

**Indiana State Department of Health
Health Care Quality and Regulatory Commission
Division of Long Term Care**

**Program Policy and Procedure
Informal Dispute Resolution**

ISDH Division of Long Term Care

Program Policy and Procedure

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

PURPOSE: To outline the informal dispute resolution (IDR) and independent informal dispute resolution (IIDR) process for any deficiencies cited during a survey at a comprehensive care facility.

OVERVIEW: The following is an overview of the informal dispute resolution process for skilled nursing facilities (SNF) and nursing facilities (NF). [Indiana licensing rules refer to these facilities as comprehensive care facilities. They are more traditionally referred to as nursing homes.] There are two informal dispute resolution processes. The facility may only select one dispute resolution process per survey.

1. “Informal Dispute Resolution” (IDR) Process

The ISDH offers informal dispute resolution for all licensing and certification surveys conducted at comprehensive care facilities. “Informal dispute resolution” refers to the review process conducted by ISDH Long Term Care Supervisors. The informal dispute resolution process may be either a paper review or a face-to-face review as requested by the facility. There is no fee to the facility for the informal dispute resolution process.

2. “Independent Informal Dispute Resolution” (IIDR) Process

An independent informal dispute resolution process is available 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 process is conducted by a CMS-approved “independent entity” that has contracted with the ISDH to provide this service. There is no fee to the facility for the independent informal dispute resolution process.

IMPLEMENTATION:

1. This ISDH Informal Dispute Resolution Policy and Procedure is effective January 1, 2012.
2. The Independent Informal Dispute Resolution process will only apply 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.
3. The ISDH will be contracting with an independent entity for the independent informal dispute resolution process. The ISDH will provide contact and process information for that entity when a facility requests the independent process. The ISDH will inform facilities of the independent entity when the state contract process is completed early in 2012.

ATTACHMENTS:

Document 2011-03-A-LTC: State Contact Information for requesting the independent informal dispute resolution.

ISDH 2011-03-B-LTC: Attachment providing a timeline for the independent informal dispute resolution process.

POLICY: Informal Dispute Resolution and Independent Informal Dispute Resolution

The following are general policies related to the informal dispute resolution and independent informal dispute resolution processes:

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 and independent informal dispute resolution does not contemplate bargaining between facilities and the ISDH or independent entity. It is an opportunity for facilities to refute survey findings that the facility believes are inaccurate 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: Per authorization by 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.

The following are policies related to the informal dispute resolution process:

4. 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 staff of the ISDH Division of Long Term Care.
5. The informal dispute resolution process will be conducted by ISDH Division of Long Term Care Supervisors and the Informal Dispute Resolution Program Supervisor. There is no fee for this process.

6. The informal dispute resolution process will provide facilities with the option of a face-to-face or paper review informal dispute resolution process.
7. The informal dispute resolution process is the only process available for instances where independent informal dispute resolution does not apply. This includes surveys where all deficiencies are less than a “G” scope and severity level (i.e. scope and severity levels D, E, and F). Any civil money penalties imposed for on deficiencies that were not subject to escrow will continue to be collected in accordance with 42 CFR 488.432 (without independent informal dispute resolution).
8. The informal dispute resolution process will be available to facilities for State-only tags. The State-only (F9999) tags will not qualify for independent informal dispute resolution. Funding for State-tag review is State funding.
9. If a facility is eligible for independent informal dispute resolution, a facility may select either informal dispute resolution or independent informal dispute resolution.
 - a. 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 State-tag. That situation could result in the facility requesting both processes although not for the same tags.
10. 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 ISDH supervisors and address issues identified in the preliminary survey findings. To achieve that goal, only facility employees and facility corporate staff may attend face-to-face meetings. These meetings are not a legal proceeding or open meeting. Non-facility employees, such as attorneys or outside consultants, are not allowed to attend face-to-face informal dispute resolution meetings.
11. From late 2003 until November 2011, the ISDH provided facilities with the option for an independent informal dispute resolution process with Michigan Peer Review Organization (MPRO) where the facility paid for the cost of the

independent informal dispute resolution process. That option is no longer available to facilities.

The following are policies related to the independent informal dispute resolution process:

12. Independent informal dispute resolution was included in the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) and the final administrative rules published at 76 FR 15106. Section 6111 of the Affordable Care Act added new section (IV)(aa) to sections 1819(h)(2)(B)(ii) and 1919(h)(2)(B)(ii) of the Social Security Act. The section provides a facility with the opportunity to request an independent informal dispute resolution if CMS imposes a civil money penalty against the facility and the civil money penalty amounts are subject to being collected and placed in an escrow account (section (IV)(cc)).
13. Independent informal dispute resolution will be offered to a facility, upon the facility's request, 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(b). The independent informal dispute resolution will be conducted by a CMS approved independent entity contracted by the ISDH.
14. The facility will have only one opportunity for review of a specific survey finding. The facility may not have both the informal dispute resolution and independent informal dispute resolution on the same survey finding, except in cases where informal dispute resolution has already been completed before a facility received notice of a civil money penalty.
15. The civil money penalties will be placed in escrow accounts by CMS that apply to both per-day and per-instance civil money penalties.
16. Only civil money penalties which are imposed based on a deficiency or deficiencies cited for actual harm or immediate jeopardy to resident health or safety (i.e., at a scope and severity level of G or above) will be subject to civil money penalty collection and escrow provisions. Those deficiencies which result in the imposition of such civil money penalties will trigger a facility's opportunity to participate in the independent informal dispute resolution process.

17. 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. 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.
18. To request an independent informal dispute resolution, the facility must submit a request to the designated state survey agency contact. The request should be sent to ISDH.LTC.IDR@isdh.in.gov. The facility must request the independent informal dispute resolution within ten (10) calendar days of the offer. Once a request is received, the ISDH will provide information to the facility to include when and how the process may be accomplished and who will be conducting the independent informal dispute resolution.
19. The independent informal dispute resolution process will be a paper review process conducted by the independent entity. The independent informal dispute resolution process will not include a face-to-face review process.
20. Federal regulations and guidance include numerous steps and a very tight time restriction 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 ISDH will not be able to allow additional time for submission of supporting documentation to be reviewed by the independent entity.
21. For independent informal dispute resolution processes, the ISDH 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 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.

22. The independent informal dispute resolution process will be completed within sixty (60) calendar days of receipt of the facility's request. For the independent informal dispute resolution process, "completed" means that a final decision from the independent informal dispute resolution process has been made, a written record generated, and the State survey agency has sent written notice of the decision to the facility.
23. All independent informal dispute resolution processes are approved by CMS. CMS reviews the results of the dispute resolution processes and retains the right to be the final arbitrator of accuracy and appropriateness. CMS retains ultimate authority for the survey findings and imposition of the civil money penalties.
24. There will be no state fee for independent informal dispute resolution. The process will be funded by the ISDH through federal funding using the existing cost allocation methodology that is in place for the State's surveys of skilled nursing facilities and nursing facilities.
25. The ISDH 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, Appendix P, Appendix PP, Appendix Q, Principles of Documentation for the CMS 2567 (SOM Exhibit 7A) and applicable health care, health care management, or life safety code knowledge and experience.
 - b. The entity has no financial or other conflict of interest for each reviewer.
 - c. All reviewers possess direct working knowledge of long term care.
 - d. Reviewers attend updates to remain current with regulatory updates, new surveyor guidance and CMS directives.
 - e. The entity is fully accredited by URAC as Health Utilization Management (HUM) and Independent Review Organization (IRO).
 - f. The entity is a member of National Association of Independent Review Organizations (NAIRO).

26. 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 informal dispute resolution supervisor through the state's email system.
 - a. The independent entity will generate a written record prior to the collection of the civil money penalty.
 - b. The independent entity will forward the written record to the ISDH for retention by the State (or to CMS Region V Office for federal surveys).
 - c. The ISDH (or CMS Region V Office for federal surveys) will make a decision based on the written record of the independent informal dispute resolution and will provide the final results to the facility for each deficiency challenged and a brief summary of the rationale for that result.
 - d. 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.
 - e. If the ISDH disagrees with the recommendation of the independent entity, the ISDH will send the complete record to the CMS Region V Office for review and final decision.

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

1. When the Division electronically sends the facility a CMS 2567 Survey Report that has deficiencies cited, the facility will also receive, via the ISDH Survey Report System, the following:
 - a. Informal dispute resolution process memo
 - b. Informal dispute resolution request
 - c. Instructions for requesting informal dispute resolution

2. The facility must submit the completed informal dispute resolution request electronically, including supporting documentation, with the plan of correction through the ISDH Survey Report System. 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. Although not recommended because of time deadlines, the facility may fax the informal dispute resolution and supporting documents or send them by mail.
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 and/or independent informal dispute resolution.
 - b. Program staff accesses the ISDH Survey Report System and prints out and/or saves electronically the plan of correction and supporting documents that are included as part of the review request.
 - c. For a face-to-face informal dispute resolution, program staff contacts the facility administrator and sets up an appointment. Aspen Central Office (ACO) is accessed by program staff and the scheduled date is entered for the face-to-face. A confirmation letter is sent by program staff to the facility verifying the face-to-face date.
 - d. For paper review informal dispute resolutions, the same system is followed but the informal dispute resolution is recorded on the paper review record. The paper review record, CMS 2567 Survey Report, plan of correction, and supporting documents are given to the Informal Dispute Resolution Supervisor.
 - 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. The ISDH will not schedule an informal dispute resolution process until there has been a determination of whether a civil money penalty was imposed and the facility has been given the opportunity for independent informal dispute resolution.

5. Upon issuing a notice of imposition of a civil money penalty that will be collected and placed 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. To request an independent informal dispute resolution, the facility must submit a request to the designated state survey agency contact at ISDH.LTC.IDR@isdh.in.gov or submit a request through the ISDH Survey Report System. For independent informal dispute resolution, the same system is followed as in the informal dispute resolution paper review process but the information is forwarded to the independent entity instead of the Informal Dispute Resolution Supervisor.

6. The involved resident or resident representative and the Indiana Long Term Care Ombudsman will be provided notification of opportunity to comment for any independent informal dispute resolution:
 - a. Prior to beginning the independent informal dispute resolution process, the ISDH will notify the involved resident or resident representative 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 ISDH.
 - b. The ISDH will either contact the involved resident or representative by phone, mail, or in-person and provide the opportunity for comment or coordinate notice with the Indiana Long Term Care Ombudsman. In order to maintain resident/complaint confidentiality, the ISDH 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.
 - c. In order to be assured that comments will be included in the review process, comments must be received by the ISDH within fourteen (14) calendar days of notice of opportunity to comment. Upon receipt, the ISDH will forward comments to the independent entity for inclusion in the review.

7. Timing of independent review process:
 - a. Independent informal dispute resolution materials will be sent to the independent entity 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 Informal Dispute Resolution Supervisor for review within thirty (30) days of receipt of materials.

- c. The Supervisor will review all determinations and recommendations of the independent entity. The independent informal dispute resolution review and final determination by the Informal Dispute Resolution Supervisor will be completed and the results sent to the facility within twenty (20) days of the receipt of the complete independent informal dispute resolution record.
 - d. If the ISDH disagrees with the recommendation of the independent entity, the ISDH will send the complete record to the CMS Region V Office for review and final decision.
 - e. Independent informal dispute resolution and informal dispute resolution review and final determination will be completed within sixty (60) days of the initial receipt of the completed informal dispute resolution record from the facility.
8. The informal dispute resolution process may involve a review of the following:
 - a. Statement of deficiencies
 - b. CMS guidance and guidelines in Appendix P, PP, 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 and Ombudsman comment information.
9. When the informal dispute resolution or independent informal dispute resolution process is completed and a determination is made, the Informal Dispute Resolution Supervisor 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 on Aspen Central Office and the letter to the facility will be processed on 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 ISDH Survey Report System.
 - c. Send informal dispute resolution / independent informal dispute resolution changes and determinations to CMS Region V Office and ISDH 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. File the completed informal dispute resolution packet in the confidential file.
10. The ISDH 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.
 11. The Informal Dispute Resolution Supervisor will compile, analyze and report all informal dispute resolution data monthly and quarterly.
 12. The ISDH assumes responsibility for:
 - a. Obtaining independent informal dispute resolution services that meet professional standards and principles and assuring compliance with those standards;
 - b. Ensuring the timeliness of the independent informal dispute resolution service; and
 - c. Accuracy and reliability of the final result of the independent informal dispute resolution.

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