

Top Ten Tips for Effectively Communicating with Surveyors and Investigators

Aging Services of Minnesota
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Goals

- Help facility staff put their best foot forward during the survey or investigation process
- Provide suggestions on how best to communicate with state representatives
- Achieve accurate surveys and reports
- Evaluating OHFC VAA reports or MDH survey deficiencies

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Avoid tipping the first domino...

- MDH VAA reports or surveys may lead to
 - Disqualification of unlicensed staff
 - Discipline by state boards
 - Disqualification of licensed staff for failure to report serious or repeated maltreatment
 - CMPs, SFF lists, terminations
 - Civil lawsuits
 - Criminal prosecutions

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It can happen anywhere

- Facts and circumstances beyond the control of even the best-run organization might result in a human tragedy that will shake your staff, residents, families and community.

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Communicating with on-site surveyors or investigators.

How can staff:

- Build credibility
- Gain trust
- React confidently
- Tell the whole story
- Attain a great survey or favorable VAA report when deserved

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CMS “Principles of Documentation”

- Information obtained **through interviews** can provide evidence to support a deficiency.
- In the absence of other objective validation of information, information may also be confirmed/verified through **multiple interview sources**
 - CMS Surveyor Guidance

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CMS instructions to Surveyors

- Informal interviews are conducted throughout the duration of the information gathering tasks of the survey.
- Use the information obtained from interviews to assist in deciding what additional observations and record review information is necessary.
- Avoid asking leading questions, but use the Guidance to Surveyors for specific requirements to focus questions and determine the significance of the answers.

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CMS relies on staff admissions.

- “Evidence of the facility’s failure to implement its anti-neglect policies and procedures can also be found in the fact that the **DON admitted** during a survey interview (the summary of which is uncontested) that the facility had not trained Nurse B, who was left alone with a resident needing such care, to provide tracheostomy care and tracheal suctioning. “ *DAB Docket No. A-10-72*

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Hearsay answers and admissions may be enough to prove deficiencies

- “CMS asserts that, on cross examination, the **DON admitted** that she did not know, but rather inferred, that R113’s left hip fracture was spontaneous. “ Civil Remedies Div Dec. CR 1101
- Petitioner’s **assistant administrator admitted** to a surveyor that no system was in place that told the staff who was permitted to leave the facility on a pass. Civil Remedies Div Dec. CR 2195

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What we have here is...



.....failure to communicate

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Tip #1: Remember that surveys happen to everyone

- Expect you will get nervous and deal with it
- MDH is required by law to survey facilities
- OHFC is required by law to investigate VAA reports filed with the Common Entry Point
- There is no avoiding these inevitable events
- You are not alone

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Tip #1: surveys happen to everyone

- Remember your driver's license test? The examiner sat in the passenger seat with a clip-board watching your every move.
- People are not robots and you, your co-workers and supervisors may get nervous.
- Recognize that feeling among staff is natural and should be expected.

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Tip # 2: Confidence-You know your residents better than the surveyor.

- There's a big difference between the driver's license examiner and the MDH surveyor:
- The examiner knows how to drive better than the 16 year old
- But your staff knows your residents' needs better than the surveyor. You have successfully met those needs over and over

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Tip #2 : Gain confidence from knowing residents

- Remind staff to re-read and use their assignment sheets during surveys or investigations
 - A survey is not like a test in school. You will not fail because your staff relied on an important daily tool, crib sheet or asked a supervisor for help

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Tip# 2: Confidence from knowing your residents

- Make certain staff follow all routine procedures and is not distracted by curiosity surrounding the pending survey:
 - Follow "check-in" or "report" procedures
 - Line staff should communicate with supervisory staff: **you are not alone**
 - Handle resident episodes just like any other day

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Tip # 3: How should I treat the investigator / surveyor?

- The surveyor is not your boss, even if they appear to act bossy or gruff
- The surveyor is not your best friend, even though they may act like it
- The surveyor is not your enemy, even though they can shut your facility down

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Tip #3: How should I treat the surveyor?

- **Treat the surveyor or investigator just like you treat the resident's family:**
 - You talk to family in a respectful manner
 - When families ask you questions that are beyond your knowledge, you direct them to the person with the answers

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Tip #3: treat the surveyor as family

- When staff interact with residents while family members are present, they probably demonstrate that they know how to treat their loved one with dignity. They project that they have their resident's needs and best interests at heart.
- Take that same friendly, confident and professional manner with surveyors

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Tip #4: Never guess or speculate when answering a surveyor's question

- Your memory may not be reliable.
 - You probably don't remember everything about every resident's chart or every employee's personnel file. That's why we document
 - Go to the file or chart for the answer instead of guessing
 - If you don't know, send them to the person who does know

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Tip #4: Never Guess or Speculate

- Do not exaggerate what you know
 - If they ask you a question that is someone else's job or assignment, don't guess the answer, send them to the person who knows the answer
- Bragging is great, exaggerating or lying is not
 - This is not a time to be shy about what you do well

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Tip #5: Be clear, accurate and responsive

- Give the surveyor the correct answer, not the answer you think they want to hear
 - Agreeing just to get them out of your hair is not smart: Suppose the care plan allows a one-person pivot transfer and that has always worked, but the surveyor asks: "Don't you think this resident needs a two-person transfer?" Refer them to the care planner, instead of saying "I guess so"

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Tip #5: Being clear, accurate and responsive

- Stand your ground:
 - E.g.. They ask what you do if a resident becomes combative. You respond, but they say “so you don’t really know what you’d do, do you.” Stand your ground. Tell them again so they know what you are doing.

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Tip #5: Being clear, accurate and responsive

- Agree or not to agree, that is the question
 - *Do you see that reddish area-it looks like a stage one pressure sore?*
 - Does yes mean you see a reddish area or that you are confirming a pressure sore
 - “I guess you’re right. That flaming meteor would never had hit our facility if we had just trained our staff better...”

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Tip#5: Being clear, accurate and responsive.

- Remember a resident’s needs change over time. If the surveyor asks a question about a resident’s needs, are they asking about today, yesterday, last week or last year
- Don’t guess about dates of events like hospitalizations or incidents
- Are your care planning documents dated, especially interventions after the event?

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Tip#5: Be clear, accurate and responsive

- Survey sabotage by lying about supervisors you don't like or co-workers you can't stand helps no one
- Survey sabotage by intentionally failing to provide care can lead to criminal prosecution of the person who intentionally neglected their responsibilities

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Tip #6: It's your right to understand the question

- Never answer a question you can't understand
- Ask the surveyor to clarify a vague or ambiguous question
- If English is your second language, and you need help, ask the surveyor if your supervisor can join the conversation

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Tip #7: A surveyor's Q & A is not a Typical Conversation

- Listen to the question
- Understand the question
- Answer the question completely
- Stop Talking
 - Don't ramble or bring up different topics
- A good witness is like a good tape recorder

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Tip #7: A surveyor's Q&A is not a typical conversation

- Remember what you said and then **tell your supervisor as soon as possible**
- You may not be aware of the entire story. By telling your supervisor what was discussed, the supervisor can retrieve other information to complete any gaps

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Tip#8: Dignity, dignity, dignity

- Never let the stress of a survey distract you from treating your residents with dignity
 - Privacy, especially privacy curtains
 - Knocking
 - Avoid terms of endearment that may be misunderstood
 - Words of encouragement or direction, especially during cares, must be said in a professional tone

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Tip #9: Care comes first.

- Care comes first: If the surveyor engages you while you are providing care, remind the surveyor you must finish this first and will talk as soon as you are done

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Tip #10: Orient novice staff to the survey process

- Available video: "Making the Communication Connection" © MDH Compliance Monitoring Division 2006
- Review Appendix P topics and consider using past 2567s as learning examples of what surveyors observe
- Remind them they are not alone, they know their residents and care comes first.

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Communicating about an erroneous report.

- They're the government, they should know
 - Public reports and deficiencies are read by a wide audience
 - Families
 - Private lawyers
 - Media
 - AG and local prosecutors
 - Licensing boards

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I know it's wrong, but does it matter?

- Does the report or 2567 link or imply that maltreatment or deficiencies caused serious injury or death?
- Will family see the report as validating earlier grievances?
- Has your organization been sued before?

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Dealing with an unfavorable MDH public report or 2567

- Dissect the public report
 - Use color coded highlighters to sort findings that are correct from incorrect or from those that you need more information
 - Marshal facts to disprove the inaccuracies and to clarify the unknown
 - Identify witnesses, documents and investigate

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Written communication in the appeal or reconsideration letter

- Be thorough, not brief
- Quote applicable F-Tag or legal definition (abuse, neglect, therapeutic errors, accident)
- Explain what facts prove that the findings are wrong topic-by-topic
- Characterize new information as *new evidence that was missing from MDH report*

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Sorting the strong case from the loser

- A strong and persuasive case should follow a theme that is easy to articulate:
 - The resident sustained a medication overdose, but the staff was following an erroneous physician order
 - She returned to her pre-existing condition
 - It was unexpected, sudden. Even the risk was unpublished

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A strong case...

- Gains support from the documentary evidence. It's not dragged down by a staff's failure to document what happened clearly and timely
- Has a careful presentation of a written argument and a well-analyzed comparison of the law to the facts
- Who is bucking the statutory standard? State or appellant?

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Bringing weak cases to hearing may pose risks for the appellant

- "Free" discovery for family's lawyer
- Roadmap for civil lawsuit
- "Seal of approval" by Administrative Law Judge
- Reduce credibility with MDH and other agencies
- Gives disgruntled employees a chance to point finger at former employer

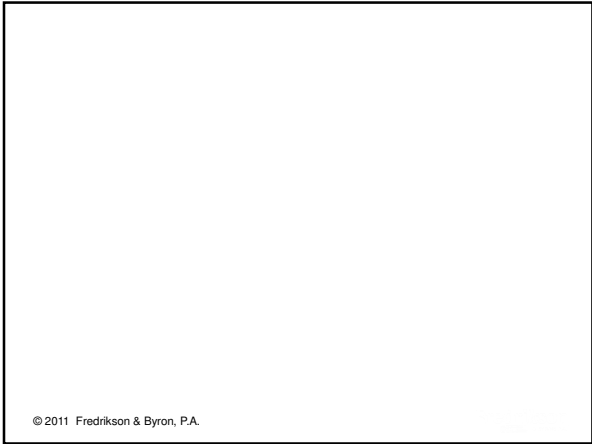
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Thanks

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