

Long-Term Care Survey Alert

Survey Management: Don't Let The Feds Shred Your Survey Record Into F Tags

A good state survey doesn't mean you're out of the woods ... here's what you need to know.

Achieving a deficiency-free survey may be your facility's dream come true - unless federal surveyors arrive on the scene and turn it into a nightmare.

Cautionary tale: Tallahassee attorney **Jay Adams** has had two nursing home clients in Florida subjected to "brutal" federal surveys following a zero-deficiency state survey. "In one case, the facility got hit with immediate jeopardy."

In such cases, nursing facilities appear to get caught in the crossfire between federal and state surveyors, Adams observes.

Yet facilities striving for a topnotch survey record can take steps to protect themselves from federal look-behind surveys.

Here's how it works: "The **Centers for Medicare & Medicaid Services** can do validation surveys to evaluate state performance, which usually occur shortly after a state survey," explains **Joseph Bianculli**, an attorney in Arlington, VA.

Facilities in some states may actually be at higher risk for a follow-up survey, depending on how the federal surveyors view the state surveyors' track record. "And chances are fairly good that the federal surveyors would do any look-behind survey at a deficiency-free facility," says Bianculli.

Tip: Check with your state trade association to see if it tracks rates of federal look-back surveys and whether it has heard that facilities with deficiency-free surveys or those with only minimal tags appear to be a target in your state.

For example, a couple of years ago, the **Tennessee Health Care Association** was seeing deficiency-free facilities getting hit with federal look-behind surveys often enough to determine it wasn't a coincidence, according to THCA legal counsel **Chris Puri**.

Take the Survey High Road

Facilities should be aware that they could be at risk for a federal survey following a very good state inspection, says Adams, who jokes that he feels relieved when his clients tell him they got three E-level deficiencies on a survey.

And he's not entirely kidding, "because a facility can usually correct a few D- or E-level deficiencies before the survey revisit without incurring penalties." These penalties also keep CMS from wondering if the state was too soft on the survey.

So does that mean facilities should try to throw a few minor monkey wrenches into their state survey to stay out of the feds' crosshairs? Of course not, says Adams. "But [facilities] should look very closely at their quality assurance processes and care following a deficiency-free survey."

Follow These Survival Strategies

1. Focus on providing the highest possible quality of care rather on survey compliance. "The survey [outcome] should reflect the facility's efforts to implement best practices and quality assurance to fix problems in real time," Adams says.

While the survey is process-oriented, providers should keep their eyes on MDS-generated quality indicators/measures - and customer satisfaction surveys and data, advises **Tom Burke**, with the **American Health Care Association**. "Define your 'customers' as including not only residents and families, but also the facility's staff, physicians, hospital discharge planners and rehab therapy vendors.

"For example, has the facility surveyed attending physicians to find out what they'd like to see improved to benefit resident care? The managers should also be aware of the tenor of what the staff says about working in the nursing facility," adds Burke.

2. Never think you're doing so well that you can't get tagged on the next survey. "Remaining deficiency free is harder than getting there," cautions **Tom Shumate**, administrator of **Liberal Good Samaritan Center** in Liberal, KS.

Burke agrees: "A facility can go from golden to tarnished in a matter of days - a survey deficiency requires only one mistake."

3. Make sure staff demonstrate they know how to do the care - and then actually do it correctly at all times, Shumate advises. And don't rely on managers to police the care. Instead of trying to blanket your facility with managers, "promote a culture of accountability among the CNAs who know to confront a colleague who isn't doing a procedure correctly - and to take the issue to a manager if the person refuses to self-correct," Shumate advises.

Know Your Appeal Rights

If federal surveyors do cite a facility, CMS typically offers some kind of IDR to allow facilities to challenge the findings, at least informally, says Bianculli. "And the usual appeal rights for departmental appeal board cases also apply."

Good news: The Florida facility that got hit with IJ after a deficiency-free survey fought the citation and won on appeal, Adams reports. (For more information on maintaining a deficiency-free survey record, see the case study, Article 4.)

Check out CMS' performance requirements for state survey agencies, including how CMS expects surveyors to support their citations at www.cms.hhs.gov/medicaid/surveycert/sc0447.pdf.