SURVEY AND ENFORCEMENT IN LONG TERM CARE

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Leadership Health Care Spring 2007 Conference

Katherine M. Layman
Cozen O’Connor
Philadelphia, PA
215-665-2746
klayman@cozen.com
Discussion Topics

- Oversight Enforcement
- Survey Regulation
- Guidance for Handling Surveyors
- Confidentiality
- Handling Government Requests
DOH: Statistics

725 Nursing Homes (12/05) (down from 758 as of 12/02)
89,937 Bed Capacity (12/05) (down 3,544 beds from 2002)
91.03% Occupancy (12/05)
  - 90.1% in 2002
  - 82.8% - U.S.
DOH: Statistics
January – December 2003

- IDR
  - 262 Requested
  - 214 Upheld; 48 Changed or Deleted

- Ownership
  - For Profit
    - PA – 47%
    - US – 66%
  - Nonprofit
    - PA – 48%
    - US- 28%
Oversight Enforcement: December 2005 GAO Report

- “State Referral of Nursing Home Enforcement Cases”
  - 8% of cases warranting enforcement not reported
  - Major problem = Double G
- States must refer 3 types of cases
  - Immediate Jeopardy
  - Double G deficiency
  - “Opportunity to correct” involving lower level deficiencies that SNFs failed to correct over a period of time
Oversight Enforcement: January 2006 GAO Report

- “Despite Increased Oversight, Challenges Remain in Ensuring High-Quality Care and Resident Safety”
- Significant decline in SNFs with quality problems (29% in 1999 to 16% in 2005)
  - State surveyors understating seriousness of deficiencies, when CMS cites more serious problems
  - Wide variability between states
- Grassley follow up
Oversight Enforcement: May 2006 OIG Report -

- “Nursing Home Enforcement: Application of Mandatory Remedies” (2000-02)
- 30 of 55 SNFs meriting termination for noncompliance not terminated
  - All 30 SNFs had serious new noncompliance in subsequent surveys
- Reasons: late referral by state and CMS reluctance to displace residents
- 42% of DPNA remedies not applied or applied late
Oversight Enforcement; July 2006 OIG Report - Complaints

- “Nursing Home Complaint Investigations”
- SAs failed to investigate IJ violations timely (24 hours) in 7% of situations
- SAs filed to investigate actual harm violations timely (10 days) in 27% of situations
- Pennsylvania: good record
Enforcement by Public- August 2006 Consumers Union Report

- Non-profit facilities better than for-profits or chain (more staff)
- Little evidence that poorly performing SNFs have improved over past 5 years
- 186 SNFs listed by Consumer Reports as providing poor care in 2000 remained on list in 2005
Oversight Enforcement: GAO Reports

- “Long-Term Care Facilities: Information on Residents who are Registered Sex Offenders”
- 683 registered sex offenders in LTC facilities – generally younger than the general population
- SNFs: preadmission screening permitted
  - Fact specific
  - Caution re: ADA and Rehabilitation Act
Survey Regulation: SOM Changes

- F501 – Medical Director Guidance (11/05)
  - Increase involvement and expectations
  - Surveyors advised not to make automatic link between F501 and other F tags
Survey Regulation: SOM Changes

- Psychosocial Outcome Severity Guide
  - Addition to the severity grid
  - Tool to determine if deficiencies have caused harm to a resident’s psychosocial status
Survey Regulation: SOM Changes

- Reorganization of the SOM chapter on complaint investigations
- New computerized complaint tracking system to permit SAs to prioritize complaint allegations and to allow the SA to monitor facility compliance
Survey Regulation – Part D

- F208 – to be used if a resident’s right to choose a Part D plan has been denied
- Tension:
  - A resident’s choice of plan
  - SNF’s choice of pharmacy
  - SNF’s responsibility to protect the resident’s right to Part D plan choices
Survey Issues - Use of Photos (9/06)

- SAs may use photographic evidence to support findings of noncompliance
  - Not without written documentation
  - Resident’s permission required
  - Only an RN, PA or physician surveyor may take a photo of resident’s private areas
  - Complete series of photos, for context.
Survey Issues – IDR

- To do or not to do?
Guidance for Handling Surveyors

- Before the survey begins
  - Analyze survey history
  - Analyze Quality Indicator Profile
  - Review abuse and neglect reports
  - Review histories of falls, injuries, weight loss of more than 10%, elopements, pressure sores
  - Resolve issues with disgruntled residents and families
Guidance--Handling Surveyors

- Review resident council minutes, complaint forms
- Educate staff on survey process
- Maintain updated file of information to be provided to survey team at Entrance Conference
- Prepare facility for survey at any time
Guidance--Handling Surveyors

- Develop a plan for handling survey
  - Chain of command
  - Assign individual to accompany surveyors
- Determine when attorneys should be involved
  - IJ
  - Several SQOC surveys
  - Problematic history
Handling Survey

- Control the Survey Process
  - Accompanying surveyors (permitted by SOM, although surveyors have discretion)
  - Establish rapport with surveyors!
    - Use opportunity to provide information
    - Be direct: “Are you looking for an IJ situation?”
- Disruptive surveyor
- Daily Debriefing - document
Handling Surveys

- Entrance Conference – information gathering
  - September 2006 – new DOH Check List
- Initial Tour
- Exit Conference
  - Surveyors must provide list of residents in survey sample, if requested
  - Use time to clarify and get information
  - Taping – permitted by SOM, but not DOH
Confidentiality Issues

- QA Records
  - Federal regulations give limited protection
  - SOM states “committee records and/or minutes, including those identifying details of specific quality deficiencies which have been dealt with or are currently being dealt with should not be reviewed”
  - NF – develop a protocol to monitor incidents (logs)
Confidentiality Issues

- Exception to confidentiality regulation
  - Records generated outside QA committee not privileged
  - PA case: incident reports not generated by QA Committee, even though reviewed or considered by QA Committee, must be made available to surveyors
Confidentiality

- Other Confidential Data: Deny disclosure for:
  - 24 hour reports
  - DON Report
  - Measuring tools (temperature monitoring); this not legally required to be kept

- Medical Records
  - HIPAA and state law
  - Maintain for 4 years
Government Investigations

- Government Search – No warrant
  - Politely refuse to give any information before speaking with counsel

- Government Search – Warrant
  - Read warrant carefully
  - Make no statements
    - Get business card
  - Write down questions investigators ask
Government Investigations

- Have counsel negotiate access
- Do not sign any inventory of seized items
- Try to accompany agents – even at risk of annoying them
- Send employees home, leaving only response coordinator and legal team
Government Investigations

- Subpoenas and Document Requests
  - Failure to comply with a “reasonable” request may result in program termination
  - Consult a lawyer as soon as you receive a subpoena
  - Logistics

- Medicaid Fraud Units

- Beware of “obstruction” – grounds for exclusion