

Long-Term Care Survey Alert

WHAT DO YOU THINK? Can You Use The POC To Rebut Deficiencies?

The answer may be yes, if

To argue or not to argue in the plan of correction that the survey agency is wrong ... that is a very good question. To come up with the best answer for your facility, consider a number of key points.

First of all, you need to determine your state's stance on whether it will accept a POC with rebuttal. "There are a few states that will not accept a POC that contains a rebuttal [whereas] others are more flexible," says **Joseph Bianculli**, an attorney in private practice in Arlington, VA. But "it's more of a practice issue among states than a legal standard in terms of whether the state survey agency allows facilities to include IDR-type information in the POC," adds Chicago attorney **Matthew Murer**.

Next, weigh the benefits and downsides of using the POC to dispute a deficiency. If a facility has "specific and detailed information" indicating the survey agency has made a mistake, Mechanicsburg, PA attorney **Chris Lucas** encourages it to include that in the plan of correction. Lucas also believes that the law allows facilities to do so in all cases.

Murer agrees that "it may be advisable and beneficial" for facilities to use the POC to rebut a deficiency -- if they have "factual information" and feel strongly about including it -- or if the information is going to be posted on the state survey agency's Web site. Murer has one client who "adamantly includes rebuttal information regardless of whether the state agency complains about it."

Beware: "Facilities have to be careful they don't muddy the two issues of rebutting a deficiency and setting forth the plan of corrections," cautions Murer. "You don't want to end up stuck in a game where you are trying to convince the state that you have an acceptable POC."

Know How to Comply and Air Your Viewpoint

To develop a POC that will fly with the survey agency, facilities have to balance three issues, Murer says. Those include what the state expects to see in a POC, what's required and what the facility is trying to achieve with filing the POC, which may be to lay out facts disputing a deficiency.

Tip: If you want to bifurcate the POC from your IDR, it's easy to do so without accepting blame for what the facility believes and intends to prove at IDR or appeal is an acceptable care practice. Say the surveyors disagreed with the facility's way of doing pressure ulcer treatment for a resident and cited the facility for it. "The POC can simply say 'We are going to inservice our staff to educate them on proper pressure ulcer treatment and the DON will do random observations to ensure compliance in the future,'" says Chicago attorney **Jason Lundy**. "That isn't nearly as satisfying as giving the argument as to why the surveyors was wrong and explaining all the extenuating circumstances," he admits. But you can save those "meaty arguments" for IDR or appeal.