

ALABAMA DEPARTMENT OF PUBLIC HEALTH
Bureau of Health Provider Standards
Division of Health Care Facilities

Subject:

Informal Dispute Resolution (IDR) Process

Original Effective Date: July 1, 2004

Updated Effective Date: August 11, 2014

Purpose:

Pursuant to 42 CFR § 488.331, each state survey agency must offer a skilled nursing facility an informal opportunity, at the facility's request, to dispute deficiencies listed on the CMS form 2567. The process outlined in this policy is the means by which the Alabama survey agency will provide informal dispute resolution. The objectives of this informal resolution process are to facilitate resolution of differences from the survey process and to promote mutual exchange of information which enhances understanding of survey decisions.

Policy

The, Division of Health Care Facilities, through coordinated efforts, will provide informal dispute resolutions to skilled nursing facilities in a timely manner. Facilities should be aware that in order to participate in an IDR conference, a written request for informal dispute resolution must be made by the facility. It is the agency's policy to establish communication with the facility throughout the survey and during the decision making process. The agency encourages facilities to be aware of the opportunities to discuss concerns with the survey agency before the deadline for requesting the informal dispute resolution expires. The survey agency's experience has been that many disputes can be resolved without the necessity of an IDR conference.

Informal Dispute Resolution Procedures

1.) Requesting Informal Dispute Resolution

When the Division of Health Care Facilities (DHCF) provides the facility with the CMS 2567 (Statement of Deficiencies), it will also advise the facility in writing that the facility may request informal dispute resolution to dispute cited deficiencies. A facility must make the request for informal dispute resolution in writing. The request must be received in the offices of Division of Health Care Facilities as specified in the out of compliance notice provided with the CMS 2567, or else the right to an IDR is waived.

The written request for informal dispute resolution must give detailed reasons why deficiencies are being disputed and the basis for the facility's position that the deficiencies do not exist. The facility may have an additional 14 calendar days to submit additional material for review. ARGUMENTS NOT RAISED and EVIDENCE NOT DISCUSSED in the IDR request letter and DOCUMENTS NOT INCLUDED with the additional supporting documentation WILL NOT BE ALLOWED to be presented at the IDR meeting. If facilities submit documents that were not made available during the survey or faxed to the Bureau immediately following the survey, the facility must fully explain why the documents were not produced in a timely manner - during the survey or during any subsequent telephone conference with surveyors or DHCF management staff. Documents not produced prior to the IDR request should be viewed with a healthy dose of skepticism. In any case where a document appears to have been altered, as when the survey team obtained a copy of the document during the survey but the document presented at the time of the IDR request contains additional information, a report will be made to the Board of Nursing or other appropriate licensing authority. The request and supporting information should be directed to:

IDR Coordinator
201 Monroe Street
RSA Tower, Suite 600
Montgomery, AL 36104
(334) 206-5879

2.) Subject of the Informal Dispute Resolution

The informal dispute resolution process is provided only for the purpose of permitting a facility to informally challenge whether cited deficiencies exist. The informal dispute resolution process may not be used to challenge: 1) the scope and severity assignment of a deficiency citation unless it constitutes substandard quality of care or jeopardy; 2) the remedies recommended or applied because of deficiencies; 3) the failure of a survey team to comply with a requirement of the survey process; 4) the inconsistency of the survey agency in citing deficiencies among facilities; or, 5) the inadequacy or inaccuracy of the informal dispute resolution process.

3.) How the Informal Dispute Resolution will be conducted

Systems Management/Enforcement Unit staff are responsible for recording and tracking all IDR requests from skilled nursing facilities. For any deficiencies disputed at the scope and severity level of A, B, or C, the written request will be forwarded to the supervisor responsible for that facility. The IDR for A, B, or C level deficiencies will be accomplished through a conference call. The supervisor will affirm or delete deficiencies at the A, B, and C level. The supervisor will notify the facility in writing of the results of the conference call.

Long Term Care providers may not continue with the IDR process for deficiencies cited at the A, B, and C level.

For disputed deficiencies of a scope and severity level of D or higher, the IDR process will include two levels of review. The first level will be a paper review, by the QA Director and additional management personnel as necessary, of the argument and supporting documents sent by the facility. If agency management determines that all deficiencies being disputed by the facility are found to be cited in error and agree with the facility's position, the Quality Assurance Director will inform the team supervisor and the facility administrator will be notified of this decision; an amended 2567 will be prepared and sent to the facility; and no face to face meeting will be scheduled. If, after review of the additional material submitted by the facility, the QA Director and management personnel believe that one or more but not all of the deficiencies that the facility is disputing are invalid, the facility administrator will be notified by phone of this determination. If the facility withdraws the request for the IDR by contacting the IDR Coordinator, an amended 2567 will be sent to the facility and no face to face meeting will be scheduled. The facility must promptly send written notice of withdrawal of the request to dispute the remaining tags by fax or email. If this notice is not received, the face to face IDR will be scheduled.

If the request for the IDR is not withdrawn, the IDR Coordinator will schedule a face-to-face conference to be conducted at the survey agency offices in Montgomery, Alabama. The date for the IDR conference will be scheduled by the IDR Coordinator. If the facility staff does not attend the IDR conference on the date and time scheduled, then the IDR request will be regarded as withdrawn and the matter concluded. The IDR panel cannot wait more than 15 minutes beyond the scheduled start time for the facility staff to arrive. If the facility personnel arrive more than 15 minutes late, without prior notice and explanation, the IDR will not be conducted. A letter will be sent to the facility notifying it of this conclusion of the matter.

The survey findings and all previously submitted information relevant to the disputed deficiencies may be discussed at the informal dispute resolution meeting. Only deficiencies cited at a scope and severity level of D or higher may be discussed at a face-to-face IDR conference.

An IDR conference is an opportunity for the facility to informally dispute the survey findings. It is **NOT** an evidentiary hearing and it is not an administrative appeal. Facilities and surveyors will be allowed thirty minutes each to present their case to panel members. Attendance will be limited to facility staff directly affected by the disputed citation or citations. The facility may bring a total of five facility employees and their Medical Director. Facilities that are part of a chain may bring one corporate representative to be included in the total of five facility employees. DHCF may bring involved members of the survey team, the supervisor of the survey team, and the DHCF Director of Quality Assurance, and the Medical Director. Others present will be the IDR panel and the IDR Administrative Coordinator. Senior

management staff may attend and answer technical questions from the IDR panel about federal rules and procedures but shall not otherwise participate in the conference. Limited numbers of surveyors in training may attend as observers. No other persons may attend.

EXCEPTION: In cases where the disputed deficiency citation concerns the work of a facility consultant, then that consultant may attend. For example, if a facility is cited as a result of the work of its pharmacy consultant, then the pharmacy consultant may participate in the IDR conference.

IDR panelists will be assigned on a rotating basis, 3 members per conference, and will include one attorney under contract to the Department of Public Health and two nurses employed in the nursing schools of state institutions of higher learning.

4.) Results of the Informal Dispute Resolution meeting

The IDR panelists will notify the facility in writing of the results of the informal dispute resolution meeting. The decision will be reached as soon as reasonably possible.

If the facility is successful during any part of the IDR process in demonstrating that deficiencies cited should be changed or did not exist, the statement of deficiencies will be modified to show the change or deletion of the deficiencies. A recommendation to CMS regarding any enforcement action imposed solely because of the deleted deficiency(ies) will be made.

A facility has the option to request a "clean" copy of the CMS form 2567. However, the clean copy will be the releasable copy only when a clean (new) plan of correction is both provided and signed by the facility. The original CMS 2567 is disclosable when a clean plan of correction is not submitted and signed by the facility. Any CMS 2567 or plan of correction that is revised or changed as a result of informal dispute resolution must be disclosed to the ombudsman. Disputed deficiencies will not be entered into the OSCAR/ODIE system while informal dispute resolution is pending.

5.) Professional Behavior

Respectful and professional behavior is expected at all times by both the Department staff and Facility staff. Inappropriate behavior may result in being dismissed from the conference by the attorney in charge.

Important Facts to Remember About Informal Dispute Resolution

1.) The facility is required to submit a Plan of Correction for all deficiencies, even those that may be disputed.

- 2.) The IDR request must be received by the Division of Health Care Facilities as specified in the out of compliance notice provided with the CMS 2567, or else the right to an IDR is waived.
- 3.) The request for informal dispute resolution does not delay the enforcement process, nor does it extend any deadline for appealing deficiencies to the Alabama Medicaid Agency or to CMS.
- 4.) Whenever time permits, utilizing the opportunities to resolve problems and concerns at the survey level or at the supervisory level may result in problems being quickly addressed so that a face-to-face informal dispute resolution conference is not necessary.
- 5.) IDRs are neither legal appeals nor evidentiary proceedings. If a facility wishes to exercise its right to a legal appeal, it should have its attorney file the necessary paperwork with CMS. A facility need not request an IDR to preserve its right to an appeal. Requesting an IDR does not toll the deadline for a facility to request an appeal.
- 6.) Facilities may not challenge scope and severity determinations unless a disputed tag constitutes substandard quality of care or is at a level of J or higher. If an example from any other tag is deleted, the management staff of the Division of Health Care Facilities will review the revised tag to determine whether the scope and severity determination should be altered.
- 7.) Allegations of surveyor misconduct are not germane to IDRs. Facilities should address any complaints about surveyor behavior to the surveyor's supervisor or to the director, Division of Health Care Facilities.
- 8.) It is important that the IDR panel hear the points of view of both the survey team and the facility staff. At the same time, however, IDR conferences are not mediation sessions. The goal is to resolve disputes correctly and accurately. The goal is not to create a "win-win" situation or to create any other scenario designed to make both sides happy,
- 9.) IDR conferences should last no longer than one and a half hours in most cases and no longer than two hours in any event.
- 10.) Except as specified above, outside consultants, including attorneys, may not attend IDR conferences. If a facility wishes to bring its medical director, it MUST notify the Division of Health Care Facilities at least one week in advance of the conference to enable the Division to consult with its medical director as to whether he should also attend.
- 11.) A deficiency citation is presumed valid. The facility has in all cases the burden of showing why the tag, or specific examples, should be deleted. Therefore, the facility staff will be called upon first during the IDR conference.

12.) The survey team will be given an opportunity to respond after the facility staff has given its reasons for disputing each tag.

13.) The panelists should listen carefully to both sides and make a separate decision about each disputed tag or example. Citations of deficiency or examples should be overturned for the following reasons only:

a.) The facts cited in the CMS 2567 statement of deficiencies fail to demonstrate that the facility has violated the regulatory requirement referred to.

b.) The facts cited on the CMS 2567 are not supported by evidence that meets the principles of documentation.

c.) The facility demonstrates with persuasive evidence that the facts underlying the citation are incorrect.

In general, the 2567, with perhaps a brief clarifying explanation by the survey staff, should stand on its own. If the survey team is unable to articulate, via the 2567, what the facility did wrong in a manner that the collective minds of two nurses and one lawyer can understand, then the tag or example should be deleted. On the other hand, a deficiency should never be deleted because the panel disagrees with the regulatory requirement, or believes that the regulatory requirement is too difficult or burdensome.

14.) IDR panelists will assemble immediately after the IDR conference and make their determination. For each disputed deficiency or example, the panel should briefly (one or two paragraphs) articulate the reasons for affirming or deleting. Senior management staff will not attend the post IDR meeting of the panelists, but will be available to answer technical questions about the federal regulations and subsequent CMS interpretations of the regulations.

15.) The state agency remains responsible under its contract with CMS to assure that federal requirements are observed. Therefore, IDR decisions will be reviewed by senior management. IDR decisions will be overturned by management ONLY when the panel has deliberately failed to follow a regulatory requirement or when an IDR decision is clearly and blatantly in violation of a federal requirement or interpretive guideline. All proposals to overturn a decision of an IDR panel must be approved by the director, Bureau of Health Provider Standards. The director, may, in his discretion, refer proposals to overturn an IDR panel decision to the State Health Officer for his review and approval.

Approved/Date

August 9, 2014

Bureau Director

Walter T. Lewis