If an accident hasn’t occurred in a nursing facility, how can it cause liability? The answer is that the potential for accidents can cause citations and sanctions, as shown in three survey-appeal cases this year.

The Centers for Medicare & Medicaid Services’ Departmental Appeals Board and its administrative law judges have confirmed that skilled nursing facilities (SNFs) can be penalized up to hundreds of thousands of dollars for putting residents in immediate jeopardy of “foreseeable risks.” The decisions highlight the importance of accident prevention, thorough investigations of near accidents, and remedial action plans.

Meadowood Nursing Center v. CMS (CR2829, June 2013) was the appeal of a 123-day immediate jeopardy finding with a civil money penalty of more than $433,000. The case started when a survey team cited the facility for failure to provide adequate supervision and accident prevention involving side rails.

In the facility’s documentation, surveyors discovered that a resident had been found uninjured with a side rail resting on her neck. The bed rails in use were full length side rails that are known to have gaps between them and the mattress or bed frame when the head of the bed is elevated.

Although the facility argued that it took reasonable steps to eliminate the foreseeable risk of bed rail entrapment, the administrative law judge determined that the actions weren’t enough to mitigate potential risks to other residents with side rails on their beds. The judge’s discussion centered on the well-known fact that side rails can entrap a person and be dangerous, so this is a hazard that can be avoided.

The two other cases involve elopements from SNPs. Courtyard Healthcare Center v. CMS (CR2712, March 2013) was based on the wandering of a resident during the second day of a survey. An 83-year-old resident was found unharmed about a block away from the Goshen, IN, facility at a busy intersection without side rails.

Another case involved medicare penalty of $3,750 was imposed by an administrative law judge and then upheld by the Departmental Appeals Board. An escape from a walkway keypad didn’t prevent residents from exiting the building when someone wearing a security bracelet was near the door. The surveyors issued a citation at the immediate jeopardy level.

A civil money penalty of $3,750 was imposed by an administrative law judge and then upheld by the Departmental Appeals Board in Glenoaks Nursing Center v. CMS (CR2669, Nov. 2012 and CR2522, June 2013), the board upheld an immediate jeopardy citation for more than a month for the Lucedale, MS, facility’s failure to prevent foreseeable accidents related to elopement. The civil monetary penalty amounted to nearly $130,000.

In Jan., 2011, a cognitively impaired resident was noticed walking outside the building when staff were taking a break. The facility had a system whereby residents at risk of wandering wore a special armband, but surveyors found that some staff were unaware whether or not the resident had been identified as a wanderer or wore the armband. The staff also were unaware that a care plan had been developed to assure this resident’s safety because she was at risk of wandering.

The surveys determined, and the Departmental Appeals Board upheld, that the facility didn’t take all reasonable steps to ensure that residents receive supervision and assistance to avoid foreseeable risks of harm from accidents.

The three cases summarized here suggest some general guidelines:

▶ When accident hazards are identified, take decisive action to mediate concerns. Thoroughly review the action with the quality assurance committee.

▶ Use resident-assessment information to develop a complete care plan that addresses accident prevention and is consistently implemented.

▶ Perform and document routine evaluation of safety equipment such as door keypads, locating devices, door alarms and resident-wanderer bracelets.

This column is not to be substituted for legal advice. The writer, Janet K. Feldkamp, practices in various aspects of health care, including long-term care survey and certification, certificate of need, health care acquisitions, physician and nurse practice, managed care and nursing-related issues, and fraud and abuse. She is affiliated with Benech Friedlander Coplan & Aronoff LLP of Columbus, OH. Comment on this and other columns at www.caringfortheages.com, under “Views.”