

Long-Term Care Survey Alert

SURVEY MANAGEMENT: Step Off The Decertification Track Before It's Too Late -- Here's How

This worst-case consequence can sneak up on you.

Envision this: You get a call from someone at the survey agency reminding you that your facility is 160 days into the 180-day survey cycle for automatic termination from Medicare and Medicaid.

To avoid this situation, you need to know the survey rules and how to get your facility back in compliance after a survey before time runs out.

The ironclad rule: "Every deficiency 'D' or above triggers" a maximum "180-day termination track," explains **Joseph Bianculli**, an attorney in private practice in Arlington, VA.

Unless facilities are on a fast track toward decertification due to immediate jeopardy (IJ) or other serious deficiencies, they are usually given 45 days from a survey to correct deficiencies and have a revisit, adds **Eleanor Alvarez**, president of **LeaderStat** in Columbus, OH. "If the facility has actual harm tags, it may ask the surveyors to come back and resurvey" before the "'date certain' to reduce fines that have been assessed," she says. "If the facility doesn't pass the first resurvey, the surveyors will typically come back for a second revisit," she says.

"[Meantime], the clock continues to run," Alvarez cautions.

The bottom line: "The facility has to be back in substantial compliance at some point within 180 days from the original survey resulting in deficiencies," says Alvarez.

Cautionary example: Surveyors cite a facility for a deficiency on Jan. 1, which puts the facility on a 180-day cycle with June 30 being "D day." The facility clears the deficiency on a Feb. 15 revisit during which the surveyor cites Y and Z deficiencies, says Bianculli. The facility clears the Y but not the Z deficiency on the March 15 revisit. Then the facility gets hit with a complaint survey on April, resulting in another deficiency. It clears that deficiency on the revisit, but surveyors refuse to clear the Z deficiency. "If June 30 comes" without the facility erasing that Z deficiency -- out the facility goes, says Bianculli.

Jettison Dangerous Mindsets

Bianculli says the "biggest error" he sees facilities make "over and over again" is assuming they will pass the first or second revisit. Then suddenly they "wake up -- usually when the survey agency mentions it" -- to realize that "termination is pending," he says.

3 strikes and you may be out: The state survey agency has to get permission from the **Centers for Medicare & Medicaid Services'** regional office to conduct a third revisit, says nurse attorney **Barbara Miltenberger** with **Husch & Eppenberger** in Jefferson City, MO. "Rarely, a CMS regional office will approve a fourth revisit" if a facility has a few minor deficiencies, she adds. But there's "no provision in the CMS guidance for a fourth revisit and a facility should not count on getting one."

"Anything after the second revisit is a gift," emphasizes Alvarez.

Complacency is your enemy in getting back into compliance, but fear can hobble your efforts, as well. Some facilities get "so stressed out about correcting deficiencies that they set themselves up for failure," cautions **Matthew Murer**, an

attorney with **Foley & Lardner** in Chicago.

Example: In an effort to correct a deficiency, one facility rewrote a policy, expanding it from a half page to six pages, Murer relays. "Suddenly it had all these teams and several different forms to implement the policy," he notes. "But if you can't reliably carry out your policy every time, you're setting yourself up for failure." Murer would much rather see a facility devise a really simple procedure that isn't "flashy" but one staff "will execute every time."

(For tips on crafting and implementing a plan of correction to get your facility back in compliance ASAP, see the November 2006 Long-Term Care Survey Alert.)

Your best bet: When you have a challenging survey with numerous deficiencies, focus on the IJ and actual-harm citations first, advises Alvarez. After you eliminate those, then focus "intensely on all the other deficiencies," she adds.

Take a 2-Track Approach for IJ

Time is of the essence in correcting IJ citations, which typically result in a faster track to decertification. "Normally, the fast track we see from CMS is 23 days for the facility to remove the immediate jeopardy or be terminated," says Miltenberger. "In such a case, we usually take two tracks -- the first, of course, is to address the immediate jeopardy concern." The second track involves preparing to appeal the termination decision in federal court by getting a temporary restraining order to prevent immediate termination. Each situation is different, however, in terms of how quickly the facility needs to prepare for an appeal, Miltenberger adds. "Even very good facilities can get an IJ citation -- for example, a single employee can make a serious mistake." In that case, the facility may be able to rectify the problem fairly quickly, so the need for an appeal will be much less, she points out.