

Long-Term Care Survey Alert

Survey Trends: Don't Be Waylaid: Here's What's Coming Down The Survey Pike

Watch out for candid cameras, Part D scrutiny, culture change and more.

The survey landscape has some key initiatives and changes under way on the near horizon that could give you a jolt or leave you out in the cold if you're caught unaware.

For one, expect a slowdown in the steady drum roll of tougher new F tags that have thus far included pressure ulcers, incontinence, activities and many more. **Centers for Medicare & Medicaid Services'** official **Cynthia Graunke** expects guidance for eating assistants (F373) to come out this spring. Also in the lineup for 2007 or 2008: Pain, end-of-life care, accidents, abuse, sanitary and nutrition and infection control, according to a presentation by Graunke at the 2007 **American Health Care Lawyers Association's** Long-Term Care and the Law conference in Orlando.

The agency is giving more advance notice of the revised tags before implementing them. We're "shooting for 90 days," said Graunke, director, Division of Nursing Homes, **Center for Medicaid and State Operations**.

Beware Candid Cameras

Recent "candid camera" cases where prosecutors in New York and California secretly videotaped residents' care could catch on, cautioned former federal prosecutor **David Hoffman** in a session on compliance at the AHLA conference. (For details, see "Recent LTC Prosecutions Include Candid Cameras, Jail Time For 'Worthless Services'" in the January/February 2007 Long-Term Care Survey Alert.)

Covert cameras can record abuse and neglect and clearly show that a resident's care doesn't match documentation of services.

Is your facility at risk? Facilities vulnerable to secret videotaping might include those with a history of repeated deficiencies or "yo-yo" compliance involving actual harm citations, potentially involving the same resident, advised Hoffman.

Another hint: If a resident is bedbound, that would be a "benefit" to someone trying to film the person's care, he cautioned.

Take home message: Encourage staff to ask themselves how they'd respond if there were hidden cameras in the facility, suggested Hoffman.

Also test your systems to see if they explain why a resident has pressure ulcers or contractures, he advised. Does the documentation explain how these are unavoidable negative outcomes?

Watch out for flow sheets: In a separate AHLA conference presentation, **Kathleen Hessler, RN, JD**, recounted how she discovered restorative flow sheets showing staff had performed range-of-motion exercises on a resident who had

developed serious contractures over several months.

When confronted with the negative outcome, the staff admitted they had not actually performed the interventions. That's fraudulent documentation, cautioned Hessler, principal of **HealthCare Law Consulting LLC** in Albuquerque, NM.

Beware Upcoming Part D Focus

Surveyors and fraud and abuse investigators may not have honed in on Part D yet, but buckle your seatbelts. If you want an idea of what the government might be doing in the Part D arena, look at the OIG work plan, which talks about kickbacks and "prescription shorting," advised **Marilyn May**, assistant U.S. Attorney in Philadelphia, in an AHLA presentation on Part D. The latter involves instances where a pharmacy provides generics but bills for brand name drugs, as one example.

The bottom line: The facility has to stay on top of what its pharmacy is actually dispensing, said May. Avoid any form of plan steering where the facility directs residents to a prescription drug plan even if it's only for convenience.

Tip: Check to see that the facility's long-term care pharmacy participates in enough plans that you can switch if one no longer meets a resident's needs, suggested private practice attorney **Michael Cook** who co-presented with May.

Are You Ready for CMS Focus on Culture Change?

Culture change will be moving into the survey arena. CMS is focusing on the concept, which involves a person-centered or resident-directed approach where the facility gives residents what they need and want, noted Graunke. CMS has already provided the first in a series of Webcasts on culture change available at www.cms.internetstreaming.com.

In the longer term, the agency wants to hold a symposium where it hopes to convene providers, state agencies -- even architects -- to discuss the issues. For example, some providers say they'd like to put seats in the hall, Graunke relayed.

Free resource: For a look at how to use the MDS to provide person-centered care, see the April 2007 MDS Alert. For a free copy of the story, e-mail the editor your request at Editormon@aol.com.

Editor's note: Graunke and May issued the usual disclaimers about how their views are their own and don't necessarily represent those of the government agencies where they work, etc.