# Informal Dispute Resolution Guidelines for Developmental Disabilities Agencies and Residential Habilitation Agencies

Revised: 11/29/13

#### 1. Introduction

- 1.1 The Idaho Department of Health and Welfare (DHW), Division of Licensing & Certification (Department), and the Idaho Association of Developmental Disabilities Agencies (IADDA) have established the following independent review process for the purpose of resolving disputes between DDA and ResHab agencies and the Department over deficiencies cited during a state survey. The foremost interest of all parties is the protection of individual's right to the highest possible quality of care and life, including the prompt correction of deficiencies that interfere with this right.
- 1.2 This informal dispute resolution (IDR) process has been developed with the expectation that all parties act in good faith, treat others with respect and professionalism, and recognize that there will be issues of honest disagreement.

## 2. Objectives

- 2.1 The principal objectives of the IDR process are to:
  - 2.1.1 Facilitate resolution of differences identified throughout the survey process through constructive, clear, and ongoing communication.
  - 2.1.2 Provide a vehicle to informally and quickly resolve disputes related to specific survey deficiencies.
  - 2.1.3 Promote the mutual exchange of clarifying information, which enhances the understanding of survey decisions and minimizes conflicts and disagreements.
- 2.2 The review process depends upon open discussion of concerns and significant issues while surveyors are on site. It also provides a means to informally pursue resolution of deficiency disagreements in a collaborative manner, if requested.
- **3. Guiding Principles.** There are a variety of opportunities to resolve issues prior to requesting an IDR.
  - 3.1 It is critical that any deficiency disputes be resolved at the earliest possible date. The Department must adhere to specific short time frames in developing and writing the survey report and processing the agency's Plan of Correction (POC).

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# 3.1.1 During the Entrance Conference

The process begins at the entrance conference when the team leader explains the survey process and the nature of the information to be gathered during the survey

#### 3.1.2 During the Survey

Surveyors will use all information made available to them in making their decisions about agency compliance. Information to support survey decisions, regarding noncompliance, must be fully and properly documented. Agency and survey staff must communicate regularly to ensure that surveyors have access to all relevant information throughout the process. Survey staff members are expected to seek information from responsible agency representatives and give the agency a reasonable opportunity to provide additional information on a timely basis, normally no later than the day of the scheduled exit conference.

Members of the survey team may hold a pre-exit briefing session or status meeting with key agency staff prior to the exit. The meeting should include team observations, including potentially significant issues that may be known at the time and responses to agency questions and provide the opportunity for the agency to supply additional information.

If issues arise during the survey that individual surveyors and agency staff cannot resolve, the team leader and the agency's administrator should meet and attempt to overcome any misunderstanding or miscommunication. This meeting may include other surveyors and agency staff as necessary.

#### 3.1.3 During the Exit Conference

The team will give appropriate consideration to any additional timely information in determining the agency's compliance with requirements. The survey team will communicate its tentative deficiencies and the general basis for the deficiencies to the agency staff at the exit conference. Due to time constraints, not all examples may be given. Opportunity will be given to the agency staff to provide further information on any deficiencies. Such information must be submitted (faxed or sent by overnight mail) within two (2) business day of the exit conference in order to be considered in preparing the survey report.

Individuals, family members or guardians, other interested parties, and/or staff determined appropriate by the agency administrator are invited to attend the exit conference. Because of the informal nature of the exit conference and the

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preliminary nature of the deficiencies discussed, agency attorneys are not expected to be present at the conference. The exit conference is not intended to be a preliminary hearing on the merits of deficiency citations. Any independent consultants engaged by the agency for assistance may attend the exit conference.

The Department may cancel or end the exit conference if the agency, or the agency's consultants, create an environment that is hostile or inconsistent with the informal and preliminary nature of the exit conference. In such cases, a subsequent exit conference may be conducted at the discretion of the Department.

#### 3.1.4 After the Exit Conference

Additional information that the agency believes will demonstrate compliance with the tentative deficiencies identified at the exit conference must be submitted to the survey team within two (2) working days of the exit conference as noted in 3.1.3 above. This short time frame is based on the fact that the surveyors begin preparing the formal survey report on the working day following the exit conference. The DDA/ResHab Certification Program Manager may be involved in the review of such additional information on any disputed areas prior to finalizing the report. The Department may choose to note any comments on disputed areas in the letter transmitting the report.

The Department goal is to issue the survey reports within ten (10) working days of the survey completion date (exit conference date).

- 3.1.5 The Federal Centers for Medicare/Medicaid Services (CMS) do not require the establishment of an IDR process for DDA/ResHab providers. To promote consistency, however, the review (IDR) process described in this document mirrors other IDR processes in use in the Idaho Department of Health and Welfare. The IDR process also serves as an administrative review of state licensing deficiencies as provided in IDAPA 16.05.03.300.
- 3.1.6 This process does not alter or delay the required timetables associated with licensure or certification, suspension, revocation, or other adverse actions.
- 3.1.7 This informal process does not limit any other appeal available under state laws or regulations.
- 3.1.8 Agencies may not use the informal process to delay the formal imposition of remedies.

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- 3.1.9 Agencies may use the IDR process for the following:
  - 3.1.9.1 Dispute a deficiency;
  - 3.1.9.2 Dispute remedy(ies) imposed by the enforcing agency; and
  - 3.1.9.3 Dispute the failure of the survey team to comply with a requirement of the survey process.
- 3.1.10 Allegations of surveyor misconduct should not be reported under this process, but rather reported to the Division Administrator for Licensing and Certification for separate resolution.

## 4. Requesting an IDR

- 4.1 If disputes have not been resolved after the opportunities described in §3.1.1 through §3.1.4 have been provided, or if disagreement arises or continues after the agency receives the formal written survey report or the agency's POC is denied, the agency may request an IDR hearing for the involved deficiencies.
- 4.2 An agency shall request an IDR by completing the attached request form for each disputed deficiency and returning the original form and six (6) copies to the IDR Support Coordinator. If the agency wants the panel to consider additional evidence, the evidence and six (6) copies of the evidence must also be sent at the time of the request for an IDR. The request and any evidence must be received by the IDR Support Coordinator within thirteen (13) calendar days of the date the survey report is forwarded to the agency. This date will be identified in the cover letter accompanying the survey report. No requests will be accepted after the date specified in the cover letter.
  - 4.2.1 In cases where the agency's POC is not accepted, an agency may request an IDR by completing the attached request form for its POC and returning the original form and six (6) copies to the IDR Support Coordinator within seven (7) calendar days of the date the denial notification is forwarded to the agency. This due date will be identified in the cover letter accompanying the denial of the POC.
- 4.3 Any evidence submitted as an attachment to the request form(s) must have been in existence in its submitted form and content as of the survey date. The exception to

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- this is letters from physicians or other persons prepared at the request of the agency to provide additional information on a cited deficiency.
- 4.4 Copies of the pages from the survey report with the deficiency and examples being disputed are to be attached to the request forms.
- 4.5 The agency must designate on the request form(s) whether the agency wants to present its position in person, by telephone, or solely in writing to the IDR Panel and whether the agency will be represented by legal counsel at the meeting. Such designations are necessary to ensure that the necessary arrangements are in place for the meeting.
- 4.6 In addition to submitting the IDR request forms, the agency may note its objection to a deficiency on the POC.
- 4.7 Submitted IDR requests will be scheduled by the IDR Support Coordinator provided that:
  - 4.7.1 The request is received within thirteen (13) calendar days from the date the survey report is sent to the agency or within seven (7) calendar days from the date the agency receives notice of denial of the POC. These dates will be identified in the cover letter accompanying the survey report; and
  - 4.7.2 The IDR request form plus evidence and six (6) copies of the form plus evidence are provided.

# 5. Panel Composition

- 5.1 The IDR is conducted by a five- (5) person panel (IDR Panel) consisting of one (1) advocate, two (2) representatives selected by and from the DDA industry, and two (2) representatives selected by and from the Department. The panelists representing the DDA/ResHab industry shall serve for a period of at least one (1) year.
- 5.2 All panelists and alternates shall have completed orientation developed by the Licensing and Certification Program.
- 5.3 Five (5) panel members, representing the respective interests, must be present to conduct and decide an IDR.

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5.4 The panel chair will be selected by the panel members and serve a term of one year.

#### 6. Panelist Code of Ethics

- 6.1 The preservation of the highest standards of integrity and ethical principles is vital to the success of the Informal Dispute Resolution process. This Code of Ethics was developed in an effort to stress the fundamental rules considered essential to the success of the IDR process.
- 6.2 It shall be the obligation of IDR Panelists to seek to avoid not only conduct specifically prescribed, but also conduct that is inconsistent with the spirit and purpose of Informal Dispute Resolution. Failure to specify any particular responsibility or practice in the Code of Ethics should not be construed as denial of the existence of other responsibilities or practices.
- 6.3 Panelists recognize that the ultimate responsibility for applying standards and ethics falls upon the individual.
- 6.4 Individual panel members shall maintain high standards of professional competence. This includes possessing and maintaining the competencies necessary to effectively perform these responsibilities.
- 6.5 Individual panel members shall avoid partisanship. The IDR process shall provide a forum for the fair resolution of differences in professional opinion.
- 6.6 Individual panelists shall disclose any actual or potential circumstance concerning him or her that might reasonably be thought to create a conflict of interest or have a substantial adverse impact on the panel or its decisions. Based on any conflict of interest, the panel may decide, in its sole discretion, to replace the individual panel member with an alternate panelist. The panelist with the alleged conflict may not participate in the decision. Examples of circumstances that should be disclosed include, but are not limited to, the following:
  - 6.6.1 The panelist is currently, or was within the past two (2) years, an employee of the agency requesting the IDR or its parent organization;
  - 6.6.2 The panelist is currently, or was within the past six (6) months, under contract to provide service to the agency or its parent organization;

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- 6.6.3 The panelist is a former employee of the agency who left under adverse circumstances;
- 6.6.4 The panelist has a family member residing or working in the agency;
- 6.6.5 The panelist has an individual that resides in his or her home and receives services from the agency;
- 6.6.6 The panelist has a financial interest in the agency or its parent organization. "Financial interest" shall not include ownership of publicly traded stock purchased on the open market unless the individual owns five percent (5%) or more of the outstanding shares;
- 6.6.7 The panelist was a member of the survey team for the survey in question; or
- 6.6.8 The panelist, individually, has filed a lawsuit against the agency or the agency has filed a lawsuit against the individual panelist.
- 6.7 Information shall be kept confidential. Individual panel members shall not discuss particulars of its deliberations in any forum outside the Department or the IDR process itself, including, but not limited to, the following:
  - 6.7.1 The particular circumstances of any agency's survey in such a way as would identify the agency;
  - 6.7.2 The name(s) of any individual(s) referred to in survey findings or identified through the IDR process; or
  - 6.7.3 Any recommendations relating to sanctions imposed against an agency.
- 6.8 Panel members shall not discuss or in any way disclose the voting history of any panel member. Discussions held during decision deliberation shall be held strictly confidential.
- 6.9 Individual panel members shall inform the panel chair of actual or potential violations of this Code of Ethics, and fully cooperate with the panel's inquiries into matters of professional conduct related to this Code of Ethics.
- 6.10 Individual panel members shall not defend, support, or ignore unethical conduct perpetrated by colleagues or peers.

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- 6.11 Panel members shall display professionalism and respect for one another at all times.
- 6.12 Panel members shall act with integrity and shall avoid conflicts of interest in the performance of their professional and committee responsibilities.

## 7. The IDR Meeting

- 7.1 Two weeks in advance of the next regularly scheduled IDR meeting date, the IDR Support Coordinator will send/deliver the materials to the panelists for the IDR scheduled to be heard. This period of time will give the panelists time to review the information and be prepared to hear each case. It is each panel member's responsibility, on receipt of the information, to immediately notify the IDR Support Coordinator if they have to remove themselves from hearing a particular IDR. Immediate notice is critical to allow for alternate arrangements to be made.
- 7.2 Parties may participate in the IDR Meeting in person or by telephone. Any witnesses may also participate in person or by telephone. In addition, the parties to the meeting have the option of presenting their case entirely in writing without meeting with the panel.
- 7.3 Parties have the option of being represented by legal counsel, but, because of the informal nature of the meeting and limited time for presentation, the use of attorneys is neither necessary nor encouraged. The state will be represented by legal counsel only if the provider chooses to be represented by an attorney.
- 7.4 At the meeting with the IDR Panel, the agency and the state are given an opportunity to discuss the deficiencies in dispute. The agency will present its points, followed by the state. The panel will then have an opportunity to discuss the issues with both parties.
- 7.5 In consideration of the panelists' work load and the need to keep the process efficient and timely, the presentations by the appealing agency and state are limited in time. The agency will have fifteen (15) minutes to summarize its position on the deficiencies in dispute. The state will have eight (8) minutes to respond. There will be an opportunity for panel members to ask questions of each side after they complete their respective summary position statements. There is not a time limit on panel questions. An agency wanting additional time to present before the panel must request the additional time as part of its request for an IDR. The IDR chair shall

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decide whether additional time will be granted. If additional time is granted, the state will be given half that much additional time to respond to the agency.

- 7.6 Although evidence submitted by the agency in support of its appeal normally must be received by the IDR Support Coordinator within thirteen (13) calendar days after the date the survey report is forwarded to the agency, there may be relevant evidence that could not have been anticipated. The IDR Panel, in its sole discretion, shall determine whether the agency can submit additional evidence. Such evidence shall be delivered or faxed to the IDR Support Coordinator prior to the panel's deliberation of the case later that day.
- 7.7 If there are too many requests to be heard in one day, the IDR process may be extended to the following month.

## 7.8 IDR Meeting Suggestions

Because time and space for oral presentation is limited:

- 7.8.1 The panel will rely heavily on documentation. The panel's consideration of the agency's documents will be enhanced if the documents are identified to correspond to the deficiency or rule standard(s) to which they apply;
- 7.8.2 The oral presentation should focus on the specific reasons that the survey results are erroneous and point the panel to the submitted documentation that supports the agency's position;
- 7.8.3 Submission of large volumes of overly detailed, redundant, or irrelevant material will impede the review process; and
- 7.8.4 Keep the number of persons in the meeting room to the minimum necessary. Remember that people can participate by telephone if requested in advance.
- 7.8.5 Non-panelist observers may view the proceedings at the discretion of the panel chair. However, all observers, by being present, must agree to the same confidentiality requirements as the panelists, agencies, and Department staff members. Observers will not be allowed to take part in any of the proceedings.

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#### 8. IDR Decision

- 8.1 Five (5) panel members constitute a quorum for purposes of rendering a decision. It is hoped that the panel can make its decisions unanimously. If a unanimous decision cannot be reached, a decision requires a simple majority vote of panel members. If the panel is unable to reach a decision by an affirmative majority vote, the survey findings being disputed are deemed to be accepted and final.
- 8.2 The agency shall be notified of the panel's decision within fourteen (14) calendar days of the IDR meeting. Later in the day of the IDR meeting, the panel shall meet to determine, for each dispute heard, whether the deficiency cited is supported, amended, or deleted. The decision of the panel will be noted on the request form(s) and then sent to the Licensing and Certification Division Administrator. The final decision(s) must ensure compliance with state law and rules.
- 8.3 If the IDR review results in a decision to amend or delete a deficiency, the following steps will be taken:
  - 8.3.1 If the deficiency is to be deleted, the deficiency citation will be deleted from the report. Any enforcement actions(s) imposed solely because of that deficiency will be rescinded.
  - 8.3.2 If the deficiency is to be amended (but still cited), the deficiency will be revised. Any enforcement action(s) imposed will be reviewed by the DDA/ResHab Certification Program Supervisor for continued applicability.
  - 8.3.3 The agency has the option to request a "clean" (new) copy of the survey report. However, the clean copy will be the releasable copy only when a "clean" (new) POC is both provided and signed by the agency. The original survey report is disclosable when a clean POC is not submitted and signed by the agency.

#### 9. Appeal from IDR Decision

9.1 Any survey deficiencies which result in action to revoke, suspend, or modify an agency certificate or license may be appealed to a state hearing officer in accordance with IDAPA 16.05.03, Section 300. Information on how to file an appeal will be contained in the notice of the IDR decision.