

Long-Term Care Survey Alert

Survey Management: Immediate Jeopardy Requires Immediate Action: Follow This 4-Prong Plan

Include these tactics in your survey survival toolkit.

Hearing that the facility may be hit with an IJ citation can be immobilizing, to say the least. But knowing what to do can help prevent this nightmare scenario from being the facility's undoing.

Strategy No. 1: Don't go down without providing exculpatory explanations, if you have them. Your first step when informed that surveyors are going to call immediate jeopardy is to argue, if you have a case, says attorney **Joseph Bianculli**, in private practice in Arlington, VA. He is, in fact, amazed at how often facilities don't do this. "If the facility has information the survey team has missed or misconstrued, bring it to the supervisors' attention," Bianculli recommends.

Strategy No. 2: Nail down the problems. If cited with IJ, the facility should be very clear about what areas and residents it involves, advises attorney **Chris Puri**, with **Boult, Cummings, Conners & Berry** in Nashville, TN.

Strategy No. 3: Stem the fiscal hemorrhage. Fix any problems "pronto," Bianculli advises.

The really big civil monetary penalties and terminations occur when facilities don't grasp the seriousness of IJ and wait to address problems, including calling in experts, Bianculli cautions.

In the "old days," Bianculli adds, most IJs were 23-day "fast tracks," creating "intense pressure" to identify and correct problems and document how the fixes would ensure continuing compliance. But today, too often that same "sense of urgency is absent," resulting in IJs "dragging out at \$3,050 per day or more."

Of course, there are still some 23-day fast tracks for IJ, Bianculli says. "But some regions, particularly Atlanta, although it happens everywhere, will retro IJ back to some event way more than 23 days before the survey, or will simply not terminate, and let the IJ continue way more than 23 days after the survey."

Keep your cool: In abating IJ, don't get "paralysis by analysis," as Bianculli terms it. "Given the time pressure of an IJ -- and that \$3,050 or more per day -- being more or less on target and then actually doing something [to remedy the problem] is a lot better than doing a complete root cause analysis," he says.

Strategy No. 4: Don't stop short. Sometimes facilities abate IJ and falsely believe themselves to be out of the decertification woods.

"There's a difference between the facility's corrective measure to abate IJ and the plan of correction to fix the underlying deficiency," says attorney **Howard Sollins**, a partner with **Ober/Kaler** in Baltimore.

"If the facility doesn't move quickly to do the latter, the surveyors may find that the facility is still out of compliance during the revisit." And that means the facility remains on the survey track and is at risk for denial of payment for new admissions at 90 days and decertification after 180 days of uninterrupted noncompliance, Sollins says.

Example: Suppose a facility gets IJ due to a physical plant problem, which the facility quickly fixes. But a larger

evaluation of the problem may include not only the physical plant issue but also related clinical issues, Sollins says.

Thus, facilities need to be aware that surveyors may on the revisit focus on the larger deficiency rather than the "abated, limited issue," Sollins says.