
PROMISING PRACTICES IN STATE SURVEY AGENCIES

Training to Strengthen Surveyor Skills and Knowledge Related to Legal Aspects of the Survey Process

Florida

Summary

The relatively frequent involvement of Florida surveyors in legal proceedings and the state's stringent burden of proof requirements compel the Health Standards and Quality Unit of the Florida Agency for Health Care Administration to provide rigorous training for surveyors in how to investigate and substantiate cited deficiencies and defend survey findings against legal challenges. A training video designed to prepare surveyors for effective participation in depositions and hearings is a notable feature of Florida's training program.

Introduction

This report describes the approaches used by the Florida state survey agency to strengthen surveyor skills and knowledge related to the legal aspects of the survey process. The impact of the training approaches and lessons learned that might benefit other agencies also are discussed. The information presented is based on interviews with agency management staff and review of selected training materials.

Background

The Florida agency initiated its 17-week comprehensive surveyor orientation program in the 1990s. The extensive classroom-based training program includes several sessions that focus on strengthening surveyor skills and knowledge related to legal aspects of the survey process; related information also is interwoven throughout other courses in the training program. The structured training program, which replaced a less formal mentor-centered training model, was created in response to changes occurring on the federal level that resulted in more stringent requirements for surveyor training and qualifications (e.g., the OBRA mandate for surveyors to pass the Surveyor Minimum Qualifications Test [SMQT]). The high standard of proof required in the state and the potential for many surveyors to be involved in legal proceedings requiring verbal and/or written

support of survey findings prompted the development of the legal curriculum within the agency's surveyor training program.

Development of a video on preparing surveyors for depositions and hearings was initiated in 2002, when agency management staff determined the need to reduce surveyor anxiety about and better prepare surveyors for effective participation in legal proceedings. With up to 100 hearings related to long-term care surveys scheduled each year, it is critical for Florida surveyors to be knowledgeable about the conduct of such proceedings and to be prepared to provide effective testimony. Although many cases are settled without requiring hearings, depositions often are taken prior to settling. The perception of a surveyor's knowledge and the supporting evidence at the deposition can be influential in determining whether a case is settled or moves forward to hearing.

Intervention

Florida surveyors receive training on skills and knowledge related to the legal aspects of the survey process through both the agency's training program and communications with supervisors and managers in day-to-day operations (e.g., discussions linking ongoing survey activity with potential legal implications). The orientation program for new surveyors encompasses tracks entitled Survey 101, Survey 201, and SMQT

Academy. Training on legal aspects of the survey process is interspersed throughout many of the courses in the orientation program and is the focus of a subset of courses. The five courses that focus on skills and knowledge related to legal aspects of the survey process include the following: (1) Basic Principles of Investigation (with emphasis on mapped decision-making); (2) Information Analysis, Deficiency Determination, and Deficiency Categorization; (3) Legal Principles; (4) Legal Aspects of Surveying; and (5) Quality Assurance Review Performance Standard 2: Survey Findings are Supportable. Several of the courses build on and reinforce information addressed in the Centers for Medicare & Medicaid Services (CMS) Web-based training modules and materials in the *State Operations Manual* (SOM), with the addition of agency-developed interactive exercises (e.g., role playing, writing mock deficiency statements) to promote active learning. PowerPoint presentations, written exercises, and other resources utilized in the training sessions are available to all staff for review at any time if surveyors (or their supervisors) wish to reinforce particular knowledge or skill areas.

Florida's videotape preparing surveyors for participating in depositions and hearings is a unique component of the agency's training program. The video, which was produced in November 2003, is viewed and discussed by new surveyors during the Survey 201 session on Legal Aspects of Surveying, and also is routinely utilized by surveyors when preparing for a deposition or hearing, prior to meeting with the agency's Office of Legal Counsel attorneys. The video presents simulated depositions and hearings that are based on true events. The video was scripted, acted, and produced as a collaborative effort by agency surveyors, attorneys, and multimedia staff. The video's scriptwriter endeavored to highlight the importance of ensuring that testimony shows the surveyor's detailed understanding of and adherence to the requirements and guidance delineated in the SOM. The critical role that precise and thorough documentation can play in defending survey findings also is emphasized.

Implementation

Training staff in the agency's Survey Integrity and Support Branch (SISB), an interdisciplinary group of seven expert surveyors responsible for overseeing surveyor education, developed the described courses with input from agency attorneys. The courses are taught by SISB staff, agency attorneys, and faculty from the Health Standards and Quality Unit.

Agency surveyors, attorneys, and multimedia staff collaborated to develop the video on preparing for depositions and hearings. Agency staff estimate an investment of approximately \$7,000 to create the video, including equipment, staff time spent writing, scripting, acting, and producing it, and time spent by the multimedia division. The agency's multimedia staff project that development of the video by an outside contractor would have cost the agency approximately \$70,000.

Impact

Agency management perceive that the training programs have resulted in enhanced surveyor confidence, supportable documentation and effective evidence collection, and reduced turnover of citations in IDR and court proceedings.

Positive evaluation feedback from surveyors participating in Survey 101, 201, and SMQT Academy courses indicates that surveyors perceive the courses to prepare them to effectively perform job responsibilities.

Surveyors are reported to consistently express that viewing the videotape on depositions and hearings increased their confidence and sense of preparedness prior to participation in legal proceedings. Agency management staff believe that greater surveyor confidence has led to more effective handling of questions during depositions and hearings. The videotape appears to be a critical resource for Florida surveyors, particularly in view of the frequency of surveyor involvement in legal proceedings. Surveyors in any state where the potential for participating in depositions or hearings exists would likely benefit from the video, which is available at no

cost for all survey agencies to use (see Contact Information and Resources section below).

The video was recognized by the Association of Health Facility Survey Agencies (AHFSA) in the Promising Practices competition in 2004. In addition, the agency received a Productivity Award from the state of Florida commending their effective use of state resources by developing and producing the video within the agency, thereby avoiding the substantially higher costs of utilizing an outside contractor.

Lessons Learned

For agencies interested in utilizing the video on depositions and hearings as a training resource, it is recommended that an attorney introduce the video and lead follow-up discussion that includes sharing experiences from actual depositions and hearings. Attorney involvement in presenting and discussing the video may further build surveyor understanding of what to expect from legal proceedings and perhaps result in greater confidence and a stronger sense of preparedness. Agency staff involved in developing the video would like to supplement the video with participation in interactive exercises that would give surveyors the opportunity to experience

questioning by agency attorneys, similar to that a surveyor likely would experience during a deposition or hearing. Surveyors would learn from critique, analysis, and guidance on how best to respond to the questions. The video currently is provided on VHS, although agency staff believe it would be useful to create DVDs or CDs to facilitate viewing on laptops and provide greater durability.

Contact Information and Resources

To request a copy of the video on depositions and hearings, or for more information about the training approaches used to strengthen surveyor skills and knowledge related to the legal aspects of the survey process at the Florida Agency for Health Care Administration, please contact Dr. Susan Acker at 850/922-9138 or ackers@ahca.myflorida.com. Teaching materials used to support several of the courses described in this report are available on this Website and can be accessed online by clicking on the Promising Practices State Supplemental Resources link. For further information on teaching materials, please contact Carlton Bradley, Systems Project Analyst at 850/410-1061 or bradleyc@ahca.myflorida.com.

This document is part of an issue brief on training programs used in state survey agencies to strengthen surveyor skills and knowledge related to legal aspects of the survey process. The issue brief is one of a series by the Division of Health Care Policy and Research, University of Colorado Health Sciences Center, for the U.S. Centers for Medicare & Medicaid Services (CMS) highlighting promising practices in state survey agencies. The entire series is available online at CMS' Website, <http://www.cms.hhs.gov/SurvCertPromPractProj>. The issue briefs are intended to share information about practices used in state survey agencies and are not an endorsement of any practice.