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IDR Update: Providers See Positive Results From IDR Proceedings

CLIENT ADVISORY

The enforcement process for nursing facilities seems to become more rigorous each year and 2009 was no exception. With health care reform upon us, facilities can expect an even greater emphasis on quality and transparency. The following discussion contains helpful information on IDR results in Virginia in 2009 that will serve to provide guidance to nursing facilities as they make critical decisions on whether to challenge deficiencies through the state IDR process and beyond, to CMS.

35 Deficiencies Challenged at an IDR Hearing

In 2009, 25 facilities filed a request for informal dispute resolution, or IDR, with the Virginia Office of Licensure and Certification (OLC). Of the 25, 10 facilities ultimately proceeded to a hearing to challenge either the scope and severity or the deficiencies themselves, as identified by surveyors from the OLC. The 10 facilities that proceeded with IDR challenged 35 deficiencies, the most common being F-Tag 309 (Quality of Care) and F-Tag 371 (Sanitary Conditions). While a significant number of IDR requests were ultimately withdrawn, in certain cases this means that the facility successfully negotiated with OLC staff to reduce or eliminate a deficiency once the IDR request and supporting documentation were filed. This is an often overlooked benefit of the IDR process.

66 Percent Success Rate

An analysis of IDR decisions demonstrates that facilities achieved a 66 percent success rate when

challenging the results of a survey, with 23 out of 35 deficiencies either being deleted or reduced to a lower scope and severity. In fact, 15 deficiencies out of 35 (43 percent) were deleted completely. Looking at the same data from the facility level, of the 10 facilities that received a IDR decision, 6 facilities (60 percent) were successful in either deleting or reducing the scope and severity of a deficiency.

Of note, five facilities challenged immediate jeopardy (IJ) deficiencies through the IDR process in 2009, and as a result the OLC deleted or reduced in scope and severity, three IJ deficiencies. A fourth was reduced in scope and severity on appeal to CMS. Because an IJ results in high civil money penalties, a lower 5 star rating, a mandatory revisit, possible termination and often negative publicity, challenging an IJ is often an easy call. But with a success rate of 80 percent, challenging an IJ deficiency proved to be particularly important in 2009.

An Attorney Will Positively Impact Outcome

Facilities often wonder whether an attorney is necessary at an IDR. An attorney is not required, but statistics show that the experience and organization an attorney can provide is a factor in achieving ultimate success. In 2009, 20 deficiencies were considered in IDR hearings where an attorney represented the facility. Fourteen of the 20 deficiencies (70 percent) were either deleted or reduced in scope and severity. In fact, ten deficiencies were deleted and 4 deficiencies were reduced in scope. In comparison, in



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IDR hearings where a facility did not have legal representation, 7 out of 15 deficiencies (47 percent) were deleted or reduced in scope and severity.

Request Format

The OLC conducted a majority of IDRs in a face to face format, although three requests sought a “desk” or paper review. While this is an increase over prior years, those facilities requesting a desk review did not obtain the success that often results from a face to face meeting; in fact, in all desk reviews, deficiencies remained as originally cited.

Conclusion

Statistics show that in general, pursuing IDR for cited deficiencies is a beneficial exercise. Besides the obvious benefits outlined here, preparing an IDR request and experiencing an IDR hearing enables a facility to carefully analyze systems and deficiencies in a way

that preparing a plan of correction alone, cannot do. IDR also serves to prepare for appeals to CMS when civil money penalties are imposed or nurse aide training programs are lost, and prepares an administrator to respond to the Virginia Board of Long Term Care Administrators if substandard care is identified in a survey.

If your facility has any questions or concerns regarding the IDR process or needs assistance with an IDR proceeding, please contact Mary C. Malone at 804.967.9604 or by email at mmalone@hdjn.com, Jeannie A. Adams at 804.967.9604 or by email at jadams@hdjn.com, or Emily W.G. Towey at 804.967.9604 or by email at etowey@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm’s website at www.hdjn.com.

¹ Out of the five facilities with legal representation at an IDR in 2009, 4 facilities (80 percent) used HDJN services. HDJN attorneys achieved a 65 percent success rate in IDR hearings with 11 out of 17 deficiencies deleted or reduced in scope or severity.

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