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Health and Human
Services

Policy and Procedure for the Independent Informal Dispute Resolution Process

**Policy and Procedure
for the Independent Informal Dispute Resolution Process
by the
Health and Human Services Commission**

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Introduction

In July 1995, the Federal government established the Informal Dispute Resolution (IDR) process for certain long-term care facilities. The IDR function in Texas was originally performed by the State survey agency. Legislative action moved the IDR function from the State survey agency (Department of Human Services (DHS)) to the Health and Human Services Commission (HHSC), effective January 1, 2002. Effective September 1, 2004, DHS became the Department of Aging and Disability Services (DADS). On September 1, 2017, DADS was eliminated by the Texas legislature and was merged into HHSC. The HHSC IDR Department is now organizationally part of the HHSC Legal Division. This change ensured that the IDR Department was independent and organizationally separate from the HHSC survey agency within the HHSC Regulatory Services Division, Long Term Care Regulatory (LTCR).

Beginning on January 1, 2012, the HHSC IDR Department conducted the Independent Informal Dispute Resolution (IIDR) process that is mandated by the Federal Affordable Care Act of 2010. According to Federal regulation, the IIDR process must be performed by a qualified entity; HHSC determined that the HHSC IDR Department was the entity of choice to perform the IIDR process in Texas and the IDR Department accepted that responsibility. The HHSC IDR Department will continue to oversee the standard IDR process and the IIDR process.

PURPOSE

The IIDR is an informal administrative procedure intended to provide facilities one informal opportunity to refute cited deficiencies after any survey in which Federal Civil Monetary Penalties (CMP) are imposed, and for which CMPs are to be collected or placed in an escrow account under 42 CFR §488.431. The IDR Department's Policies and Procedures serve as a guide to ensure the IIDR process is performed thoroughly, consistently and according to 42 Code of Federal Regulations §488.331 and the State Operations Manual (SOM) §7213. The IIDR process is independent of the State Survey Agency.

The IIDR is not a formal or evidentiary hearing; is not an initial determination that gives rise to appeal rights; and may not be disclosed under Federal or State Freedom of Information laws as all original written records will be retained by HHSC.

DEFINITIONS

- **Completed** means that a final decision from the IIDR process has been made, a written record generated **AND** the State survey agency has sent written notice of this decision to the facility **OR** if a facility does not timely request or chooses not to participate in the IIDR process.
- **Involved Resident** is a resident who was the subject of a complaint, or who filed a complaint that led to a deficiency finding that is the subject of an IIDR.

Note: There must be a complaint investigation which led to a deficiency involving the resident who was the subject of the complaint or who filed a complaint **and** the content of the deficiency must be related to the content of the complaint. For example, a complaint related to quality of care that leads only to a life safety code deficiency has no involved residents.

- **Organizationally Separate** means a distinct office or division that functions independently from the office or division that conducts survey or certification activities of nursing homes.

- **Resident Representative** means either the resident’s legal representative or the individual filing a complaint involving or on behalf of a resident.
- **Written Record** includes:
 - (i) List of each deficiency or survey finding that was disputed;
 - (ii) A summary of the IIDR recommendation for each deficiency or finding at issue and the rationale for that result;
 - (iii) Documents submitted by the facility to dispute a deficiency, to demonstrate that a deficiency should not have been cited or to demonstrate a deficient practice should not have been cited as immediate jeopardy or substandard quality of care; and
 - (iv) Any comments submitted by the State’s long-term care ombudsman, residents or resident representatives, as appropriate.

REQUIREMENTS

- The IIDR process is reviewed and approved by the Centers for Medicare & Medicaid Services (CMS) before implementation.
- The IIDR is conducted by the State, “Survey Agency” under section 1864 of the Social Security Act, or by an entity approved by the State, “Survey Agency” and CMS.
- CMS Authority
 - CMS retains ultimate authority for the survey findings and imposing CMPs.
 - CMS has the authority to overturn any IIDR recommendation.
- The offer for the IIDR process is provided within 30 calendar days of the CMS notice imposing a CMP that is subject to being collected and placed in escrow.
- The IIDR process does not delay the imposition of any remedies.
- The IIDR process must be completed within 60 calendar days of a facility’s timely request.
- The facility may request an IIDR for **all** deficiencies on a survey with a *per-day* CMP imposed. If CMS imposes a *per-instance* CMP, the facility may only request an IIDR for the specific instance (deficiency) for which the per instance CMP was imposed.
- The facility may not request an IIDR for survey findings that are already the subject of an IDR under §488.331, **unless** the IDR was completed prior to CMS imposing the CMP.
- If a facility is in the process of IDR, receives notice of the opportunity for an IIDR for the same survey and makes a timely request for an IIDR, the IDR must stop and all deficiencies will be reviewed as an IIDR.
- The IIDR process is in writing and available for review upon request.
- The survey agency (HHSC LTC) ensures the State’s long-term care ombudsman, the involved residents and/or resident representatives are notified of the opportunity for written comment in accordance with SOM §7213, by the IDR Department. In order for the IDR Department to notify the above applicable person(s), LTC must:
 - Provide the IDR Department with the following information, within three calendar days¹ of receipt of the IIDR request from the facility:
 - The addresses for all applicable residents and resident representatives.
 - The contact information for the State’s long-term care Ombudsman.
- The IDR Department will provide to the State’s long-term care ombudsman, the involved residents and resident representatives with:

¹ According to Section 311.014 of the Texas Government Code, if the designated due date (calendar day) falls on a Saturday, Sunday or legal holiday, the due date becomes the following business day.

- The opportunity for written comment in accordance with SOM §7213.
- A brief description of the findings of noncompliance as set forth in SOM §7213.
- Notice that all written comments should be received within the HHSC IDR Department within 10 calendar days of the IIDR request.
- A designated contact person to answer questions and address concerns.
- The contact information for the State’s long-term care ombudsman.
- The LTC survey agency will ensure the IDR Department has no financial or other conflict of interest. Examples of conflicts of interest are set forth in SOM §7213.
- The State survey agency (LTCR) will confirm that the organizational unit (HHSC IDR Department) performing the IIDR reviews, remains organizationally separate from the State survey agency, or is an independent entity with an understanding of specific Medicare and Medicaid program requirements selected by the State and approved by CMS.
- The LTC survey agency and the HHSC IDR Department will obtain CMS approval before changing the approved IIDR process.

KEY ELEMENTS

- The IDR and IIDR are part of the survey and certification process, and are of no charge to the facility.
- The IIDR process will be published on the HHSC public access website at: <https://hhs.texas.gov/doing-business-hhs/contracting-hhs/informal-dispute-resolution-process>. This website will include specific instructions, timeframes and a request form for facilities.
- The HHSC IDR Department contact information is as follows: HHSC IDR Department, 1106 Clayton Lane, Suite 300W, Austin Texas 78723. Phone: (512) 706-7268. Email address: IDR@hhs.state.tx.us.
- During the IIDR process, a facility may dispute the factual basis of the deficiencies, but may not dispute:
 - Severity and Scope (S/S) assessments with the exception of S/S assessments that constitute substandard quality of care or immediate jeopardy;
 - Remedies imposed by the enforcing agency;
 - Alleged failure of the survey team to comply with a requirement of the survey process;
 - Alleged inconsistency of the survey team in citing deficiencies among other facilities;
 - Alleged inadequacy or inaccuracy of the IDR or IIDR process.
 - Information regarding a previous survey.
- Severity and Scope classification and the amount of the CMP, are not the subjects of the IIDR, but will be reviewed by HHSC LTCR and/or CMS if a deficiency is recommended for change by the IDR Department.
- Failure of the State Survey Agency to ensure compliance with IIDR regulations and procedures does not invalidate any deficiencies or remedies imposed.
- The person or persons conducting the IIDR will have at least the qualifications set forth in SOM §7213, and will have no financial or other conflict of interest as described in SOM §7213.
- Any subsequent changes to an approved IIDR process must be submitted as soon as possible to the applicable CMS RO for approval prior to these changes taking effect.

IIDR TIMELINES

- 1) All information received by the IDR Department, from either the nursing facility or HHSC LTCR, will be shared with both parties by the IDR Department. The 2567 and Report of Contact (ROC) are accessible to the IDR Department via databases; however, HHSC LTCR must provide to the IDR

Department within three calendar days upon notification of the IIDR Request, if applicable:

- The Resident Identifier List;
 - The addresses for all applicable residents and resident representatives; and
 - The contact information for the State's long-term care ombudsman.
- 2) The offer of IIDR is provided by CMS Region 6 in the CMP imposition notice letter. The facility must request the IIDR process within 10 calendar days from receipt of the offer. When requesting the IIDR process, the facility must provide a copy of the notice of CMP imposition and indicate on the IIDR Request Form the date the notice was received. Requests for the IIDR process after the 10-day deadline from the receipt of the offer will be denied.
 - 3) The IDR Department must acknowledge receipt of the IIDR Request Form to the facility within 3 business days of receipt of the request. The IDR Department will notify by email the LTCR State Office and involved region within two business days of receipt of the IIDR request.
 - 4) Within three calendar days of this notification, HHSC LTCR must provide the HHSC IDR Department with:
 - A list of all deficiencies on which a provider is eligible to have an IIDR.
 - The addresses for all involved residents and resident representatives.
 - If an involved resident cannot provide a written response, HHSC should ensure that contact information is provided for a resident representative, if available.
 - 5) The facility will be given 10 calendar days² (from the date the IIDR request is received by the IDR Department) to provide two copies of a written rebuttal statement and supporting documentation. Failure to provide rebuttal information within the 10-day timeframe will result in denial of the IIDR case.
 - 6) The IDR Department must:
 - Notify the State's long-term care ombudsman, and the resident or resident's representatives of the opportunity to comment within 3 business days of receipt of the IIDR request from the facility.
 - Inform the State's long-term care ombudsman and the resident or resident's representatives that all written comments should be received within the HHSC IDR Department within 10 calendar days of the IIDR request.
 - 7) All IIDR cases are conducted by desk review; however, a facility may also request a phone conference to emphasize information that was previously submitted in the rebuttal letter and supporting documentation. All conferences must be scheduled to occur by the 30th day after receipt of the request for the IIDR process. HHSC LTCR has the option to participate in any phone conference held.
 - 8) The IDR Department may ask for additional information from either LTCR or a facility while the case is being processed. Responses must be received within two business days for any request for information to be considered.
 - 9) The IIDR Recommendation and Rationale will be distributed to HHSC LTCR State Office by the 45th calendar day from receipt of the IIDR request.
 - 10) The written record will be generated no later than 10 calendar days after the review is complete.
 - 11) The IIDR process must be completed within 60 days of receipt of the facility's request.

INFORMAL CASE REVIEW PROCESS

The IIDR process must comply with all federal requirements. The IDR Department will perform professional and impartial reviews of all disputed deficiency(ies) rebutted by a facility. All information

² According to Section 311.014 of the Texas Government Code, if the designated due date (calendar day) falls on a Saturday, Sunday, or legal holiday, the due date becomes the following business day.

provided by LTCR, the facility, residents, resident's representatives and the long-term care ombudsman, will be reviewed. The following procedures should be followed:

- 1) Read and analyze each disputed deficiency contained within the 2567.
 - Only those deficiencies listed on the IIDR request form and addressed in the rebuttal letter and supporting documentation will be reviewed.
- 2) Compare all information provided by the facility and the 2567.
- 3) Read and consider any information provided by residents or resident's representatives and the long-term care ombudsman.
- 4) Review and consider all applicable CMS Interpretive Guidelines, Survey & Certification Letters, credible resources, other IDR Department staff or any other applicable regulatory guidance available as appropriate.
- 5) After all information has been reviewed, analyzed and compared, determine if the information provided by the facility overcomes a deficiency.
- 6) Determine the following:
 - Whether the facility submitted information that demonstrates compliance with the requirement at the time of the survey;
 - Whether the facility submitted information that demonstrates that the deficiency should not have been cited; or
 - That information written in the 2567 is erroneous.
- 7) If any of the above are identified, the deficiency should be deleted, modified or moved to another requirement.

INFORMAL PHONE CONFERENCE

If a provider has requested a phone conference, it must be held no later than the 30th calendar day after the IIDR Request Form was received by the IDR Department.

Phone conference procedures:

- A record will be kept of all conference participants.
- IDR Department staff will inform both parties regarding the length of the conference, and the conference must be completed within the allotted timeframe.
- IDR Department staff will facilitate the conference.
- IDR Department staff may ask questions and clarify information from either party.

SEVERITY AND SCOPE REVIEW

Facilities are only eligible for severity and scope reviews for deficiencies that constitute Substandard Quality of Care or Immediate Jeopardy. Severity is measured at Level 1, Level 2, Level 3 or Level 4. Scope is identified as either isolated, pattern or widespread.

Note: Reviewers should refer to the most recent version of CMS' Appendix Q and Appendix P of the State Operations Manual (SOM) for Immediate Jeopardy guidance and for correct definitions of severity and scope levels.

- Substandard Quality of Care Review
 - Determine if the facility is disputing the severity or scope.
 - Determine if the severity and scope were correctly assessed.

- Immediate Jeopardy Review
 - Determine if the facility is disputing the severity, scope or immediate jeopardy components.
 - Determine if the severity and scope were correctly assessed:
 - (i) Review the deficiency to determine if the immediate jeopardy components were met.

DOCUMENTING & DISTRIBUTING THE IIDR RECOMMENDATION AND RATIONALE

- The IIDR recommendation will be documented in the IDR Department’s “Recommendation and Rationale (R&R)” format. Each deficiency disputed by a facility will be separately addressed, and will include the following sections:
 - Regulatory Requirement
 - HHSC LTCR Information (Form CMS 2567)
 - Facility’s Rebuttal Information
 - Comments (Ombudsman and the Residents or Resident’s Representatives)
 - IIDR Recommendation and Rationale

Note: The R&R should be distributed to HHSC LTCR by the 45th calendar day from the date the IIDR request was received to ensure completion of the process by the 60th day.
- Records generated by the IDR Department will be kept secure and confidential in accordance with applicable laws.
- Original IIDR records will be submitted to HHSC LTC State Office for retention.

ADDITIONAL REQUIREMENTS

- HHSC LTCR will provide its final decision to the facility no later than 15 calendar days of its receipt of the written record, if HHSC LTCR agrees with the IIDR recommendation(s).
- If HHSC LTCR disagrees with one or more of the recommendations of the IIDR, the LTCR survey agency will follow procedures set forth in SOM §7213.
- If HHSC LTCR agrees with the IIDR recommendation(s) or has received a final decision from the CMS Regional Office and changes will be made to the disputed survey findings, HHSC LTCR will:
 - Change deficiency(ies) citation content findings, as recommended.
 - Adjust the severity and scope assessment for deficiencies, as recommended.
 - Annotate deficiency(ies) citations as “deleted as recommended.”
 - A HHSC LTCR Manager or Supervisor will sign and date the revised CMS Form-2567.
 - HHSC LTCR will promptly recommend to CMS that any enforcement action(s) imposed solely because of deleted or altered deficiency citations be reviewed, changed or rescinded.
 - If one or more deficiencies on the Form CMS-2567 have changed, HHSC LTCR must provide a revised Form CMS-2567 to the facility, and the facility must submit and sign a plan of correction.
 - Any Form CMS-2567 or plan of correction that is revised or changed as a result of IIDR must be disclosed to the State long-term care ombudsman in accordance with SOM §7904.
 - Deficiencies pending IDR or IIDR will be processed in CMS’ data systems as set forth in SOM §7213 and applicable ASPEN manuals.
- The CMP is collected by CMS on the date the IIDR is completed or 90 calendar days after the date the notice the CMP is imposed.
- Until further notice, only CMPs for a deficiency or deficiencies cited at actual harm or immediate jeopardy (Severity and Scope of G or above). (Refer to SOM §7213)