

Long-Term Care Survey Alert

What Do You Think?

Question: Should your facility take all potentially winnable cases to informal dispute resolution?

Answer: If you want to clear your survey slate fast and skip the price tag attached to an appeal, informal dispute resolution may be just the ticket. But before you take the IDR route, be aware of the unexpected detours and pitfalls.

The bottom line: If your facility disagrees with a deficiency, at least request an IDR, because you may have a stronger case than you know up front, advises **Barbara Miltenberger, RN, JD**, with **Husch & Eppenberger** in Jefferson City, MO. "Sometimes facilities don't have all the refuting evidence, such as medical records and key personnel statements, within the 10 day [deadline] for requesting an IDR," she notes. (The facility must request IDR within the same 10 calendar day period it has for submitting an acceptable plan of correction, says the **Centers for Medicare & Medicaid Services**.)

Once the facility administrators examine the evidence, they may realize the facility has a much stronger case than anyone realized. But if no one requested IDR [within the required timeframe], the facility will have missed its opportunity for making that case, Miltenberger says. On the other hand, if the evidence does not pan out--or the facility later decides IDR is a waste of time and money--it can always withdraw the request, adds Miltenberger.

IDR as dress rehearsal: "An IDR can point out holes in the facility's evidence that need to be filled" to win an appeal, notes Miltenberger.

Be aware of the downside: If a facility succeeds in lowering a deficiency's scope and severity so that it eliminates the remedy, it can lose its shot at pursuing a Departmental Appeals Board appeal with the opportunity to ditch the deficiency all together. In other words, no remedies--no appeal rights.

Avoid this mistake: Don't decide to forego an appeal just because you believe the facility will likely prevail at IDR, cautions Miltenberger. Facilities must file a request for a federal (Departmental Appeals Board) within 60 days of receiving the CMS letter imposing the remedy (or in the case of a state-imposed denial of payment for new admissions, within 60 days after receiving the same), says **Joseph Bianculli, JD**, in Arlington, VA.