



## Long-Term Care Regulation Provider Letter

<b>Number:</b> PL 2021-25
<b>Title:</b> Informal Dispute Resolution (IDR) Conference Expectations
<b>Provider Types:</b> Assisted Living Facility (ALF), Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions (ICF/IID), and Nursing Facility (NF)
<b>Date Issued:</b> June 30, 2021

### 1.0 Subject and Purpose

The Texas Health and Human Services Commission (HHSC) is issuing this letter to inform NFs, ALFs, and ICF/IIDs (referred to collectively as “facilities”) about expectations during an IDR conference relating to House Bill (H.B.) 2205, 86th Legislature, Regular Session, 2019.

### 2.0 Policy Details & Provider Responsibilities

The IDR conference is an informal opportunity for the facility to present important information previously submitted by the facility in an IDR in its rebuttal letter and its responses to shared information<sup>1</sup>. The IDR is not formal evidentiary hearing (e.g., It does not include the cross-examination of witnesses). Rather, it is an informal administrative process for a facility to dispute deficiencies/licensing violations cited against that facility in the official Statement of Deficiencies/Licensing Violations (Forms CMS-2567/HHSC-3724)<sup>2</sup>.

A facility that properly requests an IDR conference must subsequently complete and submit an IDR Conference Questionnaire in accordance with the instructions provided by HHSC. The facility must list all questions for the

<sup>1</sup> 1 Texas Administrative Code (TAC) [§393.1\(q\)](#) and [§393.2\(u\)](#)

<sup>2</sup> 1 TAC [§393.1\(a\)](#) and [§393.2\(a\)](#)

surveyor on this form. Only those questions listed on the questionnaire form will be addressed during the IDR conference<sup>3</sup>.

It is important that all individuals participating in an IDR conference are respectful and conduct themselves in a professional manner.

On the questionnaire form, the facility may only ask questions of the participating surveyor that are strictly related to refuting the cited deficiencies/licensing violations being disputed<sup>4</sup>. Below are examples of questions that are suitable for the facility to ask the surveyor in this setting:

- Where did the surveyor observe the cited deficiency/licensing violation?
- What was observed during the cited deficiency/licensing violation?
- What records were reviewed during the investigation?

Questions unrelated to the specific survey findings being disputed by the facility are not suitable for the IDR setting. Questions that relate to the following issues are prohibited and will not be answered or addressed in the IDR conference or process:

- Alleged State survey agency failure to comply with survey protocol;
- Alleged surveyor misconduct;
- Complaints about existing Federal or State standards;
- Attempts to clear previously corrected deficiencies/licensing violations;
- Remedy(ies) imposed by HHSC, including monetary penalties;
- Alleged failure of the survey team to comply with a requirement of the survey process;
- Alleged inconsistency of the survey team in citing deficiencies/licensing violations among facilities; and
- Alleged inadequacy or inaccuracy of the IDR process<sup>5</sup>.

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<sup>3</sup> 1 TAC [§393.1\(t\)](#) and [§393.2\(x\)](#)

<sup>4</sup> 1 TAC [§393.1\(q\)](#) and [§393.2\(u\)](#)

<sup>5</sup> 1 TAC [§391.1\(h\)\(5\) and \(i\)](#), [§393.2\(l\)\(5\) and \(m\)](#); and [CMS State Operations Manual, Chapter 7 – Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities, §7212.3 – Mandatory Elements of Informal Dispute Resolution](#)

Below are examples of questions that a facility must not ask:

- Which residents were interviewed during the investigation?
- What was the length of time the Immediate Jeopardy was in effect?
- What was the purpose of the surveyor going to observe Resident #1 during the visit?
- How does the facility know that the surveyor is SMQT certified?
- Is it the surveyor's professional opinion that the nurse's personal protective equipment (e.g., gloves and gown) should have been removed while she was still in the isolation room?

If such questions are asked, they will not be answered in the IDR conference.

### **3.0 Background/History**

H.B. 2205 amended Texas Government Code §531.058(a-1) to require the surveyor who conducted the survey at an NF, ALF, or ICF/IID to be available to clarify or answer questions related to the facility or the official statement of violations that are asked by the person reviewing the dispute or by the facility during the IDR conference<sup>6</sup>.

### **4.0 Resources**

For additional and complete information on the IDR Process, review the following resources:

- [Texas Government Code §531.058\(a-1\)\(1\)20](#)
- Federal NF IDR policy and guidance at Centers for Medicare & Medicaid Services (CMS) State Operations Manual, Chapter 7, [§7212 - Informal Dispute Resolution](#) and the NF IDR rules at [1 TAC §393.1](#) and [26 TAC §554.2147](#)
- ICF/IID IDR rules at [1 TAC §393.1](#) and the Amelioration of Violation rules at [26 TAC 551.241](#)
- ALF IDR rules at [1 TAC §393.2](#) and [26 TAC §553.83](#)
- [Michigan Peer Review Organization \(MPRO\) Web site](#)

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<sup>6</sup> [Texas Government Code §531.058\(a-1\)\(1\)](#)

- [HHCS Informal Dispute Resolution Web site](#)

## **5.0 Contact Information**

If you have any questions about this letter, please contact the Policy and Rules Section by email at [PolicyRulesTraining@hsc.state.tx.us](mailto:PolicyRulesTraining@hsc.state.tx.us) or call (512) 438-3161.