

# Informal Dispute Resolution for Long Term Care Facilities



Indiana Department of Health (IDOH)

Consumer Services & Health Care Quality Regulation Commission

Program Policy and Procedure

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Cancels: Use of Informal Dispute Resolution in Long Term Care Policy (Rev. 4/11/00)

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**TITLE:** Informal Dispute Resolution (IDR) Policy for Long Term Care Facilities

**PURPOSE:** To outline the informal dispute resolution process for review of deficiencies cited during a certification and/or licensure survey.

There are two informal dispute resolution processes:

1. Informal Dispute Resolution (IDR) Process

Informal Dispute Resolution refers to the review process conducted by the IDOH IDR program. The informal dispute resolution process may be either a desk (paper) review or a face-to-face/video conference review as requested by the facility.

2. Independent Informal Dispute Resolution (IIDR) Process

Independent Informal Dispute Resolution is available only to skilled nursing facilities (SNF) and nursing facilities (NF) that meet certain requirements related to a civil money penalty (CMP) imposed by the Centers for Medicare and Medicaid Services (CMS). The IIDR process is conducted by a CMS-approved "independent entity" that has contracted with the IDOH to provide this service.

**NOTE:** The Independent Informal Dispute Resolution process applies to standard (annual) and/or complaint surveys begun on or after January 1, 2012, that initiate an enforcement action for which a civil money penalty is imposed and subject to being placed in escrow. Any revisit survey conducted on or after January 1, 2012, that is associated with standard or complaint surveys begun prior to January 1, 2012, will not be subject to the Independent Informal Dispute Resolution Process (S&C:12-08-NH).

## **ATTACHMENTS:**

[Document 2011-03-A-LTC](#): State Contact Information for requesting the independent informal dispute resolution.

[Document 2011-03-B-LTC](#): Attachment providing a timeline for the independent informal dispute resolution process.

[Document 2011-03-C-LTC](#): Attachment providing a timeline for the informal dispute resolution process.

## **GENERAL POLICY: Informal Dispute Resolution (IDR) & Independent Informal Dispute Resolution (IIDR)**

1. Pursuant to 42 CFR 488.331, 488.431, 488.433, and 488.442, a state survey agency is required to provide skilled nursing facilities and nursing facilities, at the facility's request, with an opportunity for informal dispute resolution.
2. Informal dispute resolution (IDR) and independent informal dispute resolution (IIDR) do not contemplate bargaining between facilities and the IDOH or independent entity. It is an opportunity for facilities to refute survey findings that the facility believes should not have been cited and to present evidence to support that belief.
3. A facility may not use the informal dispute resolution or independent informal dispute resolution process to delay the formal imposition of remedies or to challenge any other aspect of the survey process, including but not limited to:
  - a. Classification of deficiencies (i.e. scope and severity) with the following exception: According to CMS, facilities may contest scope and severity assessments for deficiencies which result in substandard quality of care; however, if the provider does not challenge the finding, they may not challenge the scope and severity.
  - b. Remedies imposed by the enforcing agency.
  - c. Failure of the survey team to comply with a requirement of the survey process.
  - d. Inconsistency of the survey team in citing deficiencies among facilities.
  - e. Inadequacy of the informal dispute resolution process.

## **POLICY: Informal Dispute Resolution (IDR)**

1. The informal dispute resolution process (pursuant to 42 CFR 488.331) will be offered to a facility to refute findings of any survey conducted by the IDOH Division of Long Term Care.



2. The informal dispute resolution process will be conducted by IDOH IDR Program staff and/ or designated Division of Long Term Care staff.
3. The informal dispute resolution process will provide facilities with the option of a face-to-face, video conference, or desk (paper) review informal dispute resolution process.
4. The informal dispute resolution process is the only process available for instances where independent informal dispute resolution does not apply. This includes surveys where civil money penalties are not imposed related to the deficiencies cited.
5. The informal dispute resolution process will be available to facilities for State-only tags. The State-only (F9999 and Residential [R] tags) citations will not qualify for independent informal dispute resolution. There is no fee for this process.
6. The informal dispute resolution process is not a formal or evidentiary hearing, and the results are not an initial determination that gives rise to appeal rights. The informal dispute resolution process is intended to allow facility staff to directly communicate with IDOH IDR Program staff and address issues identified in the survey findings. To achieve that goal, only facility employees and facility corporate staff may attend face-to-face and video conference IDR meetings. IDOH does not allow telephone conferencing as part of the IDR process. These meetings are not a legal proceeding or open meeting. Non-facility employees, such as attorneys, outside consultants and residents/family members, are not allowed to attend face-to-face and video conference informal dispute resolution meetings.
7. There is no fee for the Informal Dispute Resolution process.

#### **POLICY: Independent Informal Dispute Resolution (IIDR)**

1. Independent informal dispute resolution will be offered to a facility to refute survey findings if CMS imposes a civil money penalty against the facility based on the survey finding, and the civil money penalty amounts are subject to being collected and placed in an escrow account under 42 CFR 488.431(a). The independent informal dispute resolution will be conducted by a CMS approved independent entity contracted by the IDOH.
2. An offer for independent informal dispute resolution will be provided within thirty (30) calendar days of notice of the imposition of a civil money penalty that will be collected and placed in an escrow account. Centers for Medicare & Medicaid Services (CMS) Region V Office will communicate the offer for an independent informal dispute resolution, along with the appropriate state survey agency contact information, in its initial Notice of Imposition of a CMP letter to a facility.



3. Upon receipt of the Notice of Imposition of a CMP letter, the facility has ten (10) calendar days to request an independent informal dispute resolution. The request should be sent to [ISDH.LTC.IDR@isdh.in.gov](mailto:ISDH.LTC.IDR@isdh.in.gov). The facility must submit supporting documentation with this request. The IDOH will acknowledge receipt of the request and provide information to the facility to include when and how the process will be completed.
4. The independent informal dispute resolution process will be a desk (paper) review process conducted by the independent entity.
5. For independent informal dispute resolution processes, the IDOH will provide notification of the opportunity to comment to:
  - a. The involved resident(s) or the appropriate resident representative(s); and
  - b. The Indiana Long Term Care Ombudsman.

The "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 the independent informal dispute resolution. "Resident representative" means either the resident's legal representative or the individual filing a complaint involving, or on behalf of, a resident. (CMS State Operations Manual, Chapter 7, 7213.3).

6. If a survey is eligible for independent informal dispute resolution and there is a State-only tag included on that survey, the facility will be allowed the independent informal dispute resolution process for any deficiency on the survey except for the State-only tag. The facility may request the informal dispute resolution process for the State-tag.
7. The independent informal dispute resolution final decision will be completed within sixty (60) calendar days of receipt of the facility's request. The final decision includes the independent entity's decision, a written record, and the IDOH IIDR written notice of the decision to the facility.
8. There will be no fee for independent informal dispute resolution.

**NOTE:** Federal regulations and guidance include numerous steps and a specific timeline for completion of the independent informal dispute resolution process. A facility requesting independent informal dispute resolution must submit supporting documentation for review at the time of the request for independent informal dispute resolution. The IDOH will not be able to allow additional time for submission of supporting documentation to be reviewed by the independent entity.



## **POLICY: Independent Informal Dispute Resolution (IIDR) Contracting Entity**

1. The IDOH will contract with an independent entity to perform the independent informal dispute resolution process. The independent entity must meet the following requirements and show evidence of training / documentation of the following:
  - a. Understanding of Medicare and Medicaid program requirements including but not limited to:
    - 42 CFR Part 483, Subpart B and Part 488, Subparts, A, E and F.
    - The State Operations Manual (SOM) including, Chapter 2, Section 2700, Chapter 3, Section 3300, Chapter 5, Chapter 7, Definitions, Section 7212 and section 7900, Long Term Care Survey Process Procedure Guide, Appendix PP, Appendix Q, [Principles of Documentation for the CMS 2567 \(SOM Exhibit 7A\)](#) and applicable health care, health care management, and life safety code knowledge and experience.
  - b. The entity has no financial or other conflict of interest for each reviewer.
  - c. The entity is fully accredited by the Utilization Review Accreditation Commission (URAC).
2. The independent entity will provide a written record of the independent informal dispute resolution upon its completion. The written record will be an electronic document transmitted to the state Director of the Informal Dispute Resolution program through the state's email system.
  - a. The independent entity will generate and forward a written record to the IDOH for retention by the State (or to CMS Region V Office for federal surveys).
  - b. The IDOH (or CMS Region V Office for federal surveys) will make a decision based on the written record of the independent informal dispute resolution process and will provide the final results to the facility for each deficiency challenged and a brief summary of the rationale for that result.
  - c. The written record shall include:
    - 1) Each deficiency disputed;
    - 2) A summary of independent entity recommendation(s) for each deficiency or finding and the rationale for that result;
    - 3) 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 as substandard quality of care; and

- 4) Any comments submitted by the Ombudsman and/or residents or resident representatives.

- d. If the IDOH disagrees with the recommendation of the independent entity, the IDOH will send the complete written record and a written rationale of why the IDOH disagrees, to the CMS Region V Office for review and final decision.

## **PROCEDURE: Procedure for the Informal Dispute Resolution and Independent Informal Dispute Resolution Process**

### **INFORMAL DISPUTE RESOLUTION**

1. When the Long Term Care Division electronically sends the facility a CMS 2567 Survey Report that has deficiencies cited, the facility will also receive, via the IDOH Survey Report System, a letter which will include information regarding the opportunity for informal dispute resolution.
2. The facility must request the Informal Dispute Resolution (IDR) process within 10 calendar days of receipt of IDOH letter and CMS 2567 survey findings. To request an informal dispute resolution process, the facility must submit the completed informal dispute resolution request electronically, including supporting documentation, with the plan of correction through the IDOH Survey Report System. All IDR requests must be submitted through the IDOH Survey Report System by filling out the IDR form at the end of the plan of correction for each deficiency. Copies of any documents submitted with the informal dispute resolution request must have resident names and other identifying information redacted and replaced with resident identifiers from the survey report, labeled appropriately and pertinent portions underlined, circled or otherwise marked.
3. Upon receipt of the informal dispute resolution request and supporting documentation:
  - a. Program staff receives the plan of correction that includes the deficiencies indicated for informal dispute resolution.
  - b. Program staff accesses the IDOH Survey Report System and prints out and/or saves electronically the plan of correction and supporting documents that are included as part of the request.
  - c. For a face-to-face or video conference informal dispute resolution, program staff contacts the facility administrator and sets up an appointment. A confirmation



letter is sent through the IDOH Survey Report System by program staff to the facility verifying the meeting date and time.

- d. For desk (paper) review informal dispute resolutions, the same system is followed but a letter is sent through the IDOH Survey Report System by program staff to the facility confirming receipt of the desk (paper) review informal dispute resolution request. The CMS 2567 Survey Report, plan of correction, and supporting documents are given to the Director of the Informal Dispute Resolution Program for review.
  - e. Informal dispute resolution and independent informal dispute resolution results will be entered into Aspen Central Office.
- 4. The informal dispute resolution request will not be processed until all the information is received. If the informal dispute resolution record submitted is incomplete, program staff will contact the facility to obtain the omitted information.
  - 5. Informal dispute resolution review and final determination will be completed within 45 days of the initial receipt of the complete desk (paper) review request or the face-to-face/video conference meeting.

#### INDEPENDENT INFORMAL DISPUTE RESOLUTION

- 6. Upon issuing the Notice of Imposition of a CMP letter that informs the facility of collection and placement of funds in an escrow account, the Centers for Medicare and Medicaid Services (CMS) Region V Office will communicate the offer for an independent informal dispute resolution.
- 7. To request an independent informal dispute resolution process, the facility must submit a request to the designated state survey agency contact. The request is an email requesting Independent Informal Dispute Resolution. The request should be sent to [ISDH.LTC.IDR@isdh.in.gov](mailto:ISDH.LTC.IDR@isdh.in.gov) and include the following information:
  - a. Name of facility
  - b. Date of survey report and citations for which independent informal dispute resolution is being requested
  - c. Attach any additional records in support of the independent informal dispute resolution request in a secure manner
- 8. The IDOH will notify the involved resident or resident representative (for a complaint only) and the Indiana Long Term Care Ombudsman of all independent informal dispute resolution requests and provide the opportunity to comment. Individuals will be informed that comments should be provided to the IDOH.



- a. The IDOH will either contact the involved resident or representative (for a complaint only) by phone, mail, or email and provide the opportunity for comment or coordinate notice with the Indiana Long Term Care Ombudsman. In order to maintain resident/complaint confidentiality, the IDOH will use the information from the complaint intake form to contact the resident or resident representative and provide the opportunity to comment or will use information gathered by the surveyor during the survey.
- b. In order to be assured that comments will be included in the review process, comments must be received by the IDOH within fourteen (14) calendar days of notice of opportunity to comment. Upon receipt, the IDOH will forward comments to the independent entity for inclusion in the review.

9. Timing of independent review process:

- a. Independent informal dispute resolution materials will be sent to the independent entity by the IDOH within five (5) calendar days of receipt of the timely and complete request for independent informal dispute resolution.
- b. The review will be completed by the independent entity and recommendations sent to the Director of the Informal Dispute Resolution Program for review within thirty (30) days of receipt of materials.
- c. The Director of the Informal Dispute Resolution Program will review all determinations and recommendations of the independent entity. The independent informal dispute resolution review and final determination by the Director of the Informal Dispute Resolution Program will be completed and the results sent to the facility within ten (10) days of the receipt of the complete independent informal dispute resolution record.
- d. If the IDOH disagrees with the recommendation of the independent entity, the IDOH will send the independent entity's complete written record and the written record of the IDOH's rationale for disagreement to the CMS Region V Office for review and final decision.
- e. Independent informal dispute resolution review and final determination will be completed within sixty (60) days of the initial receipt of the complete independent informal dispute resolution request from the facility.

## INFORMAL DISPUTE RESOLUTION AND INDEPENDENT INFORMAL DISPUTE RESOLUTION

10. The IDR/IIDR process may involve a review of the following:

- a. Statement of deficiencies





- b. CMS guidance and guidelines in the Long Term Care Survey Process Procedure Guide, Appendix PP and Q
  - c. Documentation submitted by the facility
  - d. Survey packet
  - e. Any other information pertinent to the issues identified in the IDR, including a review of disease processes and drugs.
  - f. The independent informal dispute resolution review may involve any of the above as well as involved resident or resident representative (for a complaint only) and Ombudsman comment information.
11. When the IDR/IIDR process is completed and a determination is made, the Director of the Informal Dispute Resolution Program and/or program staff will:
- a. Document the determination on the informal dispute resolution record and update the state and federal database. The informal dispute resolution log in Aspen Central Office and the letter to the facility will be processed in Aspen Central Office.
  - b. Notify the facility of the outcome of the informal dispute resolution or independent informal dispute resolution review in a letter sent through the IDOH Survey Report System.
  - c. Send informal dispute resolution changes and determinations to CMS Region V Office and IDOH Division Director, Enforcement Manager, Administrative Assistant, LTC Area Supervisor, Surveyors listed on the 2567, Quality Review (QR) Reviewer, and Office of Legal Affairs (if applicable). In the case of independent informal dispute resolution, the State Ombudsman will be notified of the results.
  - d. Make any needed changes to the survey report resulting from the review process on the original CMS 2567 Survey Report.
  - e. Save the completed informal dispute resolution packet in the electronic filing system.
12. The IDOH Enforcement Manager will review the informal dispute resolution results and determine if any remedies previously imposed were based on a modified or deleted deficiency. If indicated the Enforcement Manager will send an amended enforcement letter to modify and /or rescind the enforcement action.
13. The Director of the Informal Dispute Resolution Program will submit a statistical report of all informal dispute resolution data quarterly and yearly.

