



LEGAL ISSUES

By Janet K. Feldkamp, JD, RN, LNHA

Prepare for a Successful Informal Dispute Resolution

Editor's note: Although this article was written in 2016, the information and advice provided in it remain relevant to the current IDR processes.

Facilities frequently feel a sense of relief after the completion of a Medicare/Medicaid certification survey, even if they've received a moderate number of citations. However, since the implementation of Nursing Home Compare and the Five-Star Quality Rating System, skilled nursing facility leaders should carefully consider the impact of all levels of deficiencies for potential informal dispute resolution (IDR,) as even low-level deficiencies can have a negative impact on the facility's public reputation and their star rating and have potential implications for participation in managed care.

In 1998, the Department of Health and Human Services, through the Health Care Financing Administration — now known as the Centers for Medicare & Medicaid Services (CMS) — launched the Nursing Home Compare website to include national information of past performance for all Medicare and Medicaid certified nursing homes. Nursing Home Compare provides information directly to residents, families, and the public regarding nursing home quality.

In December 2008, CMS enhanced the Nursing Home Compare website to include a set of quality ratings for each listed skilled nursing facility. CMS's goal in adding the Five-Star Rating system to the website was to provide consumers an easy way to understand CMS's assessment of nursing home quality. CMS hoped to make a system to provide for simple distinctions between high and

low performing facilities, as judged by multiple factors measured by the government entities. In recent years, insurers and managed care organizations have frequently used the Five-Star Rating of SNFs to restrict or limit some SNFs from inclusion on provider panels, which can dramatically limit the potential referrals for facilities and reduce their financial viability.

To Dispute or Not To Dispute

The Five-Star system includes ratings related to staffing, quality measures and inspection results. These three data groups result in an overall star rating for the SNFs; the best rating is 5, and the lowest is 1. Fewer points results in a higher inspection rating for a SNF that is included in the overall Five-Star rating calculation. With successful IDRs, the facility can lower their point total, but there are some important considerations in the determination of whether or not to dispute a citation. Consider the following:

- Informal dispute resolution does not stop or delay enforcement of remedies.
- The survey process itself, or any lack of compliance with the survey protocol by the state agency, cannot be challenged.
- Some IDR processes do not allow challenge of deficiencies that do not result in imposition of remedies.
- The SNF cannot challenge any inconsistency in citation of deficiencies

by a survey team.

- Consider the documentation and definitive support that can be submitted to support that the SNF was in substantial compliance with the requirements.
- Disputing the entire set of deficiencies can lead to decreased credibility by the SNF with the state agency, so consider disputing the most severe or most impactful citations.
- Be creative and look for support of the SNF's compliance with requirements, such as use of professional articles or the Society clinical practice guidelines, to support that the SNF provided care in compliance with the current standard of care.
- Use the SNF medical director as a resource to explain or clarify medical issues that may be beyond the scope of a Health Facilities Evaluator Nurse (HFEN) surveyor's knowledge or licensure.
- Whether the IDR process is an oral presentation, a written submission of documentation, or a combination process, maintain a professional tone in the process while being assertive in support of the facility's assertion of compliance with the requirements.

Being successful in the IDR process can have a multi-year impact on the facility's future fines and sanctions, and it can culminate in a reduction in points added to the Inspection portion of the Five-Star Rating.

The IDR process can result in positive outcomes. For one nursing facility in Ohio, an IDR resulted in the elimination of 76 days of retrospective immediate jeopardy. The facility successfully argued for a 1 day past non-compliance immediate jeopardy on an elopement based upon the thorough

Table 2: Weights for Repeat Revisits

Repeat Visit	Weight
First	0
Second	50% of health inspection score
Third	70% of health inspection score
Fourth	85% of health inspection score

Note: The health inspection score includes points from deficiencies cited on the standard annual survey and complaint surveys during a given survey cycle.

Source: Centers for Medicare & Medicaid Services.

evaluation and implementation of a comprehensive plan to prevent future elopements. This win for the facility resulted in the elimination of costly proposed fines and other potential sanctions.

Other providers have seen positive outcomes when multiple actual harm deficiencies have been eliminated with IDRs and removed from their public profile, thus reducing the total number of assigned points for deficiencies.

If your facility is contemplating an IDR, the following are suggested action items:

- Know your state requirements and carefully review the notification letters for the facility's rights in the IDR process.
- Carefully select citations that are incomplete, inaccurate, or not correctly cited — especially those with high scope and severity.
- Collect appropriate and complete information for a dispute as soon after the survey is completed as possible. If you wait until the citations arrive, the facility may not have adequate time to develop the thorough dispute information and strategy.
- Tell the story about why the citation is not supported by the facts and/or the regulatory requirements.
- The facility knows their residents well and can provide information that, although not necessarily understood by the survey team, can have an impact on the citation.
- Obtain support from the appropriate supporting professionals, such as letters or affidavits from the attending physician, the medical director, the consulting pharmacist, or other professionals, as applicable.
- Know and use information regarding the current standard of care that can support the facility's assertion that the care rendered met the requirements and the current standard of care.

Table 1: Health Inspection Score: Weights for Different Types of Deficiencies

Severity	Scope		
	Isolated	Pattern	Widespread
Immediate jeopardy to resident health or safety	J 50 points* (75 points)	K 100 points* (125 points)	L 150 points* (175 points)
Actual harm that is not immediate jeopardy	G 20 points	H 35 points (40 points)	I 45 points (50 points)
No actual harm with potential for more than minimal harm that is not immediate jeopardy	D 4 points	E 8 points	F 16 points (20 points)
No actual harm with potential for minimal harm	A 0 point	B 0 points	C 0 points

Note: Numbers in parentheses indicate points given for deficiencies that are for substandard quality of care. Shaded cells denote deficiency scope/severity levels that constitute substandard quality of care if the requirement which is not met is one that falls under the following federal regulations: 42 CFR §483.13 resident behavior and nursing home practices; 42 CFR §483.15 quality of life; 42 CFR §483.25 quality of care.

*If the status of the deficiency is "past non-compliance" and the severity is "Immediate Jeopardy," points associated with a "G-level" deficiency (i.e., 20 points) are assigned.

Source: Centers for Medicare & Medicaid Services.

Many Benefits

Being successful in the IDR process can have a multi-year impact on the facility's future fines and sanctions and on the public presence of citations on Nursing Home Compare, and it can culminate in a reduction in points added to the Inspection portion of the Five-Star Rating. Consider all outcomes for the facility when citations are issued and

determine if the use of the IDR process can benefit your facility. Advocate for your facility if the citation is incorrect as unwarranted citations can have negative effects on the facility's ability to be included on provider panels. Be proactive and consider using the IDR process to your facility's benefit.

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This column is not to be substituted for legal advice.

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Nurse Practitioners Build Future Careers on New Foundation

Joanne Kaldy

The Foundation for Post-Acute and Long-Term Care Medicine (formerly the AMDA Foundation) Futures program has always been an amalgam of participants in various career stages from all across the country. A few years ago, the program began adding nurse practitioners to the mix. These NPs not only learned about PA/LTC medicine — much of it from the medical director's point of view — they also shared their perspectives with their physician colleagues.

"It really is important for nurse practitioners and physician assistants to have representation at such programs because we play a vital role in post-acute and long-term care, and we have a voice that should be valued," said Janyl N. Walker, MSN, a geriatric nurse practitioner in College Station, TX, who attended the Futures program at the Society's Annual Conference in Orlando.

A Welcoming Reception

The NPs participating in the Futures program were pleased by the reception they got from their physician colleagues. "They were very welcoming, especially the younger physicians in the Futures program. We were all sharing stories — we bonded as colleagues rather quickly," said Ms. Walker. "I attended a wide array of sessions, and I would walk up to panelists afterwards and ask questions." She said there were many clinical pearls and takeaways on topics including dementia care, anti-psychotic use, and communicating with staff and families, and "simple suggestions, such as not waking up a person who likes to sleep late at 6 am to take a pill or have breakfast. I really appreciated the practical little ideas to maximize the quality of life for our residents," Ms. Walker said.

Futures participant JoAnn Fisher, MSN, a regional care coordinator with Family Home Physicians in Melbourne, FL, isn't new to the Society or to PA/LTC, and felt right at home among the physicians. "I was on the workgroup that developed the transitions of care clinical practice guideline, and the physicians have always welcomed my input. It just makes sense that the Society is opening the Futures program to NPs and PAs. There was great give and take, and it

was great to interact with physicians and get viewpoints I didn't consider before."

Brette Winston, BSN, MSN, a Georgia-based nurse practitioner, admitted having trepidation about participating in a physician-dominated program. "I was worried people might think, 'Oh, she's not a physician.' But it wasn't like that at all. Everyone was welcoming and glad to see me. They introduced themselves with their first names, not as Doctor so and so. They appreciated my input and perspective."

Partnering Practitioners

It's a reflection of the changing face of health care that the NPs received a positive reception. Today's NPs and PAs are much more than "physician extenders," a term that is seldom used anymore. "I don't work for the physician — I work with him. We are a team," said Ms. Walker. "We are both on the same page and share the same goals of providing quality care. At the end of the day, none of us does it all by ourselves. The team approach is essential, especially for practitioners working in geriatrics."

Ms. Fisher agreed. "This program was a reaffirmation of the importance of the interdisciplinary team as a key part of the dynamics of providing quality care," she told *Caring*. "We need to continue to promote the IDT, and the Society does a good job of this."

Ms. Walker acknowledged the value of learning from physician colleagues. "Especially as a new practitioner, there is so much we can learn from physicians, especially those who have been practicing in the field for a while. Their knowledge is really helpful, especially for practitioners who come to post-acute and long-term care from other settings," she said. "How they provide care, how they interact with staff, how they document information — this is all so important, and there is no better place to get this than from the physicians themselves."

Of course, learning is a two-way street, and participating physicians can return to their clinical settings with valuable insight from their Futures colleagues. "We offer a unique perspective and bedside experience. We get to know patients. We laugh and talk with them. We understand the emotional, spiritual, physical mix that goes into their health and

well-being," said Ms. Walker. "We know what questions to ask and how to find out what is happening with someone."

Meeting Mentors

If PA/LTC is to overcome its looming practitioner shortage, said Ms. Walker, there must be patient, enthusiastic mentors to guide young and mid-career practitioners and encourage careers in this field. "We need people who are willing to be honest. As new practitioners, we often want to do every-



Nurse practitioners and physician assistants play a vital role in post-acute and long-term care.

thing, and that isn't always practical. We need someone who can give us a realistic, honest perspective about what we can accomplish and what to expect." Mentorship should be ongoing, she said. "We need mentors who will work with us as we begin our careers and grow as professionals."

Medicine is a challenging field, Ms. Winston said, and it's easy to get disheartened. "In school, you are idealistic and think you will change the world. Mentors that help you set realistic expectations while encouraging and supporting you makes the whole experience more meaningful. Everyone needs someone to share concerns and experiences with, someone we can turn to with questions and for guidance."

Next Step

The Society has reached out to NPs and PAs by including them as voting members, and Ms. Fisher said she appreciated having a voice in the Society. She wants to take the next step with her PA/LTC training; for her, that would be taking the Core Curriculum on Medical Direction. She said that NPs and PAs could benefit from the Core program, as they often take on many of the same responsibilities as

physicians working in PA/LTC. It also would help them better understand the medical director's role. (For more information, see www.paltc.org/core-curriculum-medical-direction-post-acute-and-long-term-care.)

Additionally, NPs and PAs should look into the Competencies Curriculum for Post-Acute and Long-Term Care Medicine. The course introduces management requirements for PA/LTC to geriatric fellows in training who are considering the inclusion of medical direction in their practices. The competencies curriculum also is appropriate for nurse practitioners practicing in the PA/LTC setting as well. (For more information, see www.paltc.org/competencies-curriculum-post-acute-and-long-term-care-medicine.)

Shaping Careers

Getting involved in the Futures program and the Society Annual Conference can be career-defining. Ms. Winston said her experiences in Orlando made a powerful impression on her and will shape the direction her career might take. "The way palliative care was presented in some of the sessions really broadened my perspective about the importance of helping people feel good no matter where they are and what their prognosis is. I left thinking that I would like to be a palliative nurse practitioner — that's how powerful the presentation was."

The future of young and mid-career practitioners doesn't start or end with the Futures program. Nonetheless, it has proven to be a significant opportunity for them to envision their role in PA/LTC, imagine what focus their career might take, and connect with colleagues and mentors who will accompany them on their journey. It's no wonder that the Futures program has become so popular — first with physicians and now with NPs. This article was previously printed in the September 2016 issue of *Caring for the Ages*. DOI: 10.1016/j.carage.2016.08.009

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