

Long-Term Care Survey Alert

Survey Management: OPPOSING STRATEGIES CAN TURN AROUND A LOSING SURVEY

Every survey is a gamble. That's because no matter what kind of winning hand you think you have going in, you never know what F tags surveyors may have up their sleeves.

Thus, you have to know "when to hold and when to fold," as the saying goes. If you honestly believe your facility is meeting regulatory requirements, build a proactive defense to put down on the table at the exit conference. "It's the facility's obligation to proactively verify that they are in compliance," emphasizes

But you also have to know when your hand isn't as strong as you had thought and jump into action to address the surveyors' legitimate concerns before the survey ends. If you're sincere in that approach and convince surveyors that their concerns have put the facility back on track, they may decide not to cite the facility ☐ or at least do so at a lower scope and severity, notes **Beth Klitch**, principal of **Survey Solutions Inc.** in Columbus, OH.. in Valparaiso, IN.

Gene Larrabee, principal of **Primus Care Inc Carol Rolf**, an attorney with **Rolf & Goffman** in Cleveland, has also seen this approach work for facilities. "Surveyors have that discretion," she says.

Know the Signals, Rules

To use either strategy successfully, the facility DON and administrators have to read the signals that a survey is headed in a losing direction.

"Accompany surveyors during the survey to see what they are seeing or appear to be concerned about," advises **Claire Hoffman**, principal of **Hoffman Associates** in Royersford, PA. "Otherwise, you can't develop a rational explanation to present in the exit conference or even before ☐ whether the surveyors buy it or not."

Klitch agrees: "Staff really need to stay in close contact with surveyors on the first two days of the survey. If you hear little snippets of concerns or inquiries for additional information, realize that the surveyors are raising what could turn out to be larger concerns culminating in F tags."

In addition to staying on top of the survey as it unfolds, you need to know what the regulations truly do and do not require. Thus the facility must have a current copy of the regulations on hand, as well as the State Operations Manual for immediate reference during the survey.

"Facilities usually have a grasp of what's required for an F tag, which they often learn when they get a citation, but most don't know the nuances of the regs," observes **Kathy Hurst**, a nursing consultant with **Hurst Consulting Group** in Chino Hills, CA.

In some cases, Hurst has found it literally pays to sit down with surveyors and review a regulation in the light of their complaints. She reports working with one facility where a surveyor claimed the facility did not have a policy and procedure for resident-to-resident abuse.

"But the federal regulations require a facility to have a policy and procedure to deal with catastrophic resident behavior which could be resident-to-resident or resident-to-staff or resident-to-visitor," Hurst notes.

"So we sat down with the surveyors and looked at the regulation's requirements and showed them that the facility had a policy for [handling] catastrophic resident behavior."

The argument that "the regulation didn't make me do it" only goes so far, however. "The regs do require a facility to develop policies and procedures for situations that pose a potential for injury or a negative outcome for a resident," Larrabee adds.

Look for the 'Rest of the Story'

In preparing for the exit conference, the facility administrators should look at the big picture in determining their culpability in a particular instance.

"Surveyors tend to zero in on one situation or one condition and disregard everything else in the clinical record," Larrabee observes. "Yet facility administrators may feel so intimidated □ or sometimes even bullied □ by surveyors that they will acquiesce to the surveyors' interpretation or observation."

Larrabee provides two simple real-life examples. "One facility was going to be handed a dignity ag because a certified nursing assistant didn't knock n a resident's door.

On the surface, it looked like open and shut case, literally. Yet closer inspection by administrative staff showed that the resident record clearly noted the resident in question was deaf, which everyone knew but no one was explaining to surveyors.

In another instance, surveyors were ready to cite a facility for unintended weight loss at an actual harm level. Yes, the resident's weight record clearly showed he'd lost a substantial amount of weight in the last 30 days. But the staff presented clinical records at the exit conference confirming the resident had congestive heart failure and edema. The medication administration record also showed the resident had started a diuretic a couple of weeks back which had resulted in a large loss of water weight □ an expected therapeutic outcome!

Know When to Reshuffle

On the other hand, sometimes the facility's best move is to "put its money where its mouth is" by quickly addressing surveyors' legitimate concerns, Klitch advises.

This may feel like "folding," but actually the facility wins by improving resident care immediately and possibly preventing an F tag in the process.

"Sometimes facilities just think that if they can talk fast or loud or long enough, a citation will go away," Klitch notes. "Yet in many cases, it's more about what you do. A surveyor wants to feel confident in the staff's and management's competence."

Say surveyors point to what they view as shortfalls in the facility's assessment of residents at risk for pressure ulcers. The DON thinks it over and realizes they have some valid points. In such a case, Klitch suggests the DON might say to the surveyors:

"I gave some thought to what you said about assessment of risk factors for pressure ulcers. As a result, we pulled our charts for anyone who has triggered as high risk on the Braden scale. Our wound assessment team is meeting this afternoon and you're welcome to sit in."

Dealing in the Gray Areas

In some cases, the facility staff may not be so sure that the surveyors are on track with their observations.

"You can state your truth in a positive way, however," Klitch suggests. "You say, 'We're proud of our programs here and we work very hard but we'd like to know what you think. Please tell us though what systems you have seen work in this area. Please tell us exactly where the process could be improved, based on your observation. What else do you think we should do?'"

Or sometimes surveyors may indeed uncover a problem, such as resolving pressure ulcers in a couple of low-risk

residents. Yet the facility is actively addressing the problem through its quality assurance program, which provides a defense in convincing surveyors to skip the deficiency or at least cite it at a lower scope and severity.

As Larrabee notes, "If a facility recognizes its own problems and takes action to address and resolve them by a certain target date, the surveyor is supposed to take that into account" In a Q&A, the **Centers for Medicare & Medicaid Services** does say it is "theoretically possible that the scope of a given deficiency could be limited by a facility that implemented a correction prior to a survey."

However, that theory won't turn into reality for a facility, however, if staff just says, "Yes, we have pressure ulcers," without explaining how their QA program is dealing with the problem, Larrabee cautions.

The State Operations Manual clearly states that surveyors shouldn't cite a deficiency that occurs in between two compliant surveys if the facility's QA program has corrected the problem □ unless it's viewed as an "egregious" one.

"In that case, surveyors may cite the deficiency as past noncompliance under F698," Rolf cautions.