

Long-Term Care Survey Alert

Informal Dispute Resolution: Thinking Of Going To IDR? These Tips Can Tip The Balance In Your Favor

5 ways to stack the cards for success.

Informal dispute resolution can be part of an effective survey-management tool kit if you know how to use it and avoid hidden pitfalls. Attorney **Ari Markenson** shared strategies for doing exactly that at the 2008 **American Health Lawyers' Long-term Care and the Law** conference.

Strategy No. 1: Recognize that the right to IDR or an appeal is not absolute. "There are procedural and technical requirements that could prevent the facility from doing either," Markenson cautioned. Providers should also note that the IDR and hearing process are NOT dependent on each other, he added. "You can do both and should understand the rules relating to each process," he maintained.

Strategy No. 2: Don't squander IDR on defenses involving loopholes or clever arguments, such as the paper plates cited in a deficiency were really Chinette. "You can lose credibility going after a novel theory and it is not necessarily worth the risk," Markenson cautioned. Also an inappropriate challenge can detract from the facility's valid arguments for other deficiencies worth pursuing at IDR, he said.

Strategy No. 3: When preparing for the IDR, go through a thorough fact-finding verification process. For example, comb through the entire chart for supporting documentation. Make copies of relevant documents and highlight relevant information, Markenson advised. "The material will become part of your IDR submission," he noted.

Strategy No. 4: Recognize that you can use your IDR preparation and a face-to-face meeting as a "dry run" for an administrative law judge hearing. "CMS has argued that evidence not raised during the exit interview or during IDR is suspect," cautioned Markenson.

Strategy No. 5: Get everything in writing. For example, if the facility receives an extension of time to file the IDR or plan of correction, make sure to receive written confirmation of that, Markenson advised. Document all correspondence with the state agency throughout the survey process. Follow up phone calls with written correspondence, he added.