

Writing Defensible Citations
Non-Long Term Care Learning Activity

| Item | Description |
|--------------------------|---|
| Objective: | Given a tag from the State Operations Manual (SOM), the surveyor will identify the elements of a defensible deficiency. |
| Prior to Class: | Instruct surveyors to watch the webcast <i>The Surveyor in Court: Writing Defensible Citations</i> prior to class. |
| Total Time for Activity: | 50 minutes* (*Activity times are highly dependent on class size and dynamics. The time given is approximate.) |
| Set-Up: | Divide the class into three groups and distribute a copy of the tag to each group. Advise the groups that they will have 15 minutes to read and discuss the tag and write a narrative. Option: Rather than dividing the class into groups, this activity can be conducted as a group discussion with the entire class or single surveyor. |

| Step: | Preceptor Instructions: | Activity Time: |
|-------|--|----------------|
| 1. | Each group should select someone to take notes and report to the class. (Alternative: Conduct the activity as a large group.) | 5 min. |
| 2. | Give the teams time to read and discuss the questions and develop a sample deficiency. | 25 min. |
| 3. | Allow each team to present their findings to the class. Facilitate a discussion with the other teams regarding any information that may affect the defensibility of the team's deficiency. | 15 min. |
| 4. | Debrief the activity by summarizing the importance of writing defensible deficiencies and the surveyor's role in defending deficiencies. | 5 min. |

Date:
Surveyor:

Writing Defensible Citations
Non-Long Term Care Learning Activity

Home Health Agency—Tag G114

Directions: After watching the webcast *The Surveyor in Court: Writing Defensible Citations*, work within your group to write the events in a defensible manner.

Scenario: Home visit and reviewing paperwork, patient is 85 years old with dementia. Her daughter has her Power of Attorney (POA) but is not there yet. The nurse explains payment, including the fact that her new wheelchair may not be completely covered. Patient is nodding her head as if she understands but cannot verbalize what was just discussed back to the nurse. Patient states, “Don’t worry, my daughter will be here soon, and she can read the paperwork.” The nurse has another visit to get to and has the patient sign the paperwork. She takes the paperwork with her, assuring the patient she will talk to her daughter on another visit.

G114

§484.10(e) Standard: Patient Liability for Payment

Before the care is initiated, the Home Health Agency (HHA) must inform the patient, orally and in writing,

of--

- (i) The extent to which payment may be expected from Medicare, Medicaid, or any other Federally funded or aided program known to the HHA;
- (ii) The charges for services that will not be covered by Medicare; and
- (iii) The charges that the individual may have to pay.

Interpretive Guidelines §484.10(e)(1)

During home visits, ask the patient whether the HHA has notified him or her of covered and non-covered services. Also, discuss whether the HHA has described any services for which the patient might have to pay and how payment sources might change (or have changed) during the course of care. Again, consider the patient’s ability to understand and retain payment information. The subject of payment for home care services is often complex and confusing, particularly early in the course of treatment when the patient’s illness or limitations appears to be the more pressing problem.

Look for a written statement in the home that might serve as a resource or reminder to the patient about the information the HHA has presented. Also, note whether there are subsequent written statements about payments for items or services of which the HHA has become aware.

Citation: State Operations Manual (SOM)

Citation: Introduction to Surveying for Non-Long Term Care Course; Module 4, Lesson 3
Guidelines for Documentation

Provider Type: NLTC

Date:

Surveyor:

Writing Defensible Citations
Non-Long Term Care Learning Activity

In your evaluation of compliance with this standard, consider whether the HHA is making a reasonable attempt to help the patient understand how the charges for HHA services will be covered or not covered over the course of treatment. Based on the information provided by the HHA, do you believe that the patient has a reasonable understanding of how payment for home care services will likely occur and can make reasonable, informed decisions about financial matters related to the HHA's care and treatment of him or her?

Do NOT try to advise the patient about financial, coverage, or payment issues.

Citation: State Operations Manual (SOM)

Citation: Introduction to Surveying for Non-Long Term Care Course; Module 4, Lesson 3
Guidelines for Documentation

Provider Type: NLTC

Date:
Surveyor:

Writing Defensible Citations
Non-Long Term Care Learning Activity

End-Stage Renal Disease Facilities - Tag V265

Directions: After watching the webcast *The Surveyor in Court: Writing Defensible Citations*, work within your group to document answers to the probes. Then, write the events in a defensible statement.

Scenario: During an End Stage Renal Disease (ESRD) survey, staff are discussing how each area is cleaned post-procedure. You notice that the chair has some dried blood on it underneath the sheet that is covering the tear in the material on the chair's footrest. The table beside the chair is dusty. Another technician is walking from station to station without changing gloves. One patient is asking a technician for some adjustable lighting, as he is trying to read during the procedure and the light is too dim for him to see.

V265

§405.2140(b) Standard: Favorable Environment for Patients

The facility is maintained and equipped to provide a functional, sanitary, and comfortable environment with an adequate amount of well-lighted space for the service provided.

Interpretive Guidelines: §405.2140(b)

“Sanitary environment” refers to infection control and prevention strategies. Because of the risk of nosocomial infection, an infectious and communicable diseases monitoring system should include an active surveillance program of specific measures for prevention, early detection, control, education, and investigation of infectious and communicable disease. There should also be a mechanism to evaluate the effectiveness of the program and take corrective action. The facility should institute the current recommendations of the Centers for Disease Control and Prevention (CDC) relative to the specific infection(s) and communicable disease(s). The facility may refer to the current references on infection control published by the CDC. Although not specifically mandated by CMS regulations, facilities should follow the standard precautions promulgated by the CDC.

Citation: State Operations Manual (SOM)

Citation: Introduction to Surveying for Non-Long Term Care Course; Module 4, Lesson 3
Guidelines for Documentation

Provider Type: NLTC

Date:

Surveyor:

Writing Defensible Citations
Non-Long Term Care Learning Activity

Probes §405.2140(b)

1. What infectious and communicable disease monitoring system is followed by the ESRD?
2. How do they monitor the effectiveness of their program?
3. Is the ESRD following Centers for Disease Control and Prevention (CDC) recommendations relative to specific infection(s) and communicable disease(s)?

Citation: State Operations Manual (SOM)

Citation: Introduction to Surveying for Non-Long Term Care Course; Module 4, Lesson 3
Guidelines for Documentation

Provider Type: NLTC

Writing Defensible Citations
Non-Long Term Care Learning Activity

Preceptor Rubric

This activity requires surveyors to read an assigned tag and write a defensible statement for the tag. Responses will vary based on the experience and imagination of the surveyors. Use this rubric to ensure surveyors meet the standards for writing a defensible deficiency.

| Standards of Defensible Deficiencies | Tag |
|---|-----|
| <ul style="list-style-type: none"> • Address the audience <ul style="list-style-type: none"> ○ The needs of the audience must be met. (NOTE: The primary audience for a Statement of Deficiencies is the entity’s staff who must correct the problem which caused the deficiency.) ○ Additional audiences are patients, families, and visitors who may read the statement once it becomes a public document. In addition, judges and lawyers are audiences when a deficiency is challenged at a hearing before the Departmental Appeals Board or in a Federal court. ○ Surveyors should, when possible, avoid medical terms that are not generally known to the public and jargon that could be confusing or misunderstood. | |
| <ul style="list-style-type: none"> • Write facts in a logical order. <ul style="list-style-type: none"> ○ Present the evidence in an order that includes a logical progression of the evidence—e.g., “3 of 8 medical records of surgical cases reviewed failed to include documentation of performance of a time-out to ensure the correct patient/side/surgical site was prepped for surgery.” ○ Describe the requirements for time-out under the applicable P&P reviewed after these deficiencies were identified, including whether it correctly corresponded to the regulatory requirement. ○ It might also be useful to add key statements of made by an interviewee that provide further evidence supporting the citation. ○ Deficiency statement does not repeat the regulation; rather, it states the facts regarding what the entity failed to do. | |
| <ul style="list-style-type: none"> • Include relevant information only. <ul style="list-style-type: none"> ○ Surveyors should include only information that is applicable to a specific regulatory requirement when citing deficient practices. ○ Surveyors should summarize all information collected on the survey specifying everything the entity did or did not do that is | |

Citation: State Operations Manual (SOM)

Citation: Introduction to Surveying for Non-Long Term Care Course; Module 4, Lesson 3
Guidelines for Documentation

Provider Type: NLTC

Writing Defensible Citations
Non-Long Term Care Learning Activity

| | |
|--|--|
| relevant to the appropriate regulation,. | |
|--|--|

| Standards of Defensible Deficiencies | |
|---|--|
| <ul style="list-style-type: none">• Be attentive to detail.<ul style="list-style-type: none">○ Attention to detail will support surveyors' Statement of Deficiencies and strengthen their credibility at a hearing.○ Examples of detail include:<ul style="list-style-type: none">▪ Listing the deficiency under the correct regulation▪ Identifying correctly the facts pertaining to individual patients, while still protecting their identity▪ Including dates and times of observations, interviews, and record reviews▪ Avoiding typographical errors | |

Citation: State Operations Manual (SOM)

Citation: Introduction to Surveying for Non-Long Term Care Course; Module 4, Lesson 3
Guidelines for Documentation

Provider Type: NLTC