

Informal Dispute Resolution Guidelines for Nursing Facilities

1. Introduction

- 1.1. The Idaho Department of Health and Welfare, Bureau of Facility Standards (Department), working with the Idaho Health Care Association (IHCA), and representatives from nursing facilities and advocate agencies, has established the following informal review process for the purpose of resolving disputes with nursing facilities over federal and state deficiencies 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. Nursing facilities are interested in being evaluated fairly and consistently by qualified survey personnel. The foremost interest of all parties is the resident'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 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 process described in this document complies with the federal Centers for Medicare and Medicaid Services (CMS) minimum requirements for informal dispute resolution at *42 CFR §488.331* and related CMS *State Operations Manual* instructions.
- 2.2. This process does not alter or delay the required timetables associated with licensure or certification, termination or other adverse actions, including especially the short time frames established for immediate jeopardy findings.
- 2.3. This informal process does not limit any other appeal available under other federal laws or regulations.
- 2.4. Facilities may not use the informal process to delay the formal imposition of remedies or to challenge any other aspect of the survey or enforcement process including the:
 - 2.4.1. Scope and severity assessments of deficiencies with the exception of scope and severity assessments that constitute substandard quality of care or immediate jeopardy;

- 2.4.2. Remedy(ies) imposed by the enforcing agency;
 - 2.4.3. Failure of the survey team to comply with a requirement of the survey process;
 - 2.4.4. Inconsistency of the survey team in citing deficiencies among facilities;
 - 2.4.5. Inadequacy or inaccuracy of the informal dispute resolution process; or
 - 2.4.6. 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 Long Term Care or Bureau Chief for separate resolution.

3. Objective of Informal Dispute Resolution

The principal objective of this informal review process is to provide a vehicle to informally resolve disputes related to survey deficiencies.

- 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 facility's Plan of Correction (POC). Once the survey report has been issued in final form and formal distribution made, it becomes much more difficult to resolve a conflict regarding any deficiency.

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

- 5.1. If disputes have not been resolved prior to the issuance of the 2567 (Survey Report) or if disagreement arises or continues after the facility receives the formal written survey report, the facility may request Informal Dispute Resolution or IDR, of the involved deficiencies.
- 5.2. The IDR is conducted by a five- (5) person panel (IDR Panel) consisting of one (1) the State Ombudsman and a Regional Ombudsman as an alternate, two (2) representatives and alternates selected by and from the nursing home industry, and two (2) representatives and alternates selected by and from the Department. All Panelists and alternatives shall have completed training in the IDR process. Five (5) Panel members, representing the respective interests, must be present to conduct and decide an IDR.

Potential conflicts shall be reported to the Panel Chairman, and the Panel Chairman shall determine if changes to panel membership are needed based on the potential conflict when scheduling an IDR meeting.

5.3. Panelists' Code of Ethics

- 5.3.1. The preservation of the highest standards of integrity and ethical principles is vital to the success of the Informal Dispute Resolution (IDR) process. This Code of Ethics was developed in effort to stress the fundamental rules considered essential to the success of the IDR process.
- 5.3.2. 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 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.
- 5.3.3. Recognizing that the ultimate responsibility for applying standards and ethics falls upon the individual, the IDR Executive Oversight Committee has established this Code of Ethics to make clear its expectations of participants.
- 5.3.4. Individual Panel members shall maintain high standards of professional competence. This includes possessing and maintaining the competencies necessary to effectively perform these responsibilities.
- 5.3.5. The IDR process shall provide a forum for the fair resolution of differences in professional opinion; individual Panel members shall avoid partisanship.
- 5.3.6. 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 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:
 - 5.3.6.1. The Panelist is currently, or was within the past two (2) years, an employee of the facility requesting the IDR or its parent organization;

- 5.3.6.2. The Panelist is currently, or was within the past six (6) months, under contract to provide service to the facility or its parent organization;
 - 5.3.6.3. The Panelist is a former employee of the facility who left under adverse circumstances;
 - 5.3.6.4. The Panelist has a family member in the facility;
 - 5.3.6.5. The Panelist has a financial interest in the facility 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;
 - 5.3.6.6. The Panelist was a member of the survey team for the survey in question; or
 - 5.3.6.7. The Panelist, individually, has filed a lawsuit against the facility or the facility has filed a lawsuit against the individual Panelist.
- 5.3.7. Survey information shall be kept confidential. Individual Panel members 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:
- 5.3.7.1. The particular circumstances of any facility's survey in such a way as would identify the facility;
 - 5.3.7.2. The name(s) of any resident(s) referred to in survey findings or identified through the IDR process; or
- 5.3.8. 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 with the exception that the basis of the Panel's decisions may be discussed with the Bureau Chief of Facility Standards and the nursing home industry's quality improvement committee for purposes of improving the survey process and care delivery system.
- 5.3.9. Individual Panel members shall inform the Panel Chairman 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.

- 5.3.10. Individual Panel members shall not defend, support or ignore unethical conduct perpetrated by colleagues or peers.
- 5.3.11. Panel members shall display professionalism and respect for one another at all times.
- 5.3.12. Panel members shall act with integrity and shall avoid conflicts of interest in the performance of their professional and committee responsibilities.

5.4. Request for IDR

- 5.4.1 A facility shall request an IDR by completing the attached request form including the facility's reasons why the citation is inaccurate/inappropriate for each disputed deficiency and returning the original form and seven (7) copies to 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 (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.
- 5.4.2 If the facility wants the Panel to consider additional evidence, the evidence and seven (7) copies of the evidence must be received 15 calendar days before the scheduled hearing. If the evidence is not received 15 calendar days before the meeting the panel will not hear the case.
- 5.4.3. Any evidence submitted must have been in existence in its submitted form and content as of the survey date. The exception to this is letters from physicians or other persons prepared at the request of the facility to provide additional information on a cited deficiency.
- 5.4.3. The facility must also attach to the request form copies of the pages from the Survey Report (2567) with the Tags and Tag examples in dispute.
- 5.4.4. The facility should designate on the request form(s) whether the facility wants to present its position in person, by telephone, or solely in

writing to the IDR Panel and whether the facility 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.

5.4.4.1. The facility must also identify if they want to disqualify one of the IHCA members. The form should identify the individual the facility wants disqualified. Should an alternate not be available the facility will be given one opportunity to reschedule the hearing.

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

5.4.5.1. The request is received within ten (10) calendar days of the facility's receipt of the Survey Report (2567) or the date the Electronic Plan of Correction (EOC) is available; and

5.4.5.2. The IDR request form plus evidence and seven (7) copies of the form plus evidence are provided.

5.4.5.3 The facility may request a postponement once.

5.5. IDR Coordination

5.5.1. Two weeks in advance of the next regularly 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, immediately to notify the IDR Support Coordinator if they have to remove themselves from hearing a particular IDR so that alternate arrangements can be made.

5.5.2. If there are too many requests to be heard in one day, the Department's Facility Standards Bureau Chief will coordinate the scheduling for the next month with the IDR Support Coordinator.

5.6 The IDR Meeting

5.6.1. Parties may participate in the IDR Meeting in person or by telephone. Any witnesses may also participate in person or by telephone. Witnesses who are not employees or representatives of the facility are excused from the hearing at the conclusion of their testimony. 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.

- 5.6.2. 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 or encouraged. The state will be represented by legal counsel only if the provider chooses to be represented by an attorney.
- 5.6.3. At the meeting with the IDR Panel, the nursing facility and the state are given an opportunity to present information and evidence to support its case. The facility will present its points, followed by the state. The Panel will then have an opportunity to ask questions of both parties.
- 5.6.4 In consideration of the Panelists' work load and the need to keep the process efficient and timely, the presentations by the appealing facility and state are limited in time. The nursing facility will have fifteen (15) minutes per deficiency, not to exceed a total of 30 minutes to summarize its position on the deficiencies in dispute. The state will have fifteen (15) minutes to summarize its position on the deficiencies in question. Should either party need to clarify a response to the panel, the Panel Chair will allow a limited time for that response. Responses and time will be managed by the IDR Panel Chair.

5.7. IDR Meeting Suggestions

- 5.7.1. Because time and space for oral presentation is limited:
 - 5.7.1.1. The Panel will rely heavily on documentation. The Panel's consideration of the facility's documents will be enhanced if the documents are tabbed to correspond to the tag to which they apply;
 - 5.7.1.2. 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 nursing facility's position;

- 5.7.1.3. Submission of large volumes of overly detailed, redundant, or irrelevant material will impede the review process; and,
- 5.7.1.4. Keep the number of persons in the meeting room to the minimum necessary. Remember that people can participate by telephone, if requested in advance.

5.8 IDR Decision

- 5.8.1. 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 three (3) Panel members.
- 5.8.2. The facility shall be notified of the Panel's decision or if further deliberations are needed within fourteen (14) days of the IDR meeting. The final decision(s) will be reviewed by the Department to ensure compliance with CMS regulatory intent/requirements pursuant to the State's contractual agreement with CMS and to ensure compliance with state law and rules. If the Department finds that the decision is consistent with federal requirements, the Department will notify the facility of the decision.
- 5.8.4. If the IDR review results in a decision to amend or delete a deficiency, the following steps will be taken:
 - 5.8.4.1. If the deficiency is to be deleted, the deficiency citation will be electronically deleted from the Bureau data system. CMS will also be notified, so the agency can review any enforcement action(s) imposed for continued applicability.
 - 5.8.4.2. If the deficiency is to be amended (but still cited), the deficiency will be electronically revised. CMS will be notified so they may review any enforcement action(s) imposed for continued applicability.
 - 5.8.4.3. The facility 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 facility. The original survey report can be disclosed when a clean POC is not submitted and signed by the facility. In either case, any CMS 2567 and/or POC which is revised or changed as a result of informal

dispute resolution must be disclosed to the ombudsman and other parties as required by law.

- 5.8.5. A facility may request informal dispute resolution for each survey that cites deficiencies. The following table indicates when informal dispute resolution may be requested based on the results of a revisit or as a result of the previous informal dispute resolution outcome.

Results of Revisit or of IDR	Eligibility for Another IDR
Continuation of same deficiency at revisit	Yes
New deficiency (i.e., new or changed facts, new tag) at revisit or as a result of IDR	Yes
New example of deficiency (i.e., new facts, same tag) at revisit or as a result of IDR	Yes
Different tag but same facts or revisit or as a result of IDR	No, unless the new tag constitutes Substandard Quality of Care

NOTE: A second IDR is not offered about the existence of the deficiency(ies) as of the date of the first survey.

5.9. Appeal from IDR Decision.

- 9.9.1. Federal Tags. Any federal survey finding that results in a penalty can be appealed to an administrative law judge of the Department of Health and Human Services' Departmental Appeals Board. Information on how to file an appeal will be contained in a notice from CMS. Procedures governing this federal appeal process are set out in 42 CFR § 498.40, et seq.

6. Role of the Executive Oversight Committee

- 10.1. The Executive Oversight Committee (EOC) consists of representatives of the nursing home industry, the Department, and the Commission on Aging.

As of January 1, 2016, the Executive Oversight Committee is comprised of the following members:

Troy Bell, TanaBell Health Services
 Cathy Hart, State Long-term Care Ombudsman
 Rick Holloway, Kindred Healthcare

Jason Jensen, Promontory Health Care
Tamara Prisock, Department of Health and Welfare
Debby Ransom, Department of Health and Welfare
Joe Reese, Genesis HealthCare
John Schulkins, Kindred Health Care
David Scott, Department of Health and Welfare
Robert Vande Merwe, Idaho Health Care Association

- 10.2. The EOC is responsible for regularly reviewing the IDR Process, including a Code of Ethics, and recommending changes to the Department.
- 10.3. The Executive Oversight Committee (EOC) shall meet approximately six (6) months after revisions to the IDR process and as needed, thereafter, to evaluate the process and make any necessary recommendations for revision.