



THE SURVEY & ENFORCEMENT SESSION:

WHAT HAS CHANGED?

OHCA Annual Convention/April 29, 2015

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**THE BIG
PICTURE**



The Impact of Survey In 2015

- ☛ Reputation in Community/Influence on Potential Clientele
 - Ohio HB 209: Restriction on Use of Surveys in Advertising
- ☛ Staff Morale
- ☛ Possibility of Enforcement Actions
 - CMP; Loss of NA Training; Denial of Payment; Termination
- ☛ Potential Use in Litigation Context
 - Frequently Genesis for -- Criminal; Civil -- Personal Injury; "Worthless Services" Claims
 - F309, F314 & F323 Issues Lead to Approx. 75% of Personal Injury Cases
 - Ohio HB 209: 1 year Statute of Limitations
 - Link Between Attorneys General & Plaintiff's Attorneys in Some States
- ☛ Potential Impact on Reimbursement/Insurance Rates
- ☛ Facility Value in Potential Transaction (Survey History is Assigned)



The Importance of Survey – 5 Star Program Changes

- Every Point Counts!
 - 5 Star Changes Effective 2/20/2015 (S&C: 15-26-NH)
 - No Change to Survey Calculation, But Approx. 30% of Ohio SNFs lost star(s)
 - 3 New QMs: Rehospitalizations; Discharge to Community; Antipsychotics (Short Stay & Long Stay)
 - CMS Goal Regarding Antipsychotics: 30% Reduction
 - Survey Calculation:
 - Includes 3 Years (36 Months) of Surveys
 - Level 1: 0 Points; Level 2: 4 – 16 Points; Level 3: 20 – 45 Points; Level 4: 50 – 175 Points (Significantly Reduced if Past Noncompliance)
 - Re-Visit Non-Compliance and SQC Scored Higher
 - Utilized Heavily in Special Focus Facility Selection
 - Ohio Law Changes (Ohio R.C. § 5165.771) – Potential for Faster Termination of Medicaid Provider Agreement



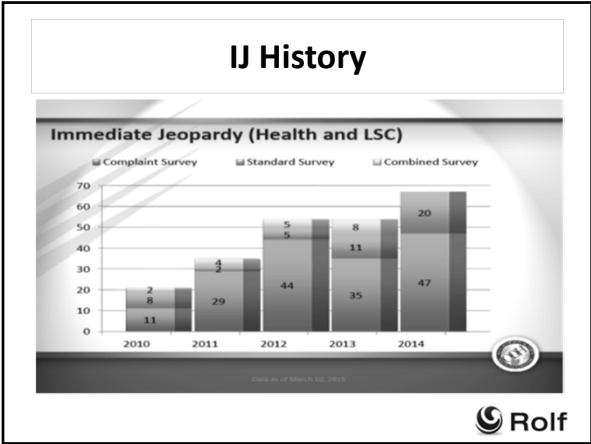
Survey Approach

- Be Proactive, Not Reactive. Avoid Non-Compliance Period.
 - Invest in: Establishing Standardized Care Protocols; Staff Training/Testing; Customer Service; QAPI; Technology (EMR, Quality Metrics)
- Complete, Prompt Internal Plan of Correction for any Potentially Citable Event and Document Your Monitoring Efforts
- Be Ready During & Throughout Survey to Communicate with Surveyors and Make Your IDR Arguments with Them
- Use Disclaimer/Positive Language on Plans of Correction Where Possible
- Carefully Evaluate CMS 2567L & Use Survey Appeal Process, Where Possible, to Reduce “Points” as Well as to Avoid Penalties
 - Argue to Delete Tags, and/or to Reduce Scope/Severity
 - IDR or I-IDR
 - Use of Administrative Appeal Process



JEOPARDIES





IJs in 2014

Eloperments	14
Abuse/Neglect	7
Necessary Care & Services - (CPR)	6
Falls	4
Accident hazards/Supervision	4
Fail to report abuse	4
Fail to develop P&P for Abuse	4
Pressure Ulcers	3
Unsupervised eating/choking	3
Necessary Care & Services - Other	2
Restraints	2
Smoking/Fire	2
Medication Errors	1
Suicide	1
Infection Control	1
K tag	1

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- ### Immediate Jeopardy Issues
- ☞ Continuing Concerns about Timing of IJ Declaration by ODH
 - ☞ Increase in Sexually-Based IJs
 - May Include ANY Sexual Contact Involving a Resident
 - Often Cited in Abuse Category, Resulting in Multiple IJs
 - ☞ New Topics: Infection Control & Nutrition
 - ☞ Length of IJ Should Be Argued at Survey
- Rolf**

PAST NON-COMPLIANCE



The Renewed Importance of Past Non-Compliance

- Significance:
 - No Plan of Correction Required
 - Potentially No Re-Visit Required
 - Stops “Bleeding” from CMP Perspective
 - Compare: 50 – 175 Points for Ongoing IJ vs. 20 Points for Past Non-Compliance IJ at Any Level (“J”, “K” or “L”)
- Substantial Compliance Differs from Immediate Jeopardy Abatement!



Elements of Past-Noncompliance

- What is Required:
 - Non-Compliance at Time of Event
 - Non-Compliance Occurred Between Surveys
 - Facility Corrected Non-Compliance and Is In Substantial Compliance at Time of Survey
- Issues to Consider
 - Time Elapsed Between Correction and Survey
 - Issue of Continued/Ongoing Monitoring



ODH UPDATE & STATISTICS

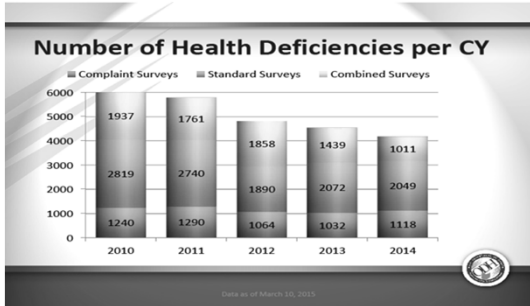


ODH Developments

- Richard Hodges New Director of ODH
- Dave Holston New Division Chief (Office of Health Assurance and Licensing)
- Lea Blair New Acting Head of Surveyors (Bureau of Long-Term Care)
- Brian Dean Interim Bureau of Regulatory Enforcement Chief
- Russell Cunningham - Life Safety Code Contact



Number of Ohio Health Deficiencies (Last 5 Years)



Top 10 2014 Ohio Health Deficiencies

Top Ten 2014 Health Deficiencies - Nursing Homes


- F323 - Accidents & supervision (289)
- F309 - Quality of care (257)
- F441 - Infection control (239)
- F371 - Sanitary conditions, food prep & service (191)
- F329 - Unnecessary drugs (183)
- F225 - Investigate/report allegations (137)
- F226 - Develop/implement abuse & neglect policies (129)
- F157 - Notify of changes (Injury/decline/room) (122)
- F279 - Develop comprehensive care plans (120)
- F314 - Pressure Sores (108)



Top 10 2014 Ohio LSC Deficiencies


Top Ten 2014 Life Safety Code Deficiencies - Nursing Homes

- K062 - Automatic sprinkler systems are operable (252)
- K038 - Exits readily accessible at all times (203)
- K018 - Corridor doors (194)
- K029 - Hazardous areas (188)
- K144 - Inspect, test and maintain generators (186)
- K050 - Fire drills (175)
- K052 - Fire alarm system (170)
- K147 - Management of electrical equipment (166)
- K056 - Automatic sprinkler exist and installed properly (123)
- K025 - Smoke barriers (118)



Current State of Ohio's Plan of Correction Review Process

- Exclusive Use of EIDC Electronic System
- Ohio law still requires Root Cause Analysis/Discussion for Harm & U, But Level of Scrutiny Has Been Relaxed
- Use of Individual Disclaimers & Argumentative Language
- Specific Details of POC Measures Required (i.e., Who, What and When)
- Must attach new Policies if Referenced
- More Desk Reviews Occurring
 - If you have been selected or are a candidate for desk review, offer physical evidence of substantial compliance
 - Timing Issues



Initial Survey Issues

- New ODH Survey Readiness Form
- Expedited Survey Rule (OAC 3701-17-03.1 & 3701-17-57)
 - Initial Licensure Survey Only
 - \$2,250 Fee (In Addition to Application Fee)
 - Survey Completed Within 10 Business Days
- No Rule Formalized for Plan Review
- Potential Enrollment Hold-Ups (Medicare 855A)



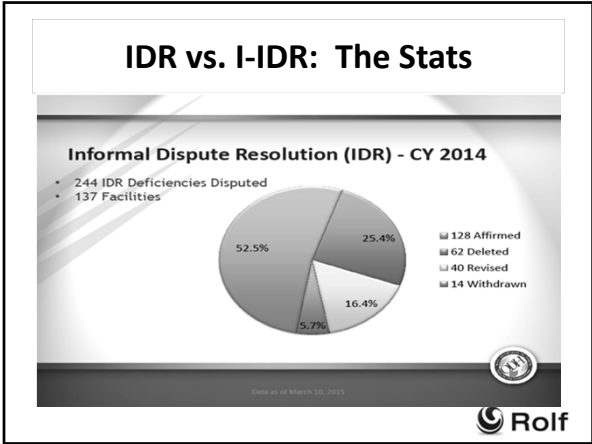
SURVEY APPEALS

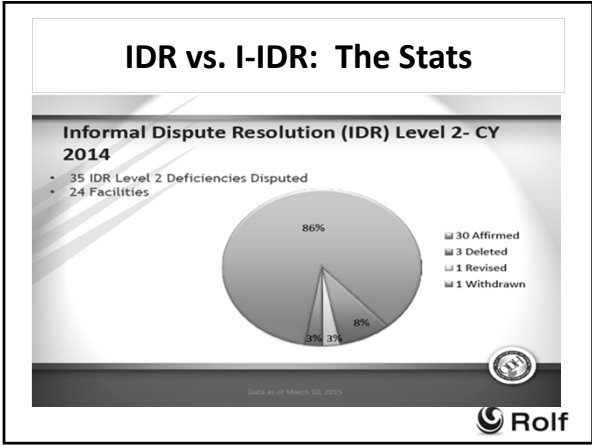


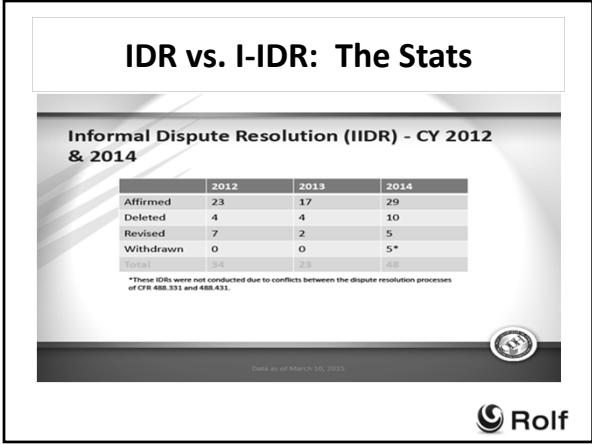
IDR vs. I-IDR: The Differences

- Generally, Must Select One Process or the Other From the Beginning
 - Can Not Request I-IDR if IDR is Pending (Pending Until Written Determination)
- IDR: Any Tag vs. I-IDR: Only if CMP imposed.
 - CMP Could Be Rescinded at Time of Imposition
- IDR: ODH (Bureau of Long-Term Care) vs. I-IDR: MPRO/ODH (Bureau of Regulatory Enforcement)/CMS
- IDR: Has 2nd Level of Review for Fee vs. I-IDR: Does Not
- Scope of Review?









NEW OHIO LAWS & RULES



Ohio – Sex Offender Law

Sex Offender Law (Effective 9/15/14) & ODH Guidelines
(Published 1/26/15)

- Prior to Admission, Search Attorney General's Sex Offender Registry (Surveyors Requesting Evidence of Compliance)
- If Admit:
 - Have Policies and Procedures to Protect Resident & Incorporate Into Resident's Plan of Care;
 - Notify Other Residents & Provide Copy of Policy (**Do Not** Publish Summary of Plan of Care – as stated in law); and
 - Assist Resident in Updating Listed Address under R.C. § 2950.05



Ohio Rule Changes

OAC § 3701-17-11 TB Testing

- Effective 12/8/14
- Removal of Prescriptive Requirements, Instead Follow CDC Guidance
- Still Requires Testing at Admission (Skin or Blood Assay) unless Resident Has Prior TB History
- Reduces Annual Screening Requirements
- Requires Annual Assessment to Determine Facility Level of Risk (No Annual Testing if Low Risk)
- ODH Clarification Regarding Employee Testing



Ohio Rule Changes (cont.)

- ☞ OAC § 3701-17-10 Advance Care Planning
 - Means: Opportunity to Discuss Goals that May be Met Through Care Provided
 - Effective 7/1/15 for Each Resident/Sponsor on Admission & Each Existing Resident "As Soon As Practicable"
 - Quarterly Thereafter
- ☞ OAC § 3701-17-22 Overhead Paging
 - Effective 7/1/15 – Overhead Paging only Allowed for Urgent Public Safety or Clinical Operations Issues
- ☞ OAC § 3701-17-06 (Proposed): Participate in Quality Improvement Project Every 2 Years
- ☞ OAC § 3701-17-21 (Proposed): Dining & Activity Space Clarification for Shared Space (w/ Adult Care/RCF)



CMS RULES AND PROGRAM LETTERS



LSC Update

- ☞ CMS Proposed Rule (5/9/14) – To Adopt 2012 Edition of LSC
 - How will potential new Code affect Existing Facilities?
 - How will potential new Code affect Facilities In Construction?
 - 2000 Edition still in place, but possibility of Categorical Waiver for some issues (S&C-13-58-LSC, 8/30/13; Power Strips: 14-46-LSC, 9/26/14)



Select CMS Program Letters

- ☛ SOM Appendix PP Changes
 - [14-25-NH \(5/16/14\)](#): F441 Infection Control (Single-Use Devices)
 - [14-34-NH \(5/20/14\)](#): F371 Sanitary Conditions (Pasteurized Eggs)
 - [14-37-NH \(7/3/14\)](#): Appendix PP updated to incorporate S&C Memos from October 2003 – May 2014
 - F155 CPR Guidelines ([14-01-NH](#)), eff. 1/23/15
 - When to Provide, and Training and Policy Requirements
 - Number of Required Personnel Discretionary



Select CMS Program Letters (cont.)

- ☛ [14-26-Hospitals \(5/9/14\)](#): New LTCH Moratorium
- ☛ [14-28-NH \(5/9/14\)](#) & [14-30-NH \(5/16/14\)](#): Use of CMPs
- ☛ [14-42-NH \(8/22/14\)](#): Learning Tool Respect for LGBT Older Adults
- ☛ [15-06-NH \(10/31/14\)](#) & [15-25-NH \(2/13/15\)](#): Nationwide Expansion of MDS-Focused Surveys
 - Select List of SNFs Subject to Initially
- ☛ [15-13-ALL \(12/12/14\)](#): Clarification of Terms Impacting Spousal Relationship



Select CMS Program Letters (cont.)

- ☛ [15-16-NH \(12/19/14\)](#): CMP Analytic Tool
 - Factors for CMP include Survey History, Repeated Deficiencies, Number of Deficiencies
 - CMS May Change at Time of Imposition
- ☛ [15-31-NH \(3/27/15\)](#): Report on Focused Dementia Care Survey
 - Emphasis on Antipsychotic Use?
 - Training for Staff
- ☛ On the Horizon:
 - New Abuse and Neglect S&C Memo
 - New F525 SOM Guidance (SNF & Hospice Contracts) & New Hospice S&C Memo



QUESTIONS

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