

## Long-Term Care Survey Alert

### Survey Management: LESSONS LEARNED FROM FEDERAL PROSECUTIONS

1. Pay attention to the survey protocols. Each of the False Claims Act prosecutions involving quality of care in nursing homes touch on one of the issues the protocols address: pressure sores, unintended weight loss, hydration, abuse, food and dining services, adverse drug reactions and sufficient staffing (Review the protocols at <http://cms.hhs.gov/manuals/pub07pdf/AP-P-PP.pdf>.)
2. Develop systems to prevent and detect medical errors. "Facilities need to be proactive and preventive and in the position to catch errors so those errors don't find their way to the government," emphasized **Michael Kogut**, an attorney in Hartford, CT, speaking at the February **American Health Lawyers'** conference in Phoenix.
3. **Use ongoing risk assessment to target staff training and education** where it's needed the most.
4. Know when to seek outside reviews of your systems. In Kogut's view, facilities with a history of deficiencies or malpractice actions are wise to seek an objective outside review of their care practices.
5. Teach staff to be aware of the different types of state and federal agents who might end up in your facility. Remember: surveyors aren't your only concern. "Prepare staff to deal with other agents, like the FBI. For example, identify someone internally to act as a single source of information," Kogut advised.
6. **Seek counsel at the first sign of an investigation.** "Facilities should engage experienced health counsel at the earliest signs of an investigation not after they have given documents over or employees have been interviewed," advises Washington D.C. attorney **Marie Infante**.
7. **Keep your head up during an investigation.** Not every investigation leads to an FCA lawsuit. Infante recently represented a Virginia facility that found itself in the cross hairs of the state Medicaid Fraud Control Unit and the Virginia U.S. Attorney's office following complaints to law enforcement agencies. "But following an 18-month investigation, the complaints were found to be wholly unfounded," Infante tells **Eli**.
8. **Implement surveys and other mechanisms to elicit family member's complaints.** Family members are often the tipsters that get cases rolling against facilities. (See related story in article 6.)

