

**Independent Informal Dispute Resolution (Independent IDR)
Guidelines for Nursing Facilities**
February 2012

1. Introduction

- 1.1. Under sections 1819(h)(2)(B)(ii)(V) and 1919(h)(2)(B)(ii)(V) of the Social Security Act and regulations at 42 CFR 488.331 and 488.431, nursing facilities are provided the opportunity to participate in an Independent Informal Dispute Resolution (IIDR) if the Centers for Medicare and Medicaid Services (CMS) imposes civil monetary penalties and these penalties are subject to immediate collection.
- 1.2. The IIDR is an informal administrative procedure intended to provide facilities, under certain circumstances, the opportunity to dispute cited deficiencies through a process independent from the State Survey Agency (SSA).

2. General Independent IDR Requirements

CMS retains ultimate authority for the survey findings and imposition of civil monetary penalties. An IIDR will:

- 2.1. Be completed within 60 calendar days, if at all possible, of a facility's timely request;
- 2.2. Generate a written record prior to the collection of the penalty;
- 2.3. Include notification to an involved resident or resident representative, as well as the State's Long Term Care Ombudsman, to provide opportunity for written comment, if the resident was identified in the deficiency(ies) as the result of a complaint investigation;
- 2.4. Will be conducted by an independent entity with specific understanding of Medicare and Medicaid program requirements selected by the State and approved by CMS; and,
- 2.5. Not include the survey findings that have already been the subject of an IDR dispute resolution under §488.331 for the particular deficiency citations at issue in the Independent IDR process under §488.431, unless the IDR under §488.331 was completed prior to the imposition of the civil monetary penalty.

NOTE:

- ▶ The independent entity is identified as the "Contractor" throughout the rest of this document.
- ▶ The IDR and the IIDR are two entirely separate processes.

3. *The Facility's Request for an Independent IDR*

The IIDR process does not delay the imposition of any remedies, including a civil monetary penalty. During the IIDR process:

- 3.1. A facility may dispute the factual basis of the cited deficiencies for which it requested the IIDR.
- 3.2. A facility may not challenge other aspects of the survey process, including:
 - 3.2.a. Scope or severity classifications, with the exception of citations that constitute substandard quality of care (SQC) or immediate jeopardy;
 - 3.2.b. Remedy(ies) imposed;
 - 3.2.c. Alleged failure of the survey team to comply with a requirement of the survey process;
 - 3.2.d. Alleged inconsistency of the survey team in citing deficiencies among other facilities;
 - 3.2.e. Alleged inadequacy or inaccuracy of the IDR or Independent IDR process.
- 3.3. A facility shall request an IIDR by completing a request form for each disputed deficiency and returning the original form and a copy of all supporting evidence to the IIDR Support Coordinator within ten (10) calendar days of receipt of the notice from CMS of an intent to impose a civil monetary penalty based on the Survey Report (CMS Form 2567). No requests will be accepted with a postmark after the tenth (10th) calendar day for any reason. The request form must identify all examples being disputed and the specific argument why the example/citation should be removed/modified/changed. The facility must also submit a copy of the pages from the CMS Form 2567 for each deficiency and deficiency example in dispute. The facility may submit pertinent documentation to support the dispute. ALL evidence to be considered must be submitted in written form. If the evidence is not received at the time of the request, evidence will not be submitted to the IIDR Contactor for review.
- 3.4. Any evidence submitted must have been in existence in its submitted form and content as of the survey date. The evidence should:

- 3.4.a. Specify the resident identified in the deficiency example(s) (i.e., ID # - resident names must be redacted.);
- 3.4.b. Be limited to the specific documents that apply to each deficiency and/or deficiency example(s);
- 3.4.c. Clearly identify which part of the document(s) either disputes the SSA's arguments or supports the facility's argument that the findings are in error; and,
- 3.4.d. Include the system documentation of date/time of creation and date and time of authentication for copies of any electronic records that are provided.

4. Notification of Resident and/or Resident Representative of Request for Independent IDR

- 4.1. If the facility requests an IIDR that involves a resident who was identified in the deficiency(ies) as the result of a complaint investigation, the SSA will notify the State's Long Term Care Ombudsman and the involved resident or resident representative that they have an opportunity to submit written comment related to the deficiency(ies).

5. Independent IDR Procedures

- 5.1. The Contractor shall review the following:
 - 5.1.a. The deficiencies disputed in facility's CMS form 2567;
 - 5.1.b. Additional written information provided by the facility and the SSA for each disputed deficiency; and,
 - 5.1.c. Written statements submitted by the involved resident, legal representative, and State Long Term Care Ombudsman if the resident was identified in the deficiency as the result of a complaint investigation.
- 5.2. The Contractor may contact the facility and/or the SSA to clarify issues related to the disputed deficiencies.
- 5.3. The Contractor shall make a recommendation on each disputed deficiency. The Contractor's recommendation must be one of the following:
 - 5.3.a. Uphold the deficiency/survey finding as written;

- 5.3.b. Delete the deficiency/survey finding as written;
 - 5.3.c. Uphold the deficiency/survey finding cited, but delete a finding (example) in the deficiency; or,
 - 5.3.d. Uphold the deficiency/survey finding cited, but make recommendations to decrease the scope and/or severity of the deficiency for findings that constitute substandard quality of care or immediate jeopardy.
- 5.4. The Contractor must submit a written record of decision to the SSA that includes:
- 5.4.a. A list of each deficiency or survey finding that was disputed;
 - 5.4.b. A summary of the IIDR recommendation for each deficiency or finding at issue and the rationale for that result; and,
 - 5.4.c. Any comments submitted by the State's Long Term Care Ombudsman and/or residents or resident representatives.

6. SSA responsibilities/time lines based on the Independent IDR review/recommendations

Upon receipt of the IIDR report, the SSA will review the IIDR recommendation(s), and:

- 6.1. If the SSA agrees with the IIDR recommendation(s) and no changes will be made to the disputed survey findings, the SSA will send written notification of the final decision to the facility *within ten (10) calendar days of receiving the written record from the Independent IDR Contractor.*
- 6.2. If the SSA agrees with the IIDR recommendation(s) or has received a final decision from the CMS RO and changes need to be made to the disputed survey findings, the SSA will provide written notification of the results and final decision to the facility *within ten (10) business days of receiving the written record.*

NOTE:

- ▶ If the CMS Form 2567 was revised and sent to the facility, the facility must submit and sign a new plan of correction with changes that address the deficiencies cited.

7. Completion of the Independent IDR process

Regulations at §488.431(a)(1) require that the IIDR be completed within 60 days of the facility's request. Every effort must be made to comply with this time frame; however, failure to comply with the IIDR process does not invalidate any deficiencies or remedies imposed.