

## Long-Term Care Survey Alert

### Survey Trends: GAO Report on Special Focus Facility Selection May Be Overlooking the Elephant in the Survey World

Experts cite persistent Achilles' heel to CMS' attempts to identify poor quality.

The Government Accountability Office's recent report identifying shortfalls in how CMS identifies nursing homes for its Special Focus Facility program may be missing the point, warn industry experts.

The problem: The SFF program relies on OSCAR data to identify candidates for the program. And for any ranking or rating system to work, the data it uses must be comparable, says attorney **Fred Miles**, partner with Miles and Peters in Denver, Colo.

Yet, OSCAR data doesn't fit that bill for several reasons, he notes. People almost universally accept that "survey results vary significantly not only from state to state, but between geographic areas within states due to the particular bias of the team performing the surveys." CMS is also widely known to exert pressure on certain states to write more deficiencies "perhaps for no other reason than to" show Congress that it's not being lax in its oversight. In addition, anomalies occur where facilities that shouldn't be on the SFF list end up on it nevertheless.

As one example, Arlington, Va. attorney **Joseph Bianculli** notes he represented a facility selected for the SFF that had had one G-deficiency in three years. Yet nearby nursing facilities with a history of immediate jeopardy weren't selected.

Another example: Bianculli just won a nursing home survey appeal in Tennessee where a survey team cited immediate jeopardy based on a pharmacist surveyor's disagreement with the facility's monthly medication reconciliation system, even though there had been no errors -- and the medical director supported the facility. "But the facility now is ... eligible for selection as a poor performer, because CMS is refusing to accept the result of the state appeal."

Bottom line: "Relying predominantly on the survey process is an ineffectual way to assess quality in a nursing facility," emphasized **Bruce Yarwood**, president and CEO of the American Health Care Association in a press statement responding to the GAO report on the SFF. In the release, Yarwood quoted from a report by **Vincent Mor, PhD**, and PointRight:

"It's clear that nursing home quality is multi-dimensional. What is also becoming clear is that it is no more appropriate to compare all nursing homes with one another than it would be appropriate to compare an obstetrics hospital with an oncology hospital."

Resource: For a review of CMS' formula for selecting facilities for the SFF program -- and tips for avoiding the selection process, see Long-Term Care Survey Alert, Vol. 11, No. 1.