

Long-Term Care Survey Alert

Survey News

Trends in survey appeals outcomes show a disquieting pattern. If 2007 was any indication, the appeals process has become less than friendly for providers seeking relief from penalties. As of January 2008, administrative law judges had rendered at least 48 decisions on the merits of nursing facility appeals in 2007. Of those, 44 sustained sanctions and only four favored facilities, according to a presentation by attorney **Joseph Bianculli** at the February 2008 **American Health Lawyers' Long-Term Care and the Law** conference in New Orleans. "At the Board level, the contrast is even more striking," Bianculli reported. "In 2007 the Board rendered 18 decisions sustaining all sanctions," zero of which were in favor of facilities.

Not only that, but some ALJs are doing de novo reviews where they basically ask to see the documentation and decide whether a deficiency exists and, if so, the civil monetary penalty, Bianculli reported. "They don't listen to either side's evidence. One judge in particular identifies the issues that are deficiencies even if they aren't on the CMS 2567," he tells **Eli**. Due to the dismal ALJ and DAB track record of late, Bianculli is taking more nursing home survey challenges to federal court. (For details, see the next Long-Term Care Survey Alert.)

The Quality Indicator Survey (QIS) is making inroads. CMS is refining this new approach to the survey in which surveyors conduct inspections in two stages -- a preliminary investigation in stage 1 and a more in-depth investigation in stage 2 based on stage 1 triggers, complaints and sentinel events. CMS officials updated providers on the status of the QIS in a recent SNF/LTC Open Door Forum. The agency's **Cindy Graunke** reported that the QIS demonstration project is moving into its next phase. CMS tested the QIS in Florida and is implementing the QIS statewide in states that participated in the demonstration (CA, CT, FL, KS, LA, MN and OH). CMS has selected three other states for implementation, as well, but Graunke declined to name them at this point.