

Long-Term Care Survey Alert

Survey Appeals: Develop A Game Plan For Your Next IDR Meeting

Follow these tips to victory.

An IDR meeting is like your day in court: You want to select your best witnesses and have a strategy to convince the state agency that not only did the facility not do what surveyors claim, but that your staff provides good care.

The administrator and DON normally attend informal dispute resolution or participate in telephonic IDR conferences. The medical director should also participate to support any clinical decisions surveyors may dispute. "It's always good to have doctor speak to doctor if the agency's physician is going to be present," says **John Lessner**, an attorney with **Ober/Kaler** in Baltimore.

Don't forget to include the direct care providers who really know the resident(s) involved in the cited deficiency. Lessner recalls one case in which the nursing assistant essentially won the day by recounting how she'd long known the resident and family in the community and had taken good care of the man. "That information never came through in the write-up," Lessner stresses. "Her involvement and connection with the resident had an incredible impact." The facility, in fact, resolved the issue at stake through IDR.

But you have to evaluate whether a particular CNA - or any staff person - will tell "just the facts, ma'am" and represent the facility in a positive light. For example, you don't want someone who has nothing to do with the case at hand - or a person who you know gets shaken easily, cautions attorney **Michael Cook** with **Baker & McKenzie** in Washington. And you don't want someone to testify who tends to get distracted from the real issues, or who embellishes too readily or becomes confrontational. "Those kinds of behaviors will undermine the facility's credibility," Cook says.

Tip: If you're really angry with the surveyors about the situation and don't feel like you can hide your feelings, let someone else go to the IDR in your place, advises **Dale Lind**, executive director, **Waterman Village** in Mount Dora, FL.

Rehearse Your Key Points, Roles

Before the meeting, make sure everyone knows their key message points and general strategies for responding to questions. Instruct staff not to answer questions if they don't understand what's being asked - or don't know the answer, Lessner advises.

During the actual proceedings, the administrator acts as the traffic cop by keeping everyone on track. The administrator performs the introductions and provides a very brief overview of the facility and then begins a discussion of the deficiencies. "It's always good to give an overview of the residents and do some personalizing by using their title and surname," Lessner offers. Beware of using residents' nicknames, which can sound condescending in the IDR situation.

Whatever you do, don't blame the resident or family for the deficiency by saying things like "he's very resistant or won't let us care for him," Lessner advises. "Instead, couch the discussion in terms of all the times staff attempted to offer care and the person refused - and how the facility respected the resident's right to refuse care."

Should facilities bring residents to an IDR hearing? "In virtually any case except where credibility of a resident's statement is at issue, residents' testimony for an IDR can be presented in writing," says attorney **Joseph Bianculli** in Arlington, VA. "Hearsay is always admissible in administrative proceedings," he notes.