

***Informal Dispute Resolution Guidelines  
Residential Care Assisted Living Facilities (RALFs)***

**1. Introduction**

- 1.1 The Idaho Department of Health and Welfare (DHW), Division of Licensing and Certification has established the following independent review process for the purpose of resolving disputes between residential care assisted living facilities (RALFs) and the Department over core issue deficiencies cited during a state survey. The foremost interest of all parties is to ensure the residents of Idaho RALFs receive quality care in a safe, humane, home-like living environment where their rights are protected.
- 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.
- 1.3 The IDR process does not alter or delay the required timetables associated with plans of correction, evidence of resolution, licensure or certification, suspension, revocation, or other adverse actions.
- 1.4 The IDR process does not limit any other appeal available under state laws or regulations.
- 1.5 Agencies may not use the IDR process to delay the formal imposition of remedies. IDR cannot be used for appealing enforcement remedies/actions. Appeals of enforcement actions must follow IDAPA 16.05.03 Rules Governing Contested Case Proceedings and Declaratory Rulings.
- 1.7 Allegations of surveyor misconduct should not be reported under this process, but rather reported to the Administrator for the Division of Licensing and Certification for separate resolution.

**2. Objectives**

- 2.1 Facilitate resolution of differences through constructive, clear, and ongoing communication.
- 2.2 Informally and quickly resolve disputes related to specific core deficiencies.
- 2.3 Promote the mutual exchange of clarifying information in order to enhance understanding of survey decisions and minimize conflicts and disagreements.

### **3. Opportunities to Resolve Disputes Prior to Requesting IDR**

#### **3.1 During the Survey**

Surveyors will use all information made available to them in making their decisions about facility compliance. Survey staff members are expected to seek complete information from facility staff and to give the facility a reasonable opportunity to provide additional information on a timely basis, normally within four hours of request. Facility staff should provide any additional information or documentation that may demonstrate compliance that was not found by the survey team. Facility and survey staff must communicate regularly to ensure that surveyors have access to all relevant information throughout the process.

If issues arise during the survey that individual surveyors and facility staff cannot resolve, the team leader and the facility's administrator should meet and attempt to overcome any misunderstanding or miscommunication.

#### **3.2 During the Exit Conference**

The survey team will communicate its tentative deficiencies and the general basis for the deficiencies to the facility staff at the exit conference. The team will give appropriate consideration to any additional information provided by facility staff at the exit conference. Due to time constraints, not all examples may be given. The survey team will inform the facility that additional information may be submitted within two (2) business days of the exit conference.

Because of the informal nature of the exit conference and the preliminary nature of the deficiencies discussed, facility 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 facility for assistance may attend the exit conference.

The Department may cancel or end the exit conference if the facility, or the facility's consultants, create an environment that is hostile or inconsistent with the informal and preliminary nature of the exit conference.

#### **3.3 After the Exit Conference**

Additional information the facility believes will demonstrate compliance with the deficiencies identified at the exit conference may be submitted to the survey team within two (2) business days of the exit conference.

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

#### **3.4 Communications with the Program Supervisor**

After the exit conference and prior to completion of the survey report, facility staff may contact the Program Supervisor for clarification on regulatory requirements and to discuss the deficiencies.

#### **4. Requesting an IDR**

- 4.1 If unable to resolve disputes using the methods described in 3.1 – 3.4, the facility may request an IDR for the involved deficiencies after the facility receives the formal written survey report.
- 4.2 To request an IDR the facility should complete the request form for each disputed deficiency. The request form is located at [www.assistedliving.dhw.idaho.gov](http://www.assistedliving.dhw.idaho.gov). The original request form should be sent to the IDR Support Coordinator by the date identified in the cover letter accompanying the survey report. No requests will be accepted after the date specified in the cover letter.
- 4.3 Any additional evidence the facility wants the panel to consider must be submitted with the initial request for IDR and must have been in existence in its submitted form and content as of the date of the survey exit conference.
- 4.4 Each document should be labeled with the rule number and the page and paragraph of the survey report to which it relates. The facility should attach a copy of the page(s) from the survey report that is being disputed.
- 4.5 Each document of additional evidence should be submitted to the IDR Support Coordinator by the date identified in the cover letter accompanying the survey report. No additional evidence will be accepted after the date specified in the cover letter.
- 4.6 Once the request for IDR is received by the Department, no additional evidence will be accepted.
- 4.7 Parties may participate in the IDR Meeting 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. The facility should check the box on the IDR request form that indicates which method (in person, by telephone, or in writing) that they would like to use to present their case.
- 4.8 The panel may deny a request for an IDR if it determines that the facility's IDR request does not include information that would reasonably dispute the core deficiency.
- 4.9 Submitted IDR requests will be scheduled by the IDR Support Coordinator provided that the request is received by the date specified in the letter accompanying the survey report.

## **5. The IDR Panel**

- 5.1 IDR Meetings will be conducted by a five- (5) person panel consisting of one (1) advocate, three (3) industry representatives and one (1) Department representatives. Industry representatives must be a current owner/operator, administrator, or nurse in an assisted living facility in Idaho. Department representatives must not be members of the Department's Residential Assisted Living Facilities (RALF) Team. Each panel member serves a term of three years.
- 5.2 Panel members may be recommended by Department staff, industry representatives, advocates or other interested parties. Final selection of panel members will be made by Department staff.
- 5.3 Five (5) panel members, representing the respective interests, must be present to conduct and decide an IDR.
- 5.4 The panel chair will be selected by the panel members and will serve a term of one year.
- 5.5 The panel will convene monthly or more often if needed. If there are no IDR requests for a given month, the panel meeting shall be cancelled.

## **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.
- 6.2 Panelists shall disclose any actual or potential circumstance that might create a conflict of interest. When any conflict of interest is identified, the panel will 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:
  - 6.2.1 The panelist is currently, or was within the past two (2) years, an employee of the facility requesting the IDR or its parent organization;
  - 6.2.2 The panelist is currently, or was within the past two (2) years, under contract to provide service to the facility or its parent organization;
  - 6.2.3 The panelist has a family member residing or working in the facility;
  - 6.2.4 The panelist has a financial interest in the facility or its parent organization.

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- 6.2.5 The panelist was a member of the survey team for the survey in question; or
- 6.2.6 The panelist, individually, has filed a lawsuit against the facility or the facility has filed a lawsuit against the individual panelist.
- 6.3 Panel members shall not discuss particulars of the panel's deliberations in any forum outside the Department or the IDR process itself, including, but not limited to, the following:
  - 6.3.1 The particular circumstances of any facility's survey in such a way as would identify the facility;
  - 6.3.2 The name(s) of any individual(s) referred to in survey findings or identified through the IDR process; or
  - 6.3.3 Any recommendations relating to sanctions imposed against a facility.
- 6.4 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.
- 6.5 Panel members shall display professionalism and respect for one another at all times.
- 6.6 Panel members shall not defend, support, or ignore unethical conduct perpetrated by colleagues or peers.
- 6.7 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.
- 6.8 Panel members shall act with integrity and shall avoid conflicts of interest in the performance of their professional and committee responsibilities.

## **7. The IDR Process**

- 7.1 Upon receipt of a request for an IDR Meeting, the IDR Support Coordinator will notify the facility of the date, time and place of the meeting when the IDR panel will consider the facility's request.
- 7.2 The IDR Support Coordinator will send/deliver the materials to the panelists for the IDR scheduled to be heard two weeks in advance of the scheduled IDR meeting date. This period of time will give the panelist's 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 he or she has to

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remove him or herself from hearing a particular IDR. Immediate notice is critical to allow for alternate arrangements to be made. Each panel member is responsible to recommend an alternate member in his or her absence.

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 facility and the state are given an opportunity to discuss the deficiencies in dispute. The facility will have thirty (30) minutes to summarize its position on the deficiencies in dispute. The state will have fifteen (15) minutes to respond. There will be an opportunity for panel members to ask questions of each side. A facility 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 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 facility.

#### 7.5 IDR Meeting Recommendations:

7.5.1 The facility's documents should be labeled with the deficiency or rule standard(s) to which they apply.

7.5.2 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 facility's position.

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

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

7.5.5 Non-panelist observers may view the proceedings at the discretion of the panel chair. All observers, however, 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.
- 8.2 The facility 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 signed by the panel chair. 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 RALF Program Supervisor for continued applicability.