Washington State Department of Social & Health Services

AGING AND LONG-TERM SUPPORT ADMINISTRATION
RESIDENTIAL CARE SERVICES
"Transforming Lives"

CHAPTER 22 – Informal Dispute Resolution (IDR)

INFORMAL DISPUTE RESOLUTION – Overview

This chapter contains information about the Informal Dispute Resolution process for long-term care settings licensed by Residential Care Services.

Authority

All programs: Chapter 34.05 RCW
Adult Family Homes: Chapter 70.128.163 RCW and WAC Chapter 388-76-10990
Assisted Living Facilities: Chapter 18.20.195 RCW and WAC Chapter 388-78A-3210
Nursing Homes: Chapter 18.51.060 RCW, 42 CFR 488.331 and WAC Chapter 388-97-4420
Certified Community Residential Services and Supports: Chapter 71A.12 RCW and WAC Chapter 388-101-4240
Intermediate Care Facilities/Individuals with Intellectual Disabilities (ICF/IID): 42 CFR 488.331, WAC 388-97-4420

Subject Matter Experts

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CHAPTER 22 – INFORMAL DISPUTE RESOLUTION

This section contains Standard Operating Procedures for the Informal Dispute Resolution (IDR) process for all settings.

Informal Dispute Resolution

A. Informal Dispute Resolution (IDR): for NH/AFH/ALF/CCRS/ICF/IID/ESF

B. Independent IDR: State Agency (IIDR-SA)

C. Independent IDR: Entity (IIDR-Entity)

- Independent IDR for NHs Request Form

Change Log

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22A –Informal Dispute Resolution IN ALL PROGRAMS

I. Background

To give Adult Family Homes, Assisted Living Facilities, Enhanced Service Facilities, Certified Community Residential Service and Support , Intermediate Care Facilities/Individuals with Intellectual Disabilities , and nursing home providers an informal opportunity to present information to dispute deficiency citations.

II. Procedures

A. Residential Care Services (RCS) headquarters (HQ) has a centralized process for Informal Dispute Resolution (IDR).

B. An IDR Program Manager in HQ conducts IDRs for:

1. Adult Family Homes (AFH);
2. Assisted Living Facilities (ALF);
3. Certified Community Residential Services and Support (CCRSS);
4. Enhanced Service Facilities (ESF);
5. Nursing Homes (NH);
6. Intermediate Care Facilities/Individuals with Intellectual Disabilities (ICF/IID)

C. RCS will give the provider, through the IDR process, an opportunity to present information to dispute deficiency citations resulting from a survey, licensing inspection, complaint investigation and/or related enforcement.

D. The IDR program manager will inform the Long Term Care (LTC) Ombuds program of IDR requests so residents or residents' representatives may comment on the disputed deficiency citation/s.

E. The IDR Program Manager will provide an objective, consistent review and analysis of the disputed issues.

F. Failure to complete an IDR in a timely manner will not delay the effective date of any enforcement action against the provider. A provider may not seek a delay in any enforcement action because the IDR is not complete. However, payment of civil fines may be deferred until after completion of the IDR and/or administrative hearing without penalty.

G. Providers may also dispute, using this IDR process, documentation of violations for which RCS provided consultation.

H. AFH, ALF, CCRSS and ESF providers are not required to submit attestation statements for deficiencies disputed in IDR

I. However, field staff may ask the provider to demonstrate how they are mitigating issues identified in the disputed citation prior to an IDR decision.

III. Responsibilities

RCS Field Staff will:

A. Tell providers during the exit interview for surveys, full and follow up licensing inspections and complaint investigations:

1. They may request an IDR; and
2. How to make the request.

B. Give providers a written notice along with the Statement of Deficiencies (SOD/report) that:

1. Explains the provider's right to an IDR;
2. Indicates the following three types of IDR processes are available:
   a. Face-to-face (Only held at HQ in Lacey); or
   b. Telephone; or
   c. Review of records or written material;
3. Instructs the provider how to request an IDR, if desired, including:
   a. The requirement to make a written request to the IDR Program Manager within 10 working days (AFH, ALF, CCRSS and ESF) or 10 calendar days (NH and ICF/IID) after receiving the SOD/report;
   b. Where to send the request:

      AFH/ ALF/ CCRSS/ ICFIID/ESF/NH IDR Program Manager (*as appropriate*)

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      Aging and Long-Term Support Administration

      Residential Care Services

      PO Box 45600

      Olympia, WA 98504-5600

   c. The requirement to identify:
      i. What specific deficiency citation/s the provider is disputing;
      ii. Why the provider disagrees with each deficiency citation; and

iii. The type of IDR the provider is requesting.

The IDR AA3 will:

A. Receive the request from the provider and determine if it is eligible for IDR.

B. Make IDR file with:

1. Communication Log
2. Request letter, and
3. One printed copy of the AFH, ALF, CCRSS or ESFSOD from the Facilities Management System (FMS), or the NH and ICF/IID SOD's from the federal ASPEN program.

C. Call the provider when the Department receives the IDR request to:

1. Verify the type of IDR process the provider is requesting;
2. Set a mutually agreed upon time and date for the IDR as soon as possible;
3. Confirm who will participate in the face-to-face or telephone IDR. (The IDR Program Manager should consider consulting with the Assistant Attorney General on cases where the provider is assisted by an attorney.
4. Ask the provider to submit documents related to the disputed deficiency citations before the IDR to allow the IDR program manager time to review the materials.
5. Inform providers requesting repeat IDRs on the same violation(s) and/or enforcement action(s) that providers are given only one opportunity to dispute the deficiency.

D. Send to the Provider a scheduling letter confirming the time, date, and type of IDR, and the disputed deficiency citations along with

- Where to submit documents related to the disputed deficiency citations before the IDR so the IDR Program Manager may review the materials prior to the meeting.

E. Send the IDR scheduling letter to the RCS Field Manager/AA3 and ask them to e-mail the IDR Program AA3 as soon as possible the following:

- The resident list related to the disputed deficiency citation/s; and
- The staff list related to the disputed deficiency citation/s.
- Resident and staff lists for Nursing Homes and ICF/IIDs will be obtained through the Electronic POC in ASPEN.

F. Electronic copies to:

- The state and regional LTC Ombuds, along with:
    a. IDR Scheduling letter
    b. Provider IDR request
    c. A copy of the SOD/report;
    d. The resident list related to the disputed deficiency citation/s; and
    e. The staff list related to the disputed deficiency citation/s;

- Nursing Assistant Training Coordinator (NATCEP) (for Nursing Home IDR's), along with:
    a. IDR Scheduling letter
    b. Provider IDR request
    c. A copy of the SOD/report;
    d. The resident list related to the disputed deficiency citation/s; and
    e. The staff list related to the disputed deficiency citation/s;

G. Document the relevant information in FMS for AFH, ALF, CCRSS, ESF, and in ASPEN for Nursing Homes and ICF//IIDs by creating an IDR record and entering:
- The Scheduled Date;
- The Requested Date;
- Indicate which citations are being disputed
- The IDR Program Manager assigned; and
- The individuals from the facility attending the IDR.

The IDR Program Manager will:

A. During the IDR:
1. Introduce all participants;
2. Explain the informal nature of the process;
3. Confirm the regulations that are actually being disputed;
4. Invite the provider to present documentation and verbally explain why the disputed deficiency citation/s should be modified or deleted;
5. Ask clarifying questions and request further documentation, if needed;
6. Give the provider the opportunity to ask questions and present additional clarifying information; and
7. Thank all participants and review the timelines for notification of the IDR decision.

B. Following the IDR:
1. As necessary, contact the RCS Field Manager, field staff, provider and other professional staff as needed for further clarification, including obtaining field working papers;
2. Review and analyze all available information; and
3. Consult with the RCS Compliance Specialist to determine if any changes made as the result of the IDR will affect an enforcement remedy.
4. Notify the RCS Field Manager of the results prior to notifying the provider.
5. Scope and Severity may not be reviewed except in cases of substandard care and Immediate Jeopardy.
6. Input the results data into ASPEN (NH and ICF/IID) and FMS (AFH, ALF, CCRSS and ESF)

The IDR AA3 Will:

Keep the following records for each IDR:

Section 1 Communication Log

IDR Scheduling Letter

Results letter

FMS Summary report (for community programs/if applicable)

USPS delivery confirmation (if applicable)

Section 2 Enforcement letter if applicable

Amendments made to the original SOD report

Section 3 Original IDR request from provider

Documentation submitted by the provider

Section 4 Resident/Staff Identifier list

Additional documentation obtained during the IDR process from RCS field staff or others

Notes/ background material

Copy of the original SOD report.

The AFH, ALF, CCRSS, and ESF IDR Program Manager will:

A. Prepare the IDR Results Notice Letter:
   1. If the IDR Program Manager makes no changes to the SOD/report, then the letter to the AFH, ALF, CCRSS or ESF should indicate the SOD/report stands with no amendments.
   2. If the IDR Program Manager makes changes to the SOD/report, then the IDR Program Manager must use the FMS system to:
      a. Amend the SOD report and cover letter, as appropriate in FMS;
      b. Sign & date the amended SOD report and cover letter; and
      c. Prepare the letter to the AFH, ALF, CCRSS, or ESF that identifies the changes.
   3. If the IDR Program Manager makes changes to <u>documentation of violations cited as consultation</u> (by either amending the "consultation," or by changing a deficiency citation to a "consultation"), then the IDR Program Manager must amend the original cover letter.
   4. Enter the results of the IDR in FMS

The IDR AA3 Will:

* NOTE – Agency goals are to move to a "paperless" system when possible. With that in mind, electronic copies should be sent as soon as each program allows.

A. Send the Results Letter (and amended cover letter and SOD/report, if applicable) to the provider, with
    1. "Hard copies" to:
        - Central File;
        - The IDR Program File.
    2. "Electronic copies" to:
        - State and Regional LTC Ombuds.
B. Send electronic copies of the Results Letter (and amended cover letter and SOD/report, if applicable), to:
    1. RCS Field Manager;
    2. RCS Regional Administrator;
    3. Program Compliance Specialist (if enforcement is involved); and
    4. Office of Financial Recovery (if citation includes a civil fine).
C. Enter the results on the IDR Tracking Tool.

The Nursing Home IDR Program Manager will:

A. Prepare the IDR Results Notice Letter;
    1. If the IDR Program Manager makes no changes to the SOD report, then the letter to the nursing home should indicate the SOD report stands with no amendments.
    2. If the IDR Program Manager makes changes to the SOD report, then the IDR Program Manager will:
        - Amend the SOD report as appropriate in the ASPEN system.
        - Prepare the appropriate letter to the nursing home that identifies the changes.
    3. Enter the results of the IDR into ASPEN.
    4. Send the results of the IDR through the E-Plan of Correction system.

THE AA3 WILL:

A. Send the Results Letter and the amended SOD to the provider, with
    1. The "hard copies" to The IDR Program File, and
    2. The "electronic copies" to the State and Regional LTC Ombuds
B. Send electronic copies of the Results Letter and the amended SOD to:
    1. RCS Field Manager (FM);
    2. RCS Regional Administrator (RA);
    3. Region/Unit Administrative Support Staff;

4. Program Compliance Specialist (if enforcement involved);
5. OFR (if includes civil fine(s);
6. CMS (if enforcement involved); and
7. NATCEP Program Manager.

C. Enter the results on the IDR Tracking Tool.

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22B –Independent Informal Dispute Resolution (IIDR)

IN NH STATE AGENCY (SA)

I. Background:

To provide the state agency information and consistent direction for an Independent Informal Dispute Resolution (IIDR) process related to the imposition of federal civil monetary penalties (CMP).

II. Procedures:

A. A nursing facility will be provided the opportunity to request an IIDR if the Centers for Medicare and Medicaid Services (CMS) imposes a CMP against the facility and the CMP amounts are subject to being collected and placed in an escrow account.

B. Beginning on January 1, 2012, CMS may collect and place imposed CMPs in an escrow account on whichever of the following occur first:
   1. The date on which the IIDR process is completed; or
   2. The date which is 90 calendar days after the date of the notice of imposition of the CMP.

C. CMS will begin collecting and escrow only those CMPs which are imposed as a result of the most serious deficiencies, actual harm or immediate jeopardy to resident health or safety including from life safety code surveys (i.e., at a scope and severity (S/S) level of G or above).

D. CMS must approve all state IIDR processes including the entity conducting the IIDR.

E. CMS will look to the States to assure the validity of the IIDR decision-making processes, and holds SAs accountable for them.

III. Responsibilities:

Scope and severity of G or higher

State agency must:

Notify the Regional Office of all surveys with a scope and severity of G or higher within 5 days of mailing the 2567 to the facility.

Post Imposition of CMP notice – *After the State agency receives imposition of CMP notice*

State Agency must:

- Have available online the IIDR request form for the facility to easily access; and
- Notify the Regional Office by email about the status of any related IIDR request.

IIDR Process

State agency must:

A. Screen out requests:
   1. That were not received timely by the date CMS indicated on the imposition of CMP notice,
   2. Where the survey findings already have been the subject of an IDR for the particular deficiency citations at issue.

B. Still conduct IIDRs if the IDR was completed prior to the imposition of the civil money penalty.

C. Send in writing within 30 calendar days , the following information to the facility:
   1. Information on the IIDR process including that it will be conducted in writing only; and
   2. The name and/or position/title of the person(s) who will be conducting the IIDR, including contact information.

D. By letter, notify the state Ombuds and involved resident(s) of the request for an IIDR. If resident(s) are incapacitated, the state agency must notify resident's representative of the request for an IIDR. Contact information must be provided on how they can submit comments, and that comments must be submitted within 14 calendar days.

E. Collect written information from the facility, and provide to IIDR entity.

F. Collect written information from the residents/Ombuds and provide to the IIDR entity; and

G. Provide SA investigation and/or written information on the deficiency(ies) to the IIDR entity.

Post IIDR – *No changes needed*

State agency must:

(This includes where the State Agency agrees with both IIDR recommendations for no change, or change.)

A. Track completion of the IIDR (including notification to the facility), to assure it is completed within the 60 days of receipt.

B. Provide written notice of final decision to facility within 10 calendar days of receiving the written record from the IIDR entity, including the result for each deficiency challenged and a brief summary of the rationale for that result.

C. Enter and upload into the Automated Survey Processing Environment (ASPEN) system IIDR requests and necessary changes within 10 working days of completion of the IIDR.

Post IIDR – *State agency does not agree with IIDR entity recommendation*

State agency must:

A. Share any disagreement with the IIDR entity's decision, and the rationale for the disagreement with the IIDR entity.

B. Send the complete written record to the CMS RO for review and final decision if the SA disagrees with the recommendation of the IIDR entity.

C. If CMS final decision results in no changes are needed, follow steps, B and C in Post IIDR-No changes needed section above.

D. If changes are needed, follow Post IIDR—Changes needed below.

Post IIDR--*Changes needed*

State agency must:

A. Change deficiency(ies) citation content findings, as recommended;

B. Adjust the scope and severity assessment for deficiencies, if warranted by CMS policy after taking in consideration approvable recommendations from the IIDR;

C. Annotate deficiency(ies) citations as deleted as recommended;

D. Have the IIDR Program Manager sign and date the revised CMS Form 2567; and

E. Recommend to CMS that any enforcement action imposed solely because of deleted or altered deficiency citations be reviewed, changed or rescinded.

F. Coordinate with Compliance Unit if recommending changes to enforcement.

G. Notify the Regional Office when the IIDR is completed and about any changes to the scope and severity of the related citations.

CMS Regional Office (RO) must:

A. Review each state agency's process to determine if meets the key elements outlined in the federal regulations.

B. Communicate the offer for an IIDR, along with appropriate SA contact information, in its initial *Notice of Imposition of a CMP* letter to a facility.

C. As soon as practicable, make the final decision if the state agency disagrees with the recommendation of the IIDR entity.

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22C –Independent Informal Dispute Resolution (IIDR) IN NH (ENTITY)

IV. Background:

To provide Independent Informal Dispute Resolution (IIDR) entity information and consistent direction on the IIDR process related to the imposition of federal civil monetary penalties (CMP).

V. Procedures:

A. The IIDR will not include the survey findings which have already been the subject of an IDR under 42 C.F.R. §488.331 for the particular deficiency citations at issue in the Independent IDR, unless the IDR was completed prior to the imposition of the CMP.

B. The IIDR will only be offered to those facilities that have an imposition of a federal CMP based on deficiency for actual harm or immediate jeopardy (including from life safety code surveys) and where the CMP will be collected and placed in an escrow account.

C. The IIDR will be a document review of facility and state agency documents.

D. The IIDR entity will only call facility or state agency staff to clarify an issue if necessary for decision making.

VI. Responsibilities:

IIDR entity must:

A. Complete the independent IDR within 60 calendar days of facility request (completed means final decision, written report and state agency provides written notice of decision to facility).

B. Read the disputed deficiencies, read the additional written information provided by the facility and state agency for each disputed deficiency and read the written

statements submitted by the involved resident, legal representative, and state LTC Ombuds.

C. If questions arise, call and clarify issues.

D. Be well-versed in LSC and if the disputed deficiency is from a life safety code survey, may consult with an independent technical expert in that area (not affiliated with the State Fire Marshalls Office).

E. Make a recommendation on each disputed deficiency:
   1. To uphold the deficiency as written;
   2. To delete the deficiency as written;
   3. To uphold the tag cited; however to delete a finding (example) in the deficiency;
   4. To uphold the tag cited; however to decrease the scope and severity of the deficiency for substandard quality of care and immediate jeopardy deficiencies.
   5. To uphold the tag cited, however to delete findings (examples) in the deficiency which results in decreasing the scope and severity of the deficiency.

F. Complete written report containing the following information, within 10 calendar days of completing the review:
   1. Each deficiency or survey finding that was disputed;
   2. A summary of the Independent IDR recommendation 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 Ombuds and/or residents or resident representatives.

G. Forward the written report and all related documents to state survey agency for retention.

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CHAPTER 22 –INFORMAL DISPUTE RESOLUTION CHANGE LOG

EFFECTIVE DATE	CHAPTER SECT #	WHAT CHANGED? BRIEF DESCRIPTION	REASON FOR CHANGE?	COMMUNICATION &TRAINING PLAN
4/2021	All	**Add ESF and update terminology**	**Updating the SOP**	**Post Chapter 22 and distribute MB R21-037**
4/10/17	All	**Create new chapter**	**Separate from Enforcement**	

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