

## Long-Term Care Survey Alert

### What Do You Think?

How can you make a solid case to surveyors that a resident's ADL decline was unavoidable?

Answer: As part of surveyor training and in the State Operations Manual's surveyor protocols, the **Centers for Medicare & Medicaid Services** establishes a four part "test" to look at the issue of "unavoidability," says attorney **Marie Infante** in Washington. The test involves determining whether the condition was:

1. accurately assessed, including baseline condition and risk factors?
2. adequately care planned?
3. was the plan of care implemented 24/7 as appropriate for the care issue?
4. Was the plan periodically reevaluated and modified as necessary?

In other words, the facility must demonstrate that staff did everything in its control to prevent the ADL decline, which is a very high standard. The same analysis applies to falls, pressure ulcers, etc., Infante adds.

"In most cases, the medical record documentation must be sufficient to support that the resident has a clinical condition that makes the decline unavoidable (end-stage or terminal illness, Parkinson's disease or a demyelinating condition, as examples)," Infante says. "Even so, maintaining the highest practicable level of function through restorative care and/or assistive devices may be indicated even with such conditions."

Staff should also carefully document their persistent efforts to get a resident to participate in the plan of care to promote optimal functioning -- and the resident's or family's refusal to do so on numerous occasions. For example, Arlington, VA attorney **Joseph Bianculli** reports one case in which a surveyor claimed a facility did not maximize a resident's ADL potential where therapy notes showed the resident refused therapy on a certain occasion, supposedly because of pain, and the resident was discharged from therapy for noncooperation shortly thereafter.

"In fact, the evidence showed that the resident was watching a movie (and didn't want to participate in therapy) and returned to bed in no apparent distress," Bianculli says. "In addition, the resident frequently refused to get out of bed to participate in therapy, and the facility was addressing her psychological ailments," he adds.

The bottom line: "If the staff really knows the resident, they should be able to paint a full picture, and not let a surveyor ... jump to unwarranted conclusions," Bianculli says.