor actually violated a resident's privacy by observing the person naked in bed, leaving the door open and discussing very personal information about the resident so others could hear.

"The surveyor also cited a bed rail issue and left the resident in the bed without the bed rail up, which exposed the resident to potential harm," Schuster reports. "And the surveyor's demeanor was very rude."

But before making a move, the facility waited to see if the surveyor in question was scheduled to return. "And only then did we state our case for not wanting the person to come back," Schuster reports.

"We literally outlined a strategy to confront the district office with our observations on the issue but proceeded very respectfully and cautiously." Caution and diplomacy are the watchwords in such situations, survey experts agree. After all, you're dealing with government authorities empowered to write you an expensive ticket or worse.

"If surveyors appeared to be extremely biased or worked at the facility previously and there are some sour grapes, for example, you can handle it informally by placing a call to the district office," says **Deborah Ohl**, with **Ohl & Associates** in Cincinnati.

"Say you don't want the surveyor or team to come back and explain why," she suggests. If the agency sends the same surveyor, you might make a formal request to ban her from coming in the future, depending on how strongly you feel about the situation.

"The reality is that if push came to shove and there were another issue with the same surveyor or team, the state would not be in the best position at an [appeal] hearing following that survey," Ohl notes.

"And most state agencies don't want to go down that road and will err on the side of deciding not to re-send the surveyor or team."

State survey agencies are, after all, aware that personality clashes can occur between surveyors and facility administration and staff.

"Some states rotate surveyors to avoid personality problems or others do so on an ad hoc basis," notes **Joseph Bianculli**, an attorney with **Bianculli & Impink** in Arlington, VA.