Informal Dispute Resolution (IDR) Guidelines for Home Health Agencies

2014

1. Introduction

1.1. The Idaho Department of Health and Welfare, Bureau of Facility Standards (*Department*), established the following informal review process for resolving disputes with Home Health Agencies (*Agency* or *Agencies*) that have Condition(s) of Participation (*CoP* or *CoP's*) level findings cited during a survey. The survey process brings together a number of professional interests. The Department, through the survey team, is responsible for meeting a large array of survey requirements in a thorough, professional manner. Agencies are interested in being evaluated fairly and consistently by qualified survey personnel. The foremost interest of all parties is the individuals receive the care and services they need to attain and maintain the highest possible functional capacity.

1.2. This independent review 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. Guiding Principles

2.1. The IDR described in this document complies with the federal Centers for Medicare and Medicaid Services (CMS) minimum requirements for IDR at *42 CFR §488.745* and related CMS *State Operations Manual* instructions. The Department has supplemented these minimum requirements by adding preliminary steps designed to resolve disputes prior to IDR.

2.2. This process does not alter or delay the required timetables associated with certification, termination or other adverse actions, including especially the short time frames established for immediate jeopardy findings.

2.3. This IDR process does not limit any other appeal rights available under federal laws or regulations.

2.4. Agencies may not use the IDR process to delay the formal imposition of remedies or to challenge any other aspect of the survey or enforcement process including:

2.4.1. The assessments of standard level deficiencies that constitute substandard care or immediate jeopardy;

2.4.2. Sanctions imposed by the Department;

2.4.3. Alleged failure of the survey team to comply with a requirement of the survey process;

2.4.4. Alleged inconsistency of the survey team in citing deficiencies among agencies;

2.4.5. Alleged inadequacy or inaccuracy of the IDR process; or,

2.4.6. Alleged failure to follow the *Principles of Documentation.*

2.5. Allegations of surveyor misconduct should not be reported under this process but rather to the Supervisors of Non-Long Term Care or the Bureau Chief for separate resolution.

3. Objectives

3.1. The principal objectives of this independent review process are to:

3.1.1. Facilitate resolution of differences throughout the survey process through constructive, clear, and ongoing communication;

3.1.2. Provide a vehicle to informally and quickly resolve disputes related to survey deficiencies; and,

3.1.3. Promote the mutual exchange of clarifying information, which enhances the understanding of survey decisions and minimizes conflicts and disagreements.

3.2. The review process depends on open discussion of concerns and significant issues while surveyors are on-site. It also provides a means to informally pursue resolution of citation disagreements at higher levels of the Department, if requested.

4. General Process

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). Once the survey report has been issued in final form and formal distribution made, it becomes more difficult to resolve a conflict regarding deficiency.

5. 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.

6. During the Survey

6.1. 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 before the scheduled exit conference.

6.2. Members of the survey team are expected to discuss concerns and provide Agency staff and administration the opportunity to provide additional information throughout the survey.

6.3. 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.

7. During the Exit Conference

7.1. The survey team will communicate its tentative citation determinations, and the general basis for the citations to the Agency staff at the exit conference. Due to time constraints, all examples may not be given. Opportunity will be given to the Agency staff to provide further information they believe may affect any deficiency. The team will give appropriate consideration to any additional timely information in determining the Agency's compliance with requirements. Such information must be submitted (faxed, e-mailed or sent by overnight mail) within one (1) business day of the exit conference in order to be considered in preparing the survey report.

7.2. The Department, in accordance with CMS protocol, may cancel or end the exit conference if the Agency creates 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.

8. Level 1 Review (after the exit conference)

8.1. Additional information which the Agency believes will demonstrate compliance with the tentative deficiencies identified at the exit conference must be submitted to the survey team within one business day of the exit conference as noted in Section 7.1 above. This short time frame is based on the surveyors beginning preparations of the formal survey report on the business day following the exit conference.

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

9. Informal Dispute Resolution (IDR) After the Survey Report is Issued

9.1. If disputes for CoP-level findings have not been resolved after the above opportunities have been provided or if disagreement arises or continues after the Agency receives the formal written survey report, the Agency may request an IDR of the CoP-level findings.

9.2. The IDR is conducted by a five (5) person panel (IDR Panel) consisting of one (1) representative and an alternate selected by and from the Idaho Commission on Aging, two (2) representatives and alternates selected by and from the home health industry, and two (2) representatives and alternates selected by and from the Department. The panelists representing the home health industry shall serve for a period of at least two (2) years. All panelists and alternates shall have completed training developed by the Department. Five (5) panel members, representing the respective interests, must be present to conduct and decide an IDR. The Panel Chair shall initially determine if any regular panel member has a conflict of interest when directing the IDR Support Coordinator to schedule an IDR meeting.

9.3. Panelists' Code of Ethics

9.3.1. The preservation of the highest standards of integrity and ethical principles is vital to the success of the IDR process. This Code of Ethics was developed in an effort to stress the fundamental rules considered essential to the success of the IDR process.

9.3.2. It shall be the obligation of IDR Panelists to seek to avoid not only conduct specifically proscribed, but also conduct that is inconsistent with the spirit and purpose of IDR. 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.

9.3.3. Recognizing the ultimate responsibility for applying standards and ethics falls upon the individual. The Department has established this Code of Ethics to make clear its expectations of participants.

9.3.4. Individual panelists shall maintain high standards of professional competence. This includes possessing and maintaining the competencies necessary to effectively perform these responsibilities.

9.3.5. The IDR process shall provide a forum for the fair resolution of differences in professional opinion; individual Panelists shall avoid partisanship.

9.3.6. Individual panelists shall disclose all actual or potential circumstances 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 an individual panelist with a backup 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:

9.3.6.1. The panelist is currently, or was within the past two (2) years, an employee of the Agency requesting the IDR or its parent organization;

9.3.6.2. The panelist is currently, or was within the past six (6) months, under contract to provide service to the Agency or its parent organization;

9.3.6.3. The panelist is a former employee of the Agency who left under adverse circumstances;

9.3.6.4. The panelist has a family member who is a patient of the Agency;

9.3.6.5. 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;

9.3.6.6. The panelist was a member of the survey team for the survey in question; or,

9.3.6.7. The panelist, individually, has filed a lawsuit against the Agency or the Agency has filed a lawsuit against the individual panelist.

9.3.7. Survey information shall be kept confidential. Individual panelists shall not discuss particulars of its deliberations in any forum outside the IDR process itself or the Department including, but not limited to, the following:

9.3.7.1. The particular circumstances of any Agency's survey in such a way as would identify the agency;

9.3.7.2. The name(s) of any patient(s) referred to in survey findings or identified through the IDR process; or,

9.3.7.3. Any recommendations relating to sanctions imposed against an Agency.

9.3.8. Panelists shall not discuss, or in any way disclose, the voting history of panel members. Discussions held during decision deliberation shall be held strictly confidential.

9.3.9. Individual panelists 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.

9.3.10. Individual panelists shall not defend, support, or ignore unethical conduct perpetrated by colleagues or peers.

9.3.11. Panelists shall display professionalism and respect for one another at all times.

9.3.12. Panelists shall act with integrity and shall avoid conflicts of interest in the performance of their professional and committee responsibilities.

9.4. Request for IDR

9.4.1. An Agency shall request an IDR by completing the attached request form for each disputed CoP and the standards that are directly responsible for CoP-level noncompliance. The original form and six (6) copies must be received by the IDR Support Coordinator within ten (10) calendar days of receipt of the survey report (Form 2567). No requests will be accepted after the tenth (10^{th}) 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.

9.4.2. If the Agency wants the panel to consider additional evidence, the evidence and six (6) copies of the evidence must be received 15 calendar days before the hearing. If the evidence is not received 15 calendar days before the meeting, the panel will not hear the case.

9.4.3. All evidence submitted must have been in existence in its submitted form and content as of the survey exit date. The exception to this is letters from physicians or other persons prepared at the request of the Agency to provide additional information on a cited deficiency.

9.4.4. The Agency must also attach to the request form copies of the pages from the survey report (2567) with the CoP's and the standards in dispute.

9.4.5. 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 essential to ensure that the necessary arrangements are in place for the meeting.

9.4.6. In addition to submitting the IDR request forms, the Agency may enter its objection to a deficiency on the PoC.

9.4.7. Submitted IDR requests will be scheduled by the IDR Support Coordinator, provided that:

9.4.7.1. The request is received within ten (10) days of the Agency's receipt of the survey report (2567); and,

9.4.7.2. The IDR request form plus evidence and six (6) copies of the form plus evidence are provided.

9.4.8. The agency may request a postponement once.

9.5. IDR Coordination

9.5.1. Two weeks in advance of the scheduled hearing day, the IDR Support Coordinator will send/deliver the materials 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 so that alternate arrangements can be made.

9.5.2. If there are too many requests to be heard in one day, the Bureau Chief will work with the IDR Support Coordinator to resolve scheduling concerns.

9.6. The IDR Meeting

9.6.1. 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. If a party chooses to submit its case in writing, the other party has the option of submitting in writing or appearing before the panel.

9.6.2. 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 Department will be represented by legal counsel only if the provider chooses to be represented by an attorney.

9.6.3. At the meeting with the IDR panel, the Agency and the Department are given an opportunity to discuss the deficiencies in dispute. The Agency will present its points, followed by the Department. The panel will then have an opportunity to discuss the issues with both parties.

9.6.4. In consideration of the panelists' workload and the need to keep the process efficient and timely, the presentations by the appealing Agency and Department are limited in time. The Agency will have fifteen (15) minutes to summarize its position on all CoP/Standards in dispute. The Department will have eight (8) minutes to respond. At the discretion of the Panel Chair, each party may be given additional limited opportunity to respond to the other party's presentation. 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 Panel Chair shall decide whether additional time is granted. If additional time is granted, the Department will be given half that much in additional time to respond.

9.7. IDR Meeting Suggestions

9.7.1. Because time and space for oral presentation is limited:

9.7.1.1. The panel will rely heavily on documentation. The panel's consideration of the Agency's documents will be enhanced if the documents are tabbed to correspond to the tag to which they apply;

9.7.1.2. The oral presentation should focus on the specific reasons that the survey results are invalid and point the panel to the submitted documentation that supports the Agency's position;

9.7.1.3. Submission of large volumes of overly detailed, redundant, or irrelevant material will impede the review process; and,

9.7.1.4. Keep the number of persons in the meeting room to the minimum necessary. Remember that people can participate by telephone, if requested in advance.

9.8 IDR Decision

9.8.1. Five (5) panel members constitute a quorum for purposes of making a decision. It is hoped that the panel can make its decisions by consensus. If no consensus can be reached, a decision requires the affirmative vote of four (4) panel members. If the panel is unable to reach a decision by an affirmative vote of four (4) panel members, the survey findings being appealed are deemed to be accepted.

9.8.2. If the IDR review results in a decision to amend or delete a deficiency, the following steps will be taken:

9.8.2.1. If the deficiency is to be deleted, the deficiency citation will be electronically deleted from the CMS data system. For any enforcement actions(s) imposed solely because of that deficiency citation, a recommendation is made to CMS to rescind the enforcement action;

9.8.2.2. If the deficiency is to be amended (but still cited), the deficiency will be electronically revised;

9.8.2.3. 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. In either case, any CMS 2567 and/or PoC which is revised or changed as a result of IDR must be disclosed to other parties as required by law.

9.8.3. Any Agency may request IDR for each survey that cites <u>new</u> CoP-level deficiencies. CoP-level deficiencies that are not corrected and that are carried forward on a subsequent survey are not eligible for the IDR process. CoP-level deficiencies identified on a subsequent survey that are new are eligible to be reviewed through the IDR process.

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Attachment: IDR Request Form