

Long-Term Care Survey Alert

Survey Regulations: Don't Get Blindsided By These Changes To The State Operations Manual's Appendix PP

Beware: The revisions go way beyond new survey guidance at F314.

In the electronic age, you have to read fast and stay on the same page with surveyors who may soon be pointing to regulatory language that escaped your radar screen.

A major case in point: While providers had their eye on the revised F314 (pressure ulcer) guidance, the **Centers for Medicare & Medicaid Services** quietly released an update to Appendix PP of the State Operations Manual, effective Nov. 19, with lots of red ink highlighting changes to survey interpretive guidelines at numerous F tags.

Legal sources characterize the revisions as both procedural and substantive in nature.

The new language reflects regulatory changes that have been published previously, said CMS representatives at the Nov. 30, 2004 SNF/LTC Open Door Forum. "Where, when?" asks **Reta Underwood**, president of **Consultants for Long Term Care Inc.** in Buckner, KY, who notes that the agency offered no opportunity for feedback on the revisions.

"The new language may reflect dialogues, policy letters, Q & As, survey appeals, etc., but as with most manual issuances, it was not published as part of formal rulemaking," says **Marie Infante**, an attorney with **Mintz, Levin, Cohn, Ferris, Glovsky and Popeo** in Washington, DC.

As a result, many facilities weren't aware of the revisions at press time - or tell Eli they stumbled across them in searching for the program transmittal implementing revisions at F314 (pressure ulcers).

Get With the Program

Facilities that aren't aware of the changes to Appendix PP - or ones that don't take immediate action to comply with them - will start their next survey with surveyors behind the eight ball.

Best advice: "Replace old copies of the Interpretive Guidelines (Guidance to Surveyors) with the latest Internet version, immediately," advises Infante. "Using the pre-November 2004 SOM is like using the RAI user's manual from 1995 for MDS coding. The nursing home survey may be an open book test but you and your staff have to have the right book" to pass it.

"Some of the interpretive guidelines statements are more directive in terms of what the facility has to do," observes **Chris Puri, JD**, counsel for the **Tennessee Health Care Association**.

"For example, CMS defines 'participates in care planning and treatment' in a more assertive way in terms of [how the facility should] involve the patient in care planning," Puri says.

The revised SOM also includes HIPAA language at F164 related to safeguarding patient's confidentiality. Everyone knows to comply with HIPAA requirements, "but the fact that the language is now in the SOM seems to highlight to surveyors that failure to comply could provide the basis for survey deficiencies," Puri points out.

To comply with requirements for F156, facilities must provide residents with a written description of their legal rights, including notice that they may file a complaint with the state survey agency about abuse, neglect or misappropriation of property. But the new guidance adds language stating facilities must inform residents that they can also file a complaint

about noncompliance with advance directives in the facility.

Thus, surveyors may look at your admissions agreements to see if they include language about the resident's right to report the facility's noncompliance with advance directives, cautions Infante.

Under F246 (accommodation of needs), the revised appendix now states that facilities must provide dining health services, recreation and program areas large enough to comfortably accommodate the people who usually use the space, including their wheelchairs, walkers, etc.

See the revised Appendix PP at www.cms.hhs.gov/manuals/107_som/som107ap_pp_guidelines_ltcf.pdf. The changes are in red ink.

Revamp Policies/Procedures

To bring your facility into compliance with the revised manual, analyze each F tag and the revised guidelines to see how they vary from your current policies and procedures, advises Underwood.

"But don't jump in and cancel out the old system without being positive that you have included every piece for the new system," she adds.

Tip: Make sure to include your medical director in revamping the facility's policies.

"It's clear that CMS recognizes the importance of the medical director's input, oversight and approval of the facility's policies and procedures - especially in clinical areas such as pressure ulcer recognition and management," says **Jacqueline Vance, RN,C, CDONA**, director of clinical affairs for the **American Medical Directors Association**.

Once you have policies in place, develop procedures with step-by-step directions for various departments involved in implementing the policies, such as nursing, administration, social work, etc.

For example, if the facility is doing an abuse investigation, the administrators need to look at language related to that, advises Infante.

Once your facility has established its procedures, identify any new tools and supplies you'll need - for example, new admissions forms and/or notices or even new pressure ulcer dressings, suggests Underwood.

Don't Take Citations Lying Down

Facilities that get cited based on the revisions outlined in the manual revision within the next couple of months should definitely challenge them through the informal dispute resolution process, advises **John Lessner**, attorney with **Ober/Kaler** in Baltimore.

"IDR offers an opportunity to communicate with regulators about survey expectations," Lessner notes. And the facility could argue that the manual revisions included hundreds of pages of new language or changes requiring time to implement.

By the same token, "the nursing facility could also agree that while the lack of prior notice is reason enough not to cite a deficient practice based on the revisions, the facility will certainly correct the cited deficiency or practice moving forward," Lessner adds.