

Lessons Learned from IDR... so far

Shared Insights from our IDR Journey

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Objectives

- ② Compare and contrast new process steps for IDR and resulting benefits.
- ② Outline process to use tools for presenting IDR evidence.
- ② Verbalize safeguards in IDR that benefit the facility.
- ② Cite examples of benefits to the industry coming from IDR work.
- ② Describe shared lessons from the IDR journey in MO.



What is IDR?

🕒 Informal Dispute Resolution

- Informal administrative process.
- Not a formal evidentiary hearing.
- Used to determine if a cited deficiency of a facility should be upheld.
- Gives providers opportunity to refute cited deficiencies after any survey.



How is the Primaris IDR process different?

- Reviewer is neither an employee of the facility or Department of Health and Senior Services (DHSS)
👍 NEUTRAL
- Process was mandated by legislative action in House Bill 385, signed by the governor on August 28, 2009.
- DHSS contracted with Primaris to be a neutral, third party reviewer on the basis of their Quality Improvement Organization status.



How is it ..different?

- ⌚ Tighter timeframe: 10 days



How is it ...different?

- ⌚ Primaris central office can prompt facility and facilitate preparedness
 - If there are gaps in documentation
- ⌚ GUIDANCE

How ... is it different?

- Significant questions remaining can be alerted



How... is it different?

- ① Primaris keeps a buffer zone between the Facility and the Reviewer, ...
- ② Technical assistance from neutral party



How is ... it different

🌀 Transparency of outcomes

- 🌀 *Who knew... what the overturn rate was before?*
- 🌀 *Latest cumulative 27%*

What are valid reasons for dispute?

- 🌀 Dispute deficiency on Statement of Deficiencies (SOD):
 - Wrong Scope or Severity for I, J, Substandard Quality Care (SQC) or State Class I violations.
 - Evidence exists that disproves a deficiency and which the surveyor failed to review.
 - New evidence surfaced that surveyor did not review.
 - Interpretation error on the part of the surveyor.
 - Wrong tag.
 - SOD misstates the evidence.

Types of IDR Review (the same)

- ② Desk review: SOD and facility exhibits are reviewed. No live participation.
- ② Telephonic: DHSS, facility and reviewer on a conference call.
- ② Face to face: Facility, DHSS, and reviewer in person.



Is there a cost to me or my facility?

- ② No fees charged by Primaris or DHSS
- ② Cost of time and travel
 - Preparing exhibits and attending conference
- ② Legal counsel (expert testimony)
 - Your decision - charges for their involvement will be your responsibility regardless of the determination.
 - DHSS must be notified of your intent to involve legal counsel and prepare to have their legal counsel present. The cost of their legal counsel is not your responsibility.



Is there a penalty for disputing tags?

- ② **DHSS is extremely sensitive to any concern regarding survey(s) objectivity and/or retaliation.**
 - Report when and inform



Is there a penalty for disputing tags?

- ② **Penalty-free zone !**
- ② **Reviewers are trained to keep the conference objective and professional.**



Why IDR?



- ⌚ Who benefits?
- ⌚ Forum for improving understanding.
- ⌚ Who should drive?
- ⌚ For the interests of the industry



WHY IDR?

- ⌚ Best approach against defensible finding in SOD
- ⌚ If not contested, it becomes published in final SOD.

⌚ IDR it!





How is it ... different?

Though the request must include:

Disputed tag #,
regulation number,
and the reason for the dispute.

- Scope and/or severity can only be challenged if tag rises to a Substandard of Quality of Care level (SQC)

... BUT

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Have we seen other changes?

- ② What are *differences*?
- ② What if the example(s) is/are removed and there is no longer the weight to warrant the Scope and Severity being cited??



Have we seen other changes?

- **SAME TYPES:**
 - Type of review requested: desk , telephonic, face-to-face.
 - Legal counsel involvement on the part of the facility.

- **DIFFERENT ATTENDANCE:**
 - State isn't generally attending unless legal is involved, they attend by phone.



Have we seen ... surprises

- ④ NFPA regulations
- ④ Fragmented communications with Fire and Safety Marshalls



Have we seen ... surprises

- ④ NFPA regulations
- ④ Clarification of very unclear expectations... over time
- ④ Who talks to whom



Have we seen ... surprises

- ② When others are involved

- ② Attorneys involved makes the case longer, more costly and likely not to finish within timeframe.

- ② Interesting cases – get it in writing!
 - i.e. case where Public Administrator would not produce witness statement after telling the facility they would provide temporary employee for extra support.
 - i.e. previous rulings on similar issues



Have we seen ... surprises

- ② Even egregious cases can have salvaging processes – can help lessen the ‘severity’

Follow-up actions do make a difference.

Proof of ‘policy’ vs. individual employee actions despite training.



What have we learned?

- ② Exhibits speak loudly for the Facility
 - Lack of exhibits doesn't help your case.
 - To prove your point – narrative isn't enough.



What have we learned?

- ② Exhibits speak loudly for the Facility
 - Facility can prepare exhibits to defend positive intent.
 - Generally observed positives are not in the Statement of Deficiencies (SOD)
 - Reviewer not being able to consider any information not supported by evidence.



What have we learned?

- ② If it isn't there, we cannot assume.

- ② Speak up for yourself – and for your facility!



What have we learned?

- ② When in doubt – press the envelope
 - Facility exhibits defend positive process despite negative 'observation'.
 - Surveyors interpret in some surprising ways... we have discovered.
 - Not winning the case may not be losing entirely, over time we discover with DHSS unfair applications.
 - Pasteurized eggs ?
 - Dietary choices ?



What have we learned?

- ② Missing exhibits... can be deal breakers.
- ② For example:
 - ② No record of attendance to trainings.
 - ② Proving policy but no evidence of follow-through to Care Plan
 - ② Using a standard by reference but not in the documentation or Care Plan.



What have we learned?

- ② Example: Restraint Use
- ② Used Primaris protocol for their core exhibits and then did not include exhibits that they had followed the protocol.
- ② Had they provided those exhibits to demonstrate compliance with the protocol they would have been successful.
 - They walked verbally through the steps as if in practice but did not show hard evidence that they had walked through the protocol with the resident who was cited. Using a standard by reference, but not in the documentation or Care Plan.



What are the steps to the process?

- ② Facility must submit exhibits to Primaris.
 - Five working days after details are finalized.
 - Facility can request, as can the reviewer, a one time delay in order to prepare exhibits or obtain additional information.
 - Failure to request a delay or submit the exhibits in a timely manner can result in the reviewer not being able to consider any information submitted.



What are the steps to the process?

- ② Conference date is scheduled by Primaris and all parties are notified. (Yes we take your availability to heart.)
- ② Primaris reviewers will make determinations within 10 working days.



What can determinations include?

- Determinations can include:
 - *Recommendations*



How does this help my facility?

- ⌚ Proactive risk management
- ⌚ Determinations help you and the industry
- ⌚ Transparency in process



How does this help my facility?

- ② Removal or reduction of a Scope and Severity
- ② Anything changed or removed will reduce impact on:
 - Five Star Ratings
 - SOD's submitted for "Nursing Home Compare"
 - Will not require follow up interim surveys to review correction



How does this help my facility?

- ② Five Star Ratings more important now in the world of Accountable Care Organizations (ACOs) and new reimbursement models.
- ② Ratings matter to potential partners.



How does this help my facility?

- ② Less exposure to liability for certain claims.
- ② Individual licenses of the administrator and the facility are better protected.
- ② Facility can review its policy and procedure for the original citation to determine if improvement might have prevented the original citation.
- ② Not required to continue with the plan of correction for violations that are removed.



Preparing Exhibits

- ② Review the citation(s) and break each down individually.
 - What are the elements of the regulation?
 - What are the elements of the citation?
 - Do they merge or is there conflict?
 - Review guidance to Surveyors, State Operations Manuals and other practice standards to form a basis.



Preparing Exhibits

- ② Review guidance to Surveyors, State Operations Manuals and other practice standards to form a basis.

- ② *Research established findings
- ② *Best practice standards
- ② *Protocols, guides from expert associations
- ② *Other hearings



Example of Disputed Deficiency

- ② F-164 SS=D 483.10(e), 483.75(l)(4) Personal Privacy/Confidentiality of Records

- ② The SOD reads: *“Based on observation, interview and record review the facility failed to provide full visual privacy while providing personal care to two of 18 sampled residents. (Resident #1 and Resident #14). ...”*



The Regulation at F-164

- ② The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.
- ② (1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups...does not require private room for each resident...



The Elements of the Regulation

- ② **Element 1:** The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.
- ② **Element 2:** Personal privacy includes:
 - **Element 2 A:** accommodations,
 - **Element 2 B:** medical treatment,
 - **Element 2 C:** written and telephone communications,
 - **Element 2 D:** personal care,
 - **Element 2 E:** visits,
 - **Element 2 F:** meetings of family and resident groups,



Elements of the Citation

- ④ The SOD reads: *“Based on observation, interview and record review the facility failed...”*
 - **Element 1:** to provide full visual privacy while providing personal care to two of 18 sampled residents. (Resident #1 and Resident #14).
The census was 90.”



Preparing Exhibits

- ④ Determine which element applies
- ④ Which your facility positively met
- ④ Which are in question
 - In our first example, we determined that it was element #2 Personal Privacy which includes:
 - Element 2 D: privacy during personal care



Elements of Regulation & Citation

Regulation

Element 2: Personal privacy includes:

- accommodations,
- medical treatment,
- written and telephone communications,

Element 2 D: personal care includes:

- visits, and meetings of family and resident groups,
- but this does not require the facility to provide a private room for each resident;

Citation

- ② Based on observation, interview and record review the facility failed to provide full visual privacy while providing personal care.

Example... continued

- ② Think about other sources to establish evidence:
- ② Witnesses, statements, other findings that support opposing view, post event behaviors.

- ② Trainings, competency checks, Policy & Procedures, other disciplines' corroboration

2nd Example of Disputed Deficiency

② A 8022 19 CSR 30 88.010(22) Free From Abuse

- ② *Each resident shall be free from abuse.*
- ② *Abuse = infliction of physical, sexual, or emotional injury or harm*
- ② *Includes verbal abuse, corporal punishment, and involuntary seclusion.*



Example... continued

② Develop the picture



- ② Facility staff failed to ensure the safety of one newly admitted resident (Res #5) from sexual contact from another resident (Res #3) with a known history of allegations from at least one other resident.



Example... continued

- ② Res #3 was taken into police custody for alleged charges, but returned to the facility without charges being filed due to lack of evidence.
- ② Facility staff did not take any action to ensure the safety of other residents after Resident #3 returned to the facility.
- ② Police interviewed one of the three witnesses and found the witness statements to be consistent with the alleged perpetrator's version



Example... continued

- ② Staff witnessed Resident #5 in Resident #3's room with three other residents talking approximately 15 minutes before the incident.
- ② Witness of other residents
- ② Find interview documented of any of these witnesses.



Preparing Presentation

- ② Build presentation and exhibits about basis of dispute.
- ② Only relevant information can be considered.
 - Corrections after citation are not relevant to determining whether or not in fact the citation existed as stated in the SOD on or before the date on the SOD.



Preparing Presentation

- ② Label exhibits per each disputed tag on the SOD to which they pertain.
- ② Put a page number on each exhibit for each citation group.
- ② Submit exhibits (1 copy) supporting your dispute at least 5 days prior to the scheduled conference.



Building Exhibits

- ② Exhibits should be organized
- ② Helps keep you organized in your presentation
- ② Helps keep Reviewer in order and in context
 - Contents can be placed in a three-ring binder
 - Use an index divider with tabs to separate each exhibit
 - Page number each exhibit
 - Numbering especially important for exhibits faxed to Primaris for a desk review



Exhibits under F-164

- ② How can you effectively dispute your case?
 1. Facility Policy & Procedure regarding Shower
 2. Facility policy & procedure regarding privacy during personal care
 3. Certified Nursing Assistant (CNA) statements which might contradict the example provided by the surveyor in the SOD
 4. The CNA Shower competency sheet from the CNA manual.
 5. Care Plan which indicates dementia and resistance to shower
 6. Any notes that document facility's awareness of resistance and attempts to reduce the residents anxiety.



Preparing for the Conference

Prepare opening statement to summarize what you are disputing and why.



Describe each exhibit and how it supports the practice is not deficient in the facility.



State why the exhibit you are referring to is relevant to review.



Refer to Exhibit Page # so reviewer and DHSS can focus on what you are presenting.



Prepare closing statement to summarize why the facility met regulation in dispute.



Preparing for the Conference

- 🌀 Tell your side of the story
- 🌀 Verbalize why it's relevant
- 🌀 Be objective, 'matter of fact'
- 🌀 We do want to hear from you!



Preparing for Phone or Face-to-Face Conference

Reviewer will:

- Ask all parties to identify themselves
- Determine legal counsel participation
- Read into the record the citation and the reason for the dispute
- Ask the facility to open with its presentation
- The DHSS will provide their presentation and any changes after review of facility exhibits, etc.
- The reviewer will then ask the facility to provide closing remarks and then DHSS to provide closing remarks.
- The reviewer can ask questions at any time as can DHSS or the facility.



Conference Process

- ② Reviewers make every effort to make all parties comfortable.
- ② Maintain objectivity, as well as, professional conduct throughout the process.
- ② The conference is NOT a forum for airing grievances from either the facility or DHSS.
- ② An opportunity to objectively look at the information presented.
- ② **Goal: eliciting relevant information pertinent to disputed citation.**



IDR Benefits for the Industry

- ② **Neutral party guiding process.**
- ② **Improve consistency in citations across regions within the state by communicating decisions.**
- ② **Data collection and monitoring regarding disputed deficiencies and determinations.**
- ② **Disclosure of findings, lessons, trends.**



IDR Benefits for the Industry

- ② **Customer friendly third party review by reviewers who bring working knowledge and experience of the long term care industry to the review process.**
- ② **Identify gaps early to prompt and streamline.**
- ② **Objectivity, realistic view and work from the industry.**



IDR Benefits for the Industry

- ② WE ARE MAKING A DIFFERENCE !!

- ② OF 1884 SOD'S IN 2012,

- ② ONLY 52 COMPLETED IDR



IIDR

- ② **Effective January 1, 2012, Independent Informal Dispute Resolution (IIDR)**
 - Facility may request IIDR if Centers for Medicare and Medicaid Services (CMS) imposes a Civil Monetary Penalty (CMP) against the facility and CMP amounts are subject to being collected
 - **This is a separate process from IDR.** The IIDR must be associated with a CMP imposed and subject to collection and placement in escrow.



Questions or comments

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