

# Emergency Preparedness and Operations in the Long Term Care Facility

**Presented by:**

**Steve Wilder, BA, CHSP, STS**  
**Sorensen, Wilder & Associates**  
**Bradley, IL**

# Steve Wilder, President and COO

- 15 years hospital risk manager in Chicago suburbs
- 5 years corporate risk manager over long-term care division of same healthcare system
- Founding member and past president of Illinois Society for Healthcare Risk Management
- Started Sorensen, Wilder & Associates (SWA) in 2001 along with business partner Chris Sorensen.
- Today serving over 400 acute care and long-term care facilities in 49 states
- 35 years in fire service; retired fire chief in Chicago suburbs
- 25 years adjunct faculty at the state fire academy at University of Illinois



# The Emergency Operations Plan (EOP)

- Required by CMS for Medicare-approved facilities
- Industry “best practice” for all facilities regardless of payer source(s)
- Based on “All Hazards” approach
  - Each facility or location must conduct a Hazard Vulnerability Assessment (HVA)
  - The HVA must be “all hazards/all perils”
  - An EOP must be designed to meet the hazards/perils identified in the HVA
  - Must address internal preparedness as well as external preparedness
- NOTE: Local police and fire agencies are charged with protecting the entire community...not your facility
  - Your EOP must be developed with “self reliance” in mind

# The Emergency Operations Plan (EOP)

- CMS Mandated Contents for EOP:
  - Hazard Vulnerability Assessment for each location
  - Policies and Procedures
    - Specific to facility population and levels of service
    - Must address collaboration with public safety agencies
    - NIMS (National Incident Management System) based
  - Must address obvious threats:
    - Midwest = Tornado/Severe Weather
    - Coastal = Hurricane/Tropical Depression
    - North/Northeast = Winter Storm
    - Desert = Excessive Heat
    - Fault Zones = Earthquake
    - Island/Coastlines = Tsunami
    - Flood Zones = Flooding

# The Emergency Operations Plan (EOP)

- Must address threats specific to the location
  - Security issues
  - Neighborhood issues (conflagration threats, hazardous materials storage, etc.)
  - Local transportation threats (rail, interstates, etc.)
  - Proximity and direction to hazards
  - Internal threats

# Anything Can Happen..... Anytime.....Anywhere.....

- CT School Shooting- December 14, 2013



# Fed-Ex Shooting- Georgia



# June 25, 2011..... Car Crashes into Nursing Home





# Joplin, MO - 2011



# Flooding...



# West, Texas- April 2013



# West, Texas- April 2013



# FIRE!!!!



# ACROSS THE STREET???



# SNF METH LAB FIRE



Room at Park Haven Nursing Home where a fire on March 4, 2012 caused by a meth lab in the room killed one person and injured six others

# Always Remember...



## Beyond Your Control...



# Failure to Respond.....

*(why some do so well, and some do so poorly)*

- **Subconscious Need for Normalcy**
- **Overwhelming Sense of Denial**
- **Optimistic Bias**
- **Unable to Comprehend Scope of Event**
- **Lack of Safety Culture**
- **No Planning / Preparedness**
- **Poor Training**
- **No Practice / Rehearsal**

# Challenges.....

**Emergency Preparedness!**

**Do we have a plan for EVERYTHING?**



# Severe Weather.....



**How many of  
you have a  
severe weather  
plan?**



How many of you  
have a plan for a  
meteorite  
crashing  
through the roof?



...or a  
vehicle  
going  
sideways  
into the  
building?

# We learn from every incident...

Disaster planning and exercises are the key to survival, not the written plan

Phone service will go down – text may not

96 hours of supplies are not enough

EHRs helpful in long run – in short term have paper kits

The desperate public will show up

It could be hours to days before help arrives

**You and your staff will be profoundly impacted**

# ALL HAZARDS PLANNING



# **“All Hazards” Emergency Management**

- **Addresses your company’s unique operation and support needs**
- **Focuses on your High-Risk Threats**
- **Reflects Local Emergency Planning Considerations**
- **Includes**
  - **System for Command**
  - **Communications**
  - **Resources and Assets and Supply Needs**
  - **Safety and Security**
  - **Staff Responsibilities**



# Tabletop Exercises



# Disaster Drills (Functional)...



# Full Scale Drills (Community)...



# HAZARD VULNERABILITY ASSESSMENT

## HVA

- **WHAT potential threats and perils may impact the community and your facility?**

# HVA FACTORS

## EVENT TYPE (Specific)

- **Probability**
  - Likelihood of Occurrence
- **Severity = Impact**
  - Human
  - Property
  - Business
- **Mitigation = Preparedness + Response**
  - Preparedness
  - Internal Response
  - External Response

# HVA TOOL

## HAZARD AND VULNERABILITY ASSESSMENT TOOL TECHNOLOGIC EVENTS

EVENT	PROBABILITY <i>Likelihood this will occur</i>	SEVERITY = (MAGNITUDE - MITIGATION)			PREPARED-NESS <i>Preplanning</i>	INTERNAL RESPONSE <i>Time, effectiveness, resources</i>	EXTERNAL RESPONSE <i>Community/ Mutual Aid staff and supplies</i>	RISK <i>Relative threat*</i>
		HUMAN IMPACT <i>Possibility of death or injury</i>	PROPERTY IMPACT <i>Physical losses and damages</i>	BUSINESS IMPACT <i>Interruption of services</i>				
SCORE	0 = N/A Low Moderate High	1 = 1 = Low 2 = Moderate 3 = High	0 = N/A 1 = Low 2 = Moderate 3 = High	0 = N/A 1 = Low 2 = Moderate 3 = High	0 = N/A 1 = High 2 = Moderate 3 = Low or none	0 = N/A 1 = High 2 = Moderate 3 = Low or none	0 = N/A 1 = High 2 = Moderate 3 = Low or none	0 - 100%
Electrical Failure								0%
Generator Failure								0%
Fuel Shortage								0%
Natural Gas Failure								0%
Water Failure								0%
Sewer Failure								0%
Steam Failure								0%
Fire Alarm Failure								0%
Communications Failure								0%
Medical Gas Failure								0%
Medical Vacuum Failure								0%
HVAC Failure								0%
Information Systems Failure								0%
Fire, Internal								0%
Flood, Internal								0%
Hazmat Exposure, Internal								0%
Supply Shortage								0%
Structural Damage								0%
<b>AVERAGE SCORE</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0%</b>

\*Threat increases with percentage.

**RISK = PROBABILITY \* SEVERITY**

0.00      0.00      0.00

# Collaboration with Outside Agencies

The last thing you want to do is meet for the first time in a disaster—build relationships now

Rescue and evacuation require outside resources

Contact list for key response partners:

- OES/EMS/Fire/Law Enforcement

- State licensing agency

- Transportation

- Vendors

- Trade Association/Red Cross

- Utility Companies

# PERSONAL OPINION!!!

**The COVID world will  
increase our vulnerabilities  
as restrictions are lifted**



# Predictions for Post-COVID World

## **HOT ISSUES THAT WILL START TO DEVELOP:**

- **Workplace Violence**
- **Armed Intruders**
- **Unique Evacuations**
- **OSHA Complaints/Visits/Citations**
- **Not up to date on drills**
- **Not using NHICS (Nursing Home Incident Command System) or ALICS (Assisted Living Incident Command System) resulting in poor event management and poor recovery**

# Workplace Violence

- **Family members are stressed over not being able to visit loved ones in the facilities**
- **Many facilities are reporting family members threatening violence against staff**
- **Staff need to be trained on how to recognize and defuse aggression before it turns violent**

# Armed Intruders

Several facilities have had family members (and staff members) who are so stressed out they have threatened to bring firearms into the facility and “shoot the place up...”

It is already happening in other industries...

# ARE WE RETURNING TO “NORMAL”?

8/10/20	Homewood, IL	Resident charged in shooting death of another resident
7/5/20	Greenville, SC	2 dead, 8 injured in nightclub shooting
7/3/20	Birmingham, AL	1 dead, 3 injured in shooting at shopping mall
6/25/20	Akron, AL	7 shot in park
6/21/20	Minneapolis, MN	1 dead, 10 injured in shooting at a restaurant

**Will there be a spike in workplace shootings because of COVID-related stress...exacerbated by the Delta variant???**

# Unique Evacuations

- Evacuating during a pandemic is uniquely different than “normal” evacuations
- Your current evacuation plan likely doesn’t contain the steps necessary to safely evacuate during pandemic conditions:
  - Social distancing on transportation vehicles
  - Decontaminating vehicles after each trip
  - Well checks for drivers (if leased vehicles)
  - Site-specific challenges (special needs of residents)

# DRILLS

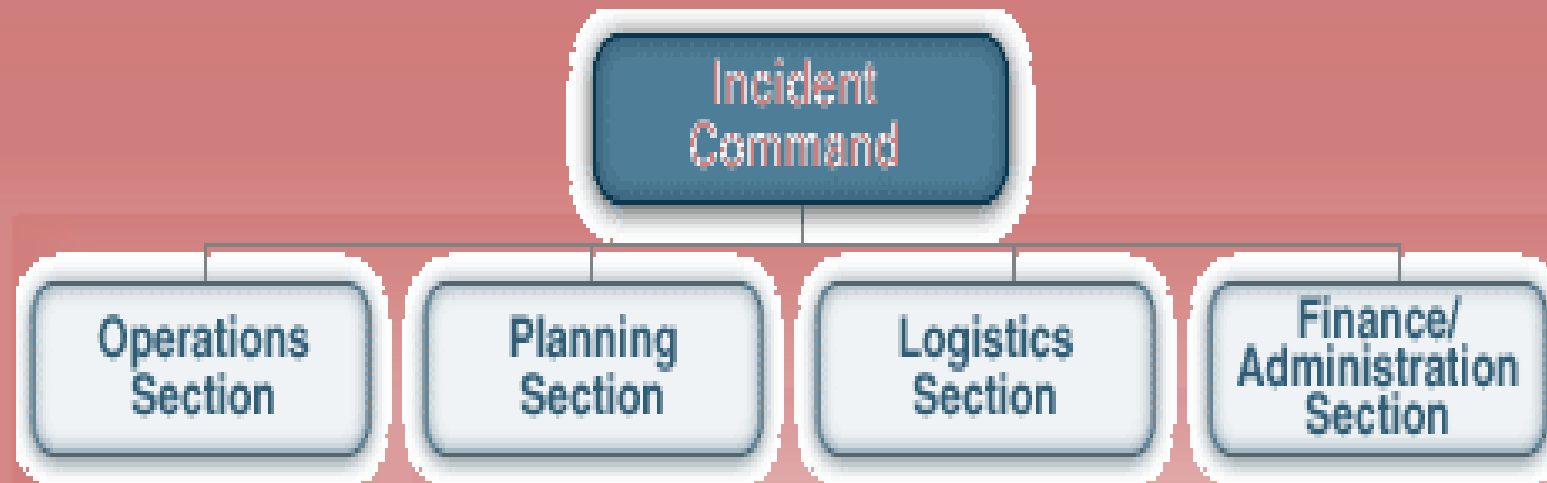
- YES...FIRE DRILLS ARE STILL REQUIRED!!!
  - Standard of one per shift per quarter has not changed
  - Standard does NOT require drills to be one per shift each month
  - You may do all three shifts on the last day of the quarter and still meet the requirement
  - DOCUMENT DOCUMENT DOCUMENT!!! Surveyors are looking aggressively at this!

# Not Using NHICS or ALICS?

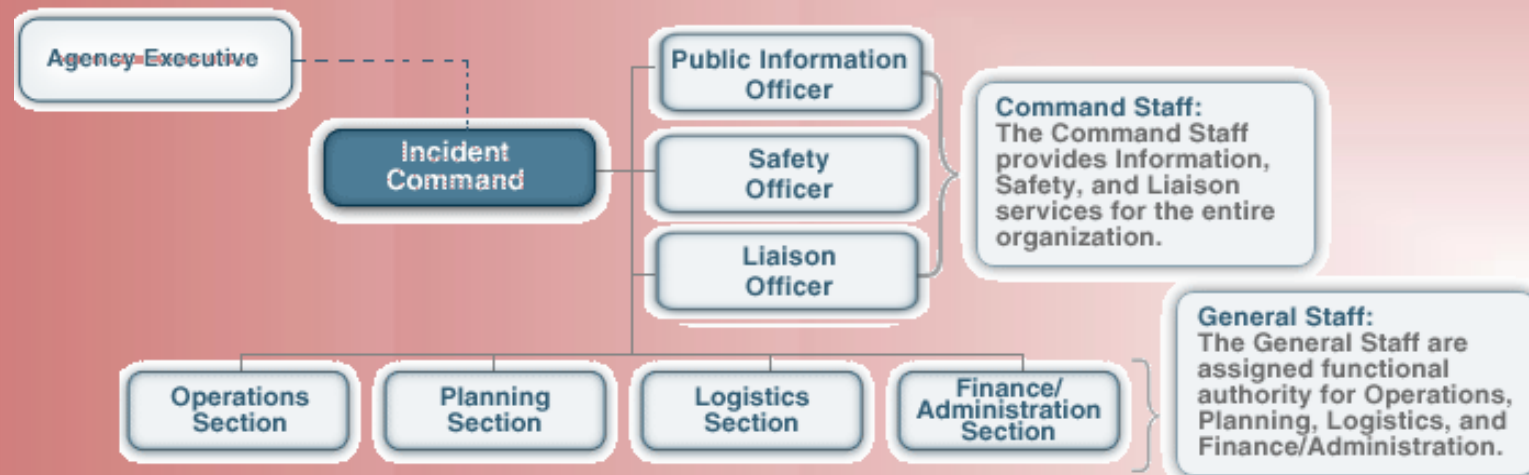
- CMS requires interoperability with community agencies in your EOP
- Federal law requires public safety agencies and government agencies to use ICS in all operations
- NHICS (Nursing Home Incident Command System) and ALICS (Assisted Living Incident Command System) is a NIMS (National Incident Management Standard) programs and meet CMS requirements
- Management and staff can get free training at <http://training.fema.gov/IS/NIMS.asp>
- Suggest all management and staff take:
  - ICS-100: Introduction to the Incident Command System
  - IS-700: National Incident Management System, An Introduction
  - ICS-100 HCB: Intro to ICS for Healthcare

# Emergency Response

## Basic Incident Command Structure



## Expanded Incident Command Structure





# Operationalizing ICS...



# Integrating ICS into your Ops...

# CULTURE

**The ULTIMATE**

**Goal:**

**Interoperability**

# Resources for ICS

Welcome to **IS-700.A**

# National Incident Management System (NIMS), An Introduction



<http://training.fema.gov/IS/NIMS.asp>

Welcome to **IS-100.b**  
**Introduction to the Incident  
Command System (ICS 100)**



# Upon Completion of FEMA classes

## Emergency Management Institute



# FEMA


This Certificate of Achievement is to acknowledge that

**TAYLOR D DEWEY**

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of the independent study course:

**IS-00100**  
**Introduction to the Incident Command System,**  
**(ICS 100)**

*Issued this 6th Day of July, 2008*

  
Cortez Lawrence, PhD  
Superintendent  
Emergency Management Institute

0.3 CEU

  
EoAM  
ESSENTIALS OF AGGRESSION MANAGEMENT

# **4 STEPS IN THE PLANNING PROCESS**

## **STEP 1**

**Establish a Planning Team**

## **STEP 2**

**Analyze Capabilities and  
Hazards**

## **STEP 3**

**Develop the Plan**

## **STEP 4**

**Implement the Plan**



# Recovery and Restoration..the Forgotten Elements of Emergency Preparedness Planning



# Recovery



**Dilbert's plan of yelling "Help Help" does not constitute a Recovery Plan!**

# Recovery

## Recovery

- Identify all the resources/agencies you might need assistance from well in advance of an event
- Develop relationships/agreements with these agencies
- When event occurs, initiate your Emergency Operations Plan
- Remember: Recovery takes place after the event is over
- The goal is to return to normal or to a safer state of affairs as quickly as possible
- May take days, weeks, months, or years
- Key is evaluation of event and a recovery plan in place BEFORE the event occurs

# Something to Consider...

# SECURITY

**Even if this is a good depiction of your maintenance director, this does NOT represent a good site security plan.....**



# Achieving a Higher Level of Disaster Preparedness

- Re-affirm commitment
- Demonstrate leadership
- Don't Wait for Crisis to be the "Driver"
- Incorporate a Hazard Vulnerability Assessment (HVA) into the process
- Embrace and utilize "All Hazards" approach
- Robustly collaborate with others
- Incorporate Incident Command System (ICS)
- **Train, train, train**
- **Drill, drill, drill**

**The worst time to develop a plan is  
when you NEED a plan....**

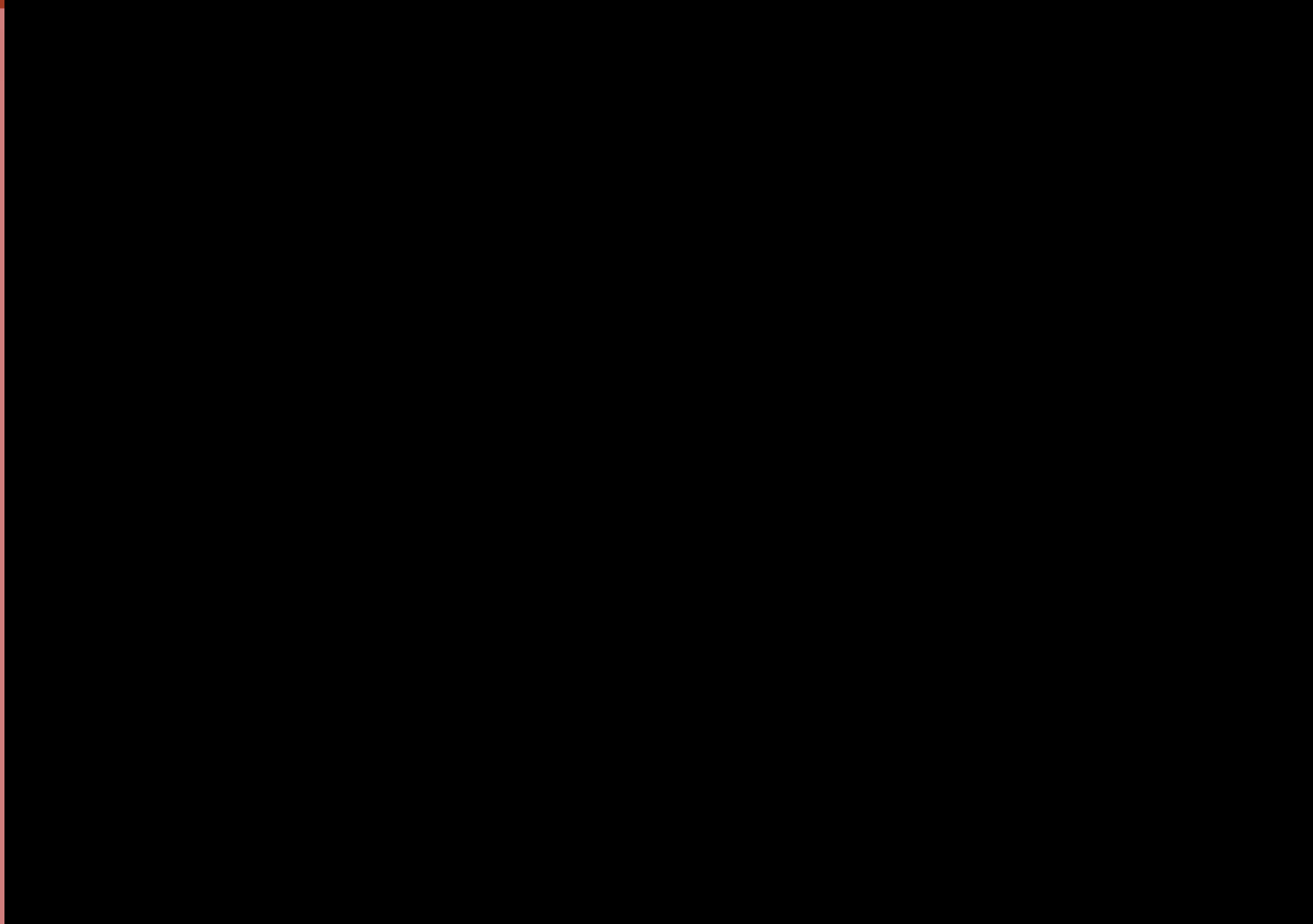


# Summary

- You can't always control what comes their way
- Understand that **“It can happen to you”**
- Facilities can control levels of preparedness, response, and recovery capabilities
- Understand human nature = **Culture of Preparedness**
- Know the hazards and perils you face = **HVA**
- Command and control programs established = **ALICS / NHICS Compliant Programs**
- Plan to recover = **Limited Service Disruption**
- Know the regulations and trends = **Compliance**
- Robust disaster management = **Reduced Risk Exposure**



FINAL THOUGHT – IT CAN HAPPEN ANY GIVEN DAY!



# OSHA Is Hot on our Tail!



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# Part 1



## Preparing for an OSHA Inspection



# Preparing for an OSHA Inspection (overview)

- Senior living communities can be inspected by OSHA for many reasons
- OSHA's current inspection priorities are:
  1. Imminent Danger situations
  2. Fatality and serious injury reports
  3. Employee complaints and referrals
  4. Targeted or Programmed inspection programs (i.e., SST, NEP, etc.)
  5. Randomly generated and planned inspections
  6. Follow-up inspections
- In most situations, OSHA inspections occur without any prior notice
- Preparing for an OSHA inspection is not easy and takes commitment at the corporate and community level
- OSHA inspectors will ask for your OSHA recordkeeping forms, written safety and health programs, training records, and they will also want to interview your employees during the inspection process
- Currently, OSHA is still conducting virtual inspections, but may start to conduct onsite inspections, based on lower COVID-19 infection rates; you should be prepared for both types of inspection

# Preparing for an OSHA Inspection (records review)

- All inspections begin with an opening conference, where the inspector will explain why they are inspecting your community; make sure you know why they are inspecting and document it
- In the opening conference, the inspector will want to review your OSHA recordkeeping forms for the current year and 5 previous years
  - ✓ Make sure the forms are up to date within 7 calendar days
  - ✓ Make sure these forms are accurate!
  - ✓ You will only have 4 hours to produce these records
- The inspector may also want to see your written OSHA safety compliance and training documentation, as follows:
  - ✓ COVID-19 Hazard Controls / Policies (use OSHA's COVID-19 "Protecting Workers" Guidance issues on 1/29/21 to inventory & document control measures)
  - ✓ Hazard Communication Policy
  - ✓ Bloodborne Pathogens Exposure Control Plan (site specific)
  - ✓ Respiratory Protection Plan (needed for N95 respiratory protection)
  - ✓ Personal Protective Equipment Certification of Hazard Assessment
  - ✓ Lockout / Tagout Program
  - ✓ Fall Protection Program (needed for rooftop maintenance exposures)
  - ✓ Slip, trip and fall prevention program (Walking/Working Surfaces standard)
- Other areas of focus may include Safe Resident Handling (No Lift Policy) and Workplace Violence Prevention (Combative Resident, Active Shooter, etc.)

# Preparing for an OSHA Inspection (readiness)

- **Safety Manual** - Your communities should have an OSHA compliant safety manual that addresses all the OSHA standards that apply to senior living communities mentioned on the previous slide
- **COVID-19 Hazard Controls** – You may want to create a binder of all the hazard controls you put in place to protect your employees, using OSHA’s guidelines as a table of contents / outline for content.
- **Safety Committees** - All communities should have an active safety committee to help implement the requirements of the compliance programs in that safety manual
- **Safety Training** - A monthly safety training schedule is recommended to meet OSHA’s training requirements, with a combination of LMS training segments and live training and return demonstration, when needed (i.e., BBP training should be given by live instructor)
- **Corporate/Home Office Assistance** – The corporate office should provide communities with compliance assistance and information and training on what to do during an OSHA inspection.
- **Safety Professionals** – If you do not currently have a comprehensive safety program and/or safety manual, you may need to engage outside assistance from a reputable safety and health professional (i.e., Insurance Risk Control, Private Safety Consulting Firms, Certified Safety Professionals, etc.)

# Preparing for an OSHA Inspection (walkthrough)

- In addition to preparing your communities for a review of your written compliance policies, training documentation, and OSHA recordkeeping, you should also prepare your communities to identify common physical hazards/violations during the walkthrough inspection.
- Housekeeping is very important!
- Back of house areas in the community should be clean and well organized.
- The following slides provide you with information on how to avoid common OSHA violations found during walkthrough inspections of senior living communities.

# Preparing for an OSHA Inspection



## Flat Roof Fall Protection

- The roof hatch, shown to the left, does not have anything to provide balance assistance at the top of the ladder; roof hatch ladders should have telescoping grab bars or other means to provide balance support
- The flat roof pictured to the right, requires fall protection to be worn when maintenance employees service rooftop vents
- Fall protection must be worn when working within 15 feet from an unprotected roof edge
- Fall protection vendor can help determine the best option for fall protection or travel restraint systems
- Maintenance staff should never be allowed to access sloped roofs!



# Preparing for an OSHA Inspection



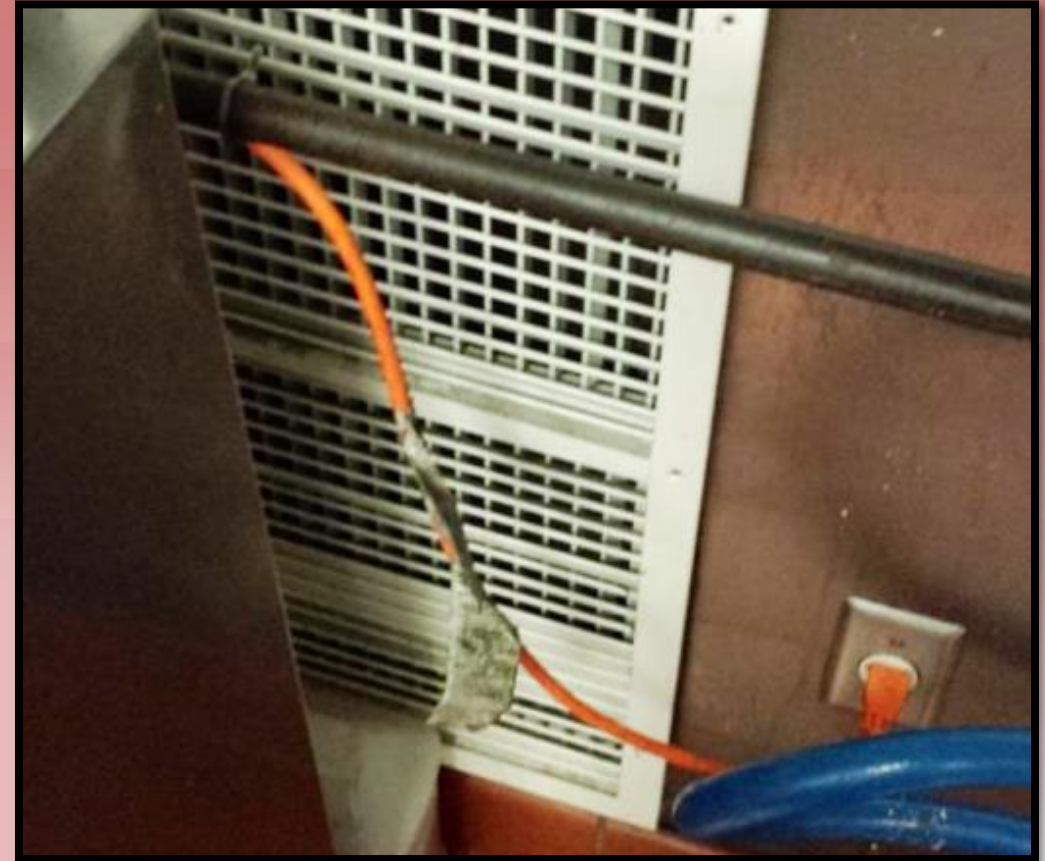
## Electrical Cords & Ground Pins

- The vacuum cleaner shown to the left has a missing ground pin on its cord; the plug to this vacuum should be replaced
- The damaged yellow extension cord pictured to the right should be removed from service and thrown away
- All electric powered plug-in equipment and extension cords should be in good condition without cuts or missing ground pins

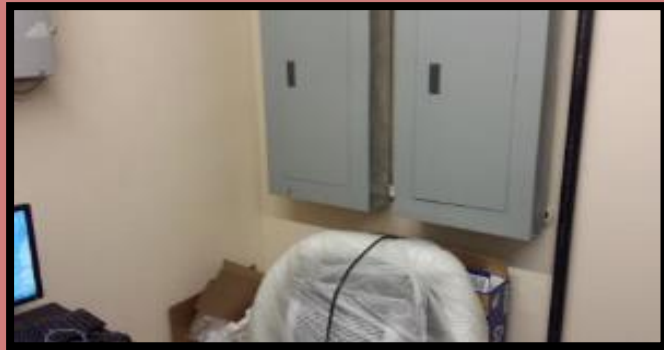
# Preparing for an OSHA Inspection

## Do Not Use Extension Cords for Permanent Power Supply

- The extension cord shown here is zip tied to the gas line at the top of the picture; this is considered a permanent use of an extension cord and a violation of OSHA standards
- The zip tie holding this cord to the gas line should be removed.



# Preparing for an OSHA Inspection



## Do Not Block Electric Panels / Equipment

- The electrical panels shown here are blocked
- All electrical panels and disconnects must be maintained with 36 inches of forward clearance
- Best practice - mark floors underneath electrical panels / equipment helps to maintain this clearance (most electric panels are in “back of house” locations)

# Preparing for an OSHA Inspection



## Cover All Electric Equipment Openings

- Openings and holes in electrical junction boxes and panels violate OSHA's electrical standards
- All openings must be covered to prevent accidental contact with exposed live electric above 50 volts

# Preparing for an OSHA Inspection



## Do Not Block Fire Exits or Fire Extinguishers

- The fire extinguisher and exit door pictured above are blocked
- All fire extinguishers and exit doors must be maintained with proper access and clearance

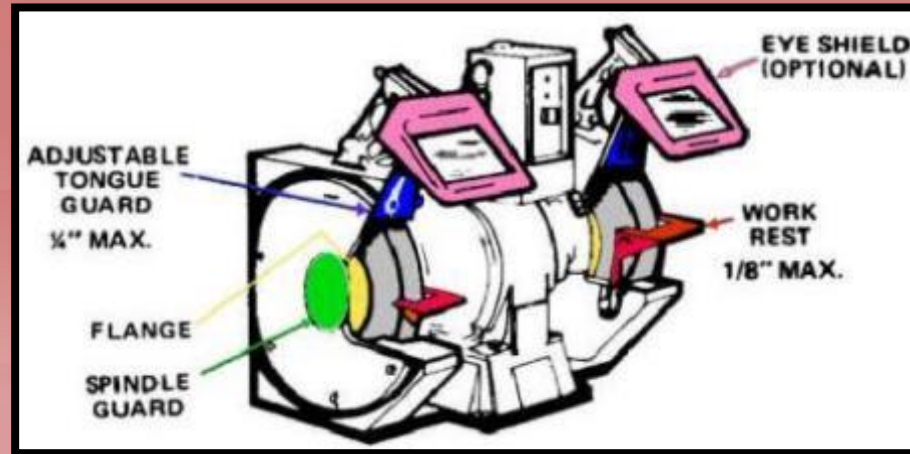
# Preparing for an OSHA Inspection



## Kitchen Mixers Must be Guarded

- The large mixer shown to the left does not have a mixer guard
- A retrofit guard should be purchased, or a new mixer should be purchased if a retrofit guard is not available
- The mixer pictured to the right is well guarded
- Guards prevent kitchen employees from reaching into the mixer bowl during operation

# Preparing for an OSHA Inspection



## Bench Grinders must be properly guarded / adjusted

- The stone wheel of the bench grinder shown on the upper left photo is not guarded properly
- The diagram on the right shows how to adequately guard this grinder
  - The top or “tongue guard” should be positioned  $\frac{1}{4}$  inch or less from the surface of the grinding wheel and
  - The tool or work rest should be positioned  $\frac{1}{8}$  inch or less from the surface of the wheel

# Preparing for an OSHA Inspection



## Biohazard Labels

- Bio-specimens storage in mini-fridges or small coolers should be labeled with biohazard symbols
- This specimen fridge shown here was not labeled, which is an OSHA violation



# Preparing for an OSHA Inspection



## Sharps' Containers

- Sharps' containers should be monitored to ensure they are replaced when full
- Staff should be diligent in replacing containers, so they are readily available when needed

# Preparing for an OSHA Inspection



## Emergency eyewash/shower stations

- Needed wherever caustic chemicals are dispensed or used
- The eyewash bottles pictured on the left are not OSHA compliant because they do not provide 15 minutes of continuous water flow to the eyes
- The plumbed eyewash with a ladder and mop bucket blocking access is not OSHA compliant
- Plumbed eyewash stations or gravity feed tanks are acceptable
- Do not block access to emergency eyewash and shower stations

# PART 2

## During an OSHA Inspection

# Verify Credentials!

## WHEN OSHA SHOWS UP

### 1. *Inspect their credentials*

- **Every Compliance Safety & Health Officer (C-SHO) will have a photo ID that will confirm they are from the USDOL – OSHA. We do this for several reasons:**
  - On first impression, the C-SHO realizes that you have been trained for their visit and you know what you are doing
  - It is your first step in showing safety preparedness
  - It is a strong security measure, as it shows that you check the credentials of everyone who comes into your building.

### 2. *Obtain their information*

- Ask for a business card. Every C-SHO has one. If they “forgot them”, ask their name, what regional office they are from, and the office phone number.
- Politely ask them to have a seat in the lobby and call that regional office to confirm the legitimacy of the visit.

# During an OSHA Inspection

## 3. *Ask the reason for the visit*

- a. Much like a police officer, they have to have a cause or reason for the visit. They cannot just make random visits. Common reasons will be:
- Investigation of a reported illness, accident, or fatality
  - They saw a hazard as they were driving by
  - Enforcement of a National Emphasis Program (NEP) or a Local Emphasis Program (LEP)
  - Statistics based visit (used in high-risk industries), based on annual 300 log recordings (site specific targeting – SST)

# Virtual vs. On-Site

- Majority of “visits” are still virtual at this point (Zoom, Teams, etc.)
- Virtual visits eliminate the physical plant walk-through; major focus is on documentation and the “paper trail”
- During interviews, answer their questions in as few of words as possible. Answer what they asked, not what you “think they want to hear”
- **As I used to tell my nursing staff:**
  - *“If they ask you the time, tell them the time, don’t tell them how to build a watch”*
- When sending documents, send the ones they ask for, not the ones you think they want! Don’t offer to send “this too...”

# Examples on Questions

Question asked of you:

*How many employees do you have?*

Correct answer: 110

Your answer:

*“Well, let’s see. We have 82 in this building, another 20 at the Adult Day Care building, and 18 next door in the Memory Care building.”*

**Instead of answering their question, you gave them three additional locations to explore!**

# The Opening Conference

**The OSHA inspector will want to have a (virtual) opening conference to discuss the conduct of the inspection. The leadership team should attend, as should any union representative. The opening conference should cover at least the following topics:**

- The inspection coordinator for the community and his/her role
- Any facility-required safety training that the OSHA inspector must receive
- Any facility-required PPE that the OSHA inspector must wear (e.g., respiratory protection)
- Confirm the scope/basis for the inspection (SST, NEP, etc.). NEP IS limited to COVID only



# The Opening Conference (cont'd)

- How long is the inspection expected to last.
- The company requests that the OSHA inspector inform them as the inspector identifies areas of concern or at the end of each day of the inspection.
- The company requests a closing conference at the end of the inspection (or at the end of each major segment of the inspection).

# Employee Interviews

**The OSHA inspector may want to interview hourly and/or management employees. It helps to manage those interview requests. Consider the following:**

- Obtain from the OSHA inspector a list of employees whom the inspector wants to interview.
- If possible, interview those employees before the OSHA inspector does about what they know about the subject matter of the inspection.
- Employees have the right to refuse to be interviewed if they aren't comfortable with the idea.

# Employee Interviews

- Inform employees who are to be interviewed by the OSHA inspector:
  - They should tell the truth during their interview. (The OSHA inspector may ask employees if their employer told them what to say; they can respond that they were told to tell the truth.)
  - This community and Gardant Management Solutions supports cooperation with OSHA during the inspection.

# Employee Interviews

- Hourly employees may be accompanied by an employee representative, such as a union steward, during their interview, if they so choose. If they would like an employee representative to attend, they should request that.
- Management employees may be accompanied by a management representative, if they so choose. Generally, the company should recommend that a management representative sit in on the interview and take notes.

# Employee Interviews

- If the OSHA inspector asks if there is an objection to the inspector recording the interview, at SWA we advise our clients to decline the request. Blame it on your attorney if you need to justify the response.
- If virtual, mention at start that we ask that no recording be made of the meeting(s).
- The company requests that every employee who is interviewed contact his or her supervisor or the management team and participate in a debriefing afterward of what happened during the interview. This is not mandatory, but rather a request so that the company may understand what the inspector knows.

# Employee Interviews

- If they do not understand the inspector's question, they should ask for clarification.
- Employees should limit their responses to what they know. They should listen carefully to the inspector's question, pause to collect their thoughts before responding, and then respond to the question that was asked. Speculation about what may have happened or what caused an incident is not appropriate.

# Employee Interviews

- Let the OSHA inspector conduct the interview. There is no need to volunteer information unless it is clear that the inspector misunderstands the situation, in which case the employee may want to volunteer clarifying information.
- Employees are not required to sign any statement indicating that the statement accurately recounts what they said.
- Employees may request a copy of any such statement. The company would appreciate receiving a copy of the statement if the employee does receive a copy.

# Employee Interviews

- The inspection coordinator should ask the OSHA inspector to have a management representative attend the interviews of management employees. The company's team should identify an appropriate management representative.
- If possible, debrief each employee promptly after the interview, taking detailed notes on what was said by the inspector and the employee. Ask if the interview was recorded and if the employee obtained a copy of the recording (if so, ask to make another copy for use by the company). Ask if the employee signed any statement to the effect that the OSHA inspector's notes were accurate and if the employee received a copy (if so, ask to make another copy for use by the company).



# The Closing Conference

**At the end of each day of the inspection, ask to speak with the OSHA inspector about the inspection, including topics such as the following:**

- Whether the OSHA inspector has identified any violations, and if so, what they are.
- Whether the OSHA inspector has identified any other areas of concern, and if so, what they are.
- The names of any employees whom the OSHA inspector still plans to interview, if any.
- The documents that the OSHA inspector plans to request, if any.
- The anticipated schedule for the rest of the inspection process.

# The Closing Conference

**In addition, at the end of the inspection or a significant stage of the inspection, clarify issues such as the following:**

- Whether the OSHA inspector will return for a follow-up inspection, and if so, when.
- The timing for when the company will provide any documents requested by the OSHA inspector but not yet provided.
- The timing for issuance of any citations.

# Additional Thoughts

- If this is an SST visit, they will almost certainly look at your Workplace Violence Prevention (WPV) program
- Be certain that you are familiar with *OSHA Guideline 3148: Guideline for the Prevention of Workplace Violence for Healthcare and Social Service Workers*
- Follow the key points of that guideline from both a programmatic and training perspective
- Develop a WPV Committee (can be sub-committee of Safety Committee) to regularly review incidents of WPV in the community and to develop programs,, etc. to keep employees prepared and to minimize the risk
- Perform Workplace Violence Risk Assessments to identify where the “chinks in the armor” are in your security management program that would contribute to the likelihood of a WPV event
- Combative residents are one of the greatest sources of WPV injuries and complaints. Review your OSHA 300 log for such events

# PART 3



## AFTER THE OSHA INSPECTION

# Citations

## ESSENTIAL ELEMENTS

1. In **writing**
2. **Signed** by Area Director
3. Describe violation with “**particularity**”
4. **Timely** (issued within 6 months of the violation, unless continuing violation)
5. Specifies the **proposed penalty**
6. Served by **certified mail**
7. **Post** for 3 days or until abatement, whichever is longer

# Federal Citations and Penalties

## Types

1. Failure to abate/correct
2. Other than serious
3. Serious
4. Repeat
5. Willful
6. Egregious
7. Willful violation causing death

## Amounts

1. Up to \$13,260/day
2. Up to \$13,260
3. \$891 - \$13,260
4. Up to \$132,598
5. \$9,054 - \$132,598
6. Up to \$132,958
7. Criminal penalties - fines and prison terms.

# Penalties – Criminal Violations

- Willful violation & employee death:  
\$10,000 or 6 months or both
  - Second conviction: \$20,000 or 12 months or both
- Advance notice of inspection:  
\$1,000 or 6 months or both
- Falsification of required records, etc.:  
\$10,000 or 6 months or both
- Murder or attempted murder of CO:  
Term of years to life

# Increasing Criminal Prosecutions

- In 2015, Former Deputy Attorney General Sally Yates issued two (2) memoranda:
- **September 9, 2015**: This memorandum reiterated the focus on individual accountability in corporate criminal investigations.
- **December 17, 2015**: The DOL and DOJ entered into a Memorandum of Understanding (MOU) to “increase the frequency and effectiveness of criminal prosecutions of worker endangerment violation.”
  - The MOU provided that the DOJ would seek to use criminal provisions (and substantially greater penalties) under the environmental statutes when reviewing workplace endangerment cases.
  - The DOJ directed U.S. Attorneys to more aggressively consider criminal referrals from the DOL and to make greater use of criminal charges for:
    - Obstruction of justice;
    - Conspiracy;
    - False statements to compliance officers; and
    - Witness tampering.

**Note:** These charges can be brought under Title 18 of the U.S. Code and sanctions include criminal sentences of up to 20 years per charge, and monetary penalties of \$250,000 against individuals and \$500,000 against corporations.



# Citations – What Are Your Options?

1. Agree to citation and pay full penalty  
(rarely recommended)
2. Informal conference/informal settlement  
(careful of admissions)
- 3. Notice of Contest – 15 working days (Federal); some state-plan states different time period**
  - 1. Not tolled for informal conference**
4. Formal settlement
5. Hearing

# Formal Hearings



- Occupational Safety and Health Review Commission
- Formal complaint and answer
- Discovery similar to Federal Court
- Can represent self pro se'
- Hearing before Administrative Law Judge
- ALJ issues written opinion
- Appeal to three-member Review Commission
- Other options – expedited proceedings

# Proving Violations – What OSHA Must Show

1. The cited standard **applies** to the condition;
2. **Non-compliance** with the standard;
3. Employees were **exposed** to or had **access** to the cited condition;
4. The employer **knew or should have known** of the cited condition; and
5. The selected **characterization** (e.g., serious, willful, repeat) is appropriate

**The burden of proof is on OSHA!**

# Requirements to Use General Duty Clause (5)(a)(1)

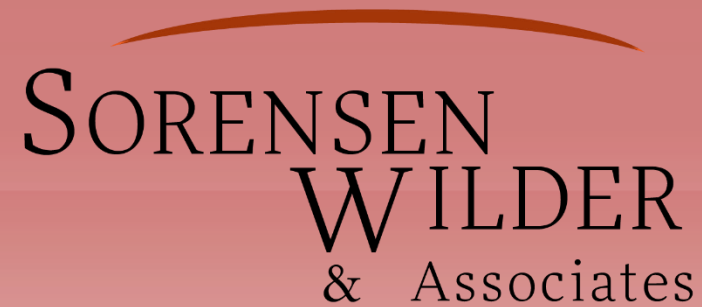
OSHA must prove:

- Condition or activity in the workplace presented a hazard
- Employer or its industry recognized the hazard
- Hazard was likely to cause death or serious physical harm
- A feasible means existed to eliminate or materially reduce the hazard was available

# Takeaways

- Know what you don't know!
- Don't panic!
- Study your rights
- Know OSHA's rights and your timelines
- Plan for OSHA Inspections
- Know when to use your consultants
  - Preparatory
  - When OSHA on site
  - After citations received
- Know when to involve legal counsel
  - History of past citations
  - Known hazards existed that weren't addressed
  - Any incident resulting in fatalities and serious injuries.

# Questions and Thoughts



SORENSEN  
WILDER  
& Associates

*Specializing in Safety & Security Solutions*

**Steven S. Wilder, BA, CHSP, STS**

Member & CEO

Sorensen, Wilder & Associates

185 E. North Street

Bradley, IL 60915

Contact: [swilder@swa4safety.com](mailto:swilder@swa4safety.com)

@SorensenWilder

800-568-2931

