

Long-Term Care Survey Alert

SURVEY MANAGEMENT: Walk The Survey Tightrope With Policies That Don't Trip You Up

Hint: Find out why and when less may be better.

You want staff to be on the same page in how they manage clinical issues. But make sure that page isn't in a policy and procedure manual that's a prescription for F tags.

The dilemma: Policies and procedures that are too detailed for people to follow in every case--or those that exceed regulatory requirements--can create survey liability where none would otherwise exist. And "surveyors tend to play 'gotcha' with a facility's policies and procedures," which means facilities have to be defensive in how they develop them, warns **Chris Puri**, an attorney with **Boult Cummings Conners & Berry** in Nashville, TN.

Real world survey example: Surveyors cited a facility because a nurse gave a hypoglycemic resident sugar rather than glucagon as specified by the policy and procedure manual. The Centers for Medicare & Medicaid Services argued that the facility should be bound by its own policies and procedures. The facility disagreed and appealed the case.

"The attending physician ... testified that while glucagon would have been better, there was nothing wrong with administering sugar, which was not outside the standard of care," relates **Joseph Bianculli**, an attorney in private practice in Arlington, VA, who handled the facility's case. "A nursing supervisor also testified that the facility's policy and procedures aren't intended to eliminate nursing judgment about how to respond to emergencies." The decision is pending in the case.

To protect your facility against a similar scenario, "consult with the medical director and quality assurance staff in the facility to develop p/p that are detailed enough without getting too specific," suggests nurse attorney **Janet Feldkamp** with **Benesch, Friedlander, Coplan & Aronoff LLP** in Columbus, OH.

Proactive strategy: Consider including a disclaimer in your policy/procedure manual saying the guidelines are "not intended to supercede the professional judgment of a licensed nurse or other health professional," suggests **Kathy Hurst, RN, JD**, director of operations for Anaheim, CA-based **TSW Management Group**. That's the tack that TSW takes in the nursing facilities it manages in California.

The TSW facilities also make their policies and procedures general, adds Hurst, "so surveyors can't say you missed step number nine."

Example: "The policy says the staff will leave the resident in a safe and comfortable manner," says Hurst. "It doesn't say the nurse will position the call light within two inches of the resident's hand," she adds. "A call light might not even be an appropriate intervention for a resident with dementia who is blind, as an example."

The facilities drill down to specific interventions reflecting the prevailing clinical standard of care in their internal quality assurance meetings and through care planning, Hurst says.

Consider Developing P/P That Reflect the Survey Regs

Of course, everyone hopes that the standard of care in facilities exceeds the minimum required by the regulations. But facilities should think hard about committing more lofty standards to paper in official policies and procedures, say many legal experts.

Why? A survey team might try to hold the facility to that standard of care as opposed to what the regulations actually require, says **Nancy Shellhorse**, an attorney with **Thompson & Knight** in Austin, TX. And to battle the F tags, "the facility would have to present evidence through an IDR or in litigation that the standard of care in the policies and procedures was actually higher than that required in the regulations..." she says.

Save paper and prevent survey headaches: "TSW facilities don't have a policy and procedure for resident assessment or care planning because the RAI manual dictates those requirements," says Hurst. The facility's manual instead states: "For anything related to assessment and care planning, refer to the RAI manual, pages x." That strategy pares down the length of the facility's manual. And it avoids accidental discrepancies between the regs and the facility's policies and procedures.

For example, a facility's manual might inadvertently state the facility performs assessments quarterly, whereas the RAI requirements say quarterly and, as needed, to reflect the resident's clinical condition, Hurst notes. "And that could become a focus for surveyors who ask: Whose policy are staff following--the RAI manual's or the facility's?"

Know When to Get Specific

Facilities are required to have specific policies and procedures for abuse prohibition and reporting, reminds Shellhorse. (For more information, see "Do Your Abuse And Neglect Policies Imperil Your Facility?" later in this issue.)

And under F328 (special treatments), facilities have to develop p/p for a resident receiving special services, including injections, parenteral/enteral fluids, ostomy care, respiratory care, such as ventilators and oxygen therapy, Shellhorse says. (For a look at how to determine the standard of care for more subacute nursing procedures, such as parenteral IV therapy and ventilators, see the April 2006 Long-Term Care Survey Alert.)