Informal Dispute Resolution
Finding Your Seat at the Table

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Disclosure / Contact

• Jennifer Hardesty has no relevant disclosures

• William Vaughan is a contractor to CMS (QAPI) and a member of the Institute for Safe Medication Practices clinical advisory board (Long-Term Care Advise ERR)

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“Welcome to the ISMP Long-Term Care Advise-ERR, a medication safety newsletter designed specifically to meet the needs of administrators, nursing directors, and nurses who transcribe medication orders, administer medications, monitor the effects of medications on residents, and/or supervise those who carry out these important tasks.”

http://www.ismp.org/Newsletters/longtermcare/default.aspx
Objectives

• Describe three CMS mandated components of the IDR process
• Describe the differences between the informal dispute resolution process (IDR) and the independent informal dispute resolution process (IIDR)
• Identify what aspects of a deficiency should be critically analyzed to determine if it should be disputed
Do the Math

• Health deficiencies nationwide (2015) = 106,730\[1\]

• Grades
  • “A” (90%) = ~ 10,000
  • “B” (80%) = ~ 21,000
  • “C” (70%) = ~ 32,000

[1] source: nursing home compare accessed 6/20/16
Informal Dispute Resolution (IDR) – The Basics

• Purpose – To Provide Facilities an Opportunity To Informally Dispute Cited Deficiencies After a Survey
• Mandated by CMS – states must offer IDR
• Process varies between states but must include specific elements
  • Attorneys
  • In-person
  • Cost
• States must make process available for review
Informal Dispute Resolution (IDR) – The Basics

• Notice with statement of deficiency
  • Who can request an IDR?

• Won’t delay imposition of sanctions
  • What about 5 star rating?

• Off the table
  • Scope/Severity
    • Except IJ or substandard quality of care
    • Elimination of examples → change S/S
  • Remedies
  • Deviation from the survey process
  • Survey inconsistencies
  • The IDR process itself
Informal Dispute Resolution (IDR) – The Basics

• Written Request to the state survey agency
  • 10 calendar days
  • Specific deficiencies disputed
    • Amount of detail?

• How its done
  • Written
  • Phone
  • Face to face
Informal Dispute Resolution (IDR) – The Basics

• Who are the players?
• State ultimately responsible for IDR process
• CMS has the final say re deficiencies

• Results
  • Time frame not specified
  • Unsuccessful → written notice
  • Successful → change 2567
    • Language
    • Scope/Severity
    • Remedies
Independent Informal Dispute Resolution (IIDR)

• Key points
  • Process developed by states, approved by CMS
  • Offered if CMS imposes civil money penalty (CMP)
  • Focus: deficiency → CMP
  • Conducted by organization independent of the state survey agency
  • Notification: involved resident/representative and ombudsman
    • Opportunity for written comments
  • IIDR is a recommended decision
    • State first, then CMS
  • Successful IIDR → CMP
Informal Dispute Resolution

Your impressions ...
True or False

Informal dispute resolution is an important part of the survey process.
True or False

Without exception, every deficiency cited by surveyors in your state is true, correct and 100% accurate.
True or False

The IDR is fundamentally unfair as the same individuals who issued the deficiency are deciding the IDR.
True or False

Going to an IDR will only serve to anger the very same surveyor who will be returning to your facility next year.
True or False

It’s not worth the time and resources to go to an IDR unless the deficiency is at a “G” level or higher.
True or False

Going to an IDR is a waste of time as very few deficiencies are overturned.
### Nursing Home IDR Outcomes in FY 2015

<table>
<thead>
<tr>
<th>Outcome</th>
<th>Percentage of Tags</th>
</tr>
</thead>
<tbody>
<tr>
<td>No change</td>
<td>22</td>
</tr>
<tr>
<td>Tag changed</td>
<td>4</td>
</tr>
<tr>
<td>Tag removed</td>
<td>46</td>
</tr>
<tr>
<td>Scope and severity changed</td>
<td>4</td>
</tr>
<tr>
<td>Example removed</td>
<td>7</td>
</tr>
<tr>
<td>Scope and severity changed and example removed</td>
<td>0</td>
</tr>
<tr>
<td>New tag issued at IDR</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Office of Health Care Quality, State of Maryland
Why are deficiencies changed?

• Fact pattern

• Regulatory requirement
  • “surveyors must base all cited deficiencies on a violation of statutory and/or regulatory requirements, rather than sections of the interpretive guidelines”[1]
  • “Use of this tool is not mandated by the Centers for Medicare & Medicaid Services (CMS) for regulatory compliance nor does its use ensure regulatory compliance”[2]

• Standard of care

Why are deficiencies changed?

• New information clearly not available during the survey (the social worker was in labor)
• Information was available but not given to the surveyor (don’t ask, don’t tell policy)
• Clinical judgment
• Timing of events
• Events surrounding deficiency put in a different perspective
• Resident’s right – conflicting regs
Why are deficiencies changed?

- Evidence doesn’t support the deficiency
- Regulation too narrowly interpreted
- Surveyor’s opinion versus regulation or standard of care
- Inability to link outcome to the deficiency (if not for this, then that)
- Too close of a call
Tips for Success

• The IDR starts during the survey
• No one at the survey agency should know the case better than you
• Listen carefully to details presented by the surveyor and challenge them if they aren’t accurate
• Don’t get caught up in the “muddy waters”
• Don’t be intimidated … nor intimidate
• Look at the entire picture rather than an isolated event
• Speak freely … but thoughtfully
Tips for Success

• Get to the point, evidence counts
• Only state what you know to be a fact
• Have key staff attend
• Share your “big picture” perspective
• Speak openly and honestly, it’s not a trial
• Stay focused on the deficiency, not the surveyors
• Your credibility is valuable, don’t sacrifice it
A Risky Strategy

• Create a parallel universe (I know what the chart says, but …)
  • Centimeters instead of inches
  • Blinking instead of seizure
  • Screaming really doesn’t mean screaming
No matter the outcome, learn from each IDR ... and share your experience with your staff
Always Remember, its Not Personal
To IDR or Not To IDR
That is the Question
References


• What factors contribute to successful appeals of nursing homes’ deficiencies in the informal dispute resolution process? JAMDA: February 2013. Volume 14, Issue 2
Thank You!