Informal Dispute Resolution

(RCS)

Adult Family Home Pilot Project

October 2019

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**DEFINITIONS**

Aging and Long-Term Support Administration (ALTSA): ALTSA is an Administration of the Department of Social and Health Services.

Consumer: An individual who has or is receiving long-term care services in and Adult Family Home or resident advocate

Department: ALTSA

Department Staff: Staff employed by ALTSA

Desk Review: An IDR in which only documents submitted by associated parties are part of the review

Direct Review: An IDR in which the disputing provider is present for the review

Division Director: Director of Residential Care Services

Enforcement Action: RCS’s responses to serious noncompliance with RCW 70.128 and WAC 388-76

Evidence: Data presented as proof of facts that could include testimony, records, documents or objects

FMS: Facility Management System – Electronic licensing software system used by RCS staff

IDR Program AA: Administrative support staff for the IDR program

IDR Volunteer Coordinator: RCS staff responsible for coordinating all IDR volunteer activities

Licensee: Individual or entity licensed as an Adult Family Home (AFH) provider

Panel: Members of the AFH IDR Review Panel

Panel Chair: Member of the AFH IDR Panel responsible for coordinating panel meetings

Provider: May be used interchangeably with licensee

Phone Review: An IDR in which the disputing provider participates by phone

Residential Care Services (RCS) –Residential Care Services is a Division within ALTSA and provides the regulatory oversight of Adult Family Homes.

RCS Representative: Member of the AFH IDR Panel who is an RCS employee

RCS Staff: Residential Care Services employee responsible for issuing the citation or enforcement in dispute

Statement of Deficiencies: (SOD) Report submitted by RCS staff documenting proof of the citation or enforcement

State Agency: May be used interchangeably with RCS, ALTSA or DSHS

***SECTION 1.***

* ***Preface***
* ***ALTSA Mission Values and Vision***
* ***Residential Care Services Purpose and Objectives***
* ***Guiding Principles, Code of Ethics, and Conflict of Interest***

***PREFACE***

The goal of Informal Dispute Resolution is to give adult family home providers, participating in the pilot project, the opportunity to dispute regulatory decisions and ensure that citations and enforcement actions are supported by fair and consistent application of the regulations and evidence based or evidence informed practice (when available or applicable).

This guidebook offers defined, structured and adaptable steps to meet this goal. Its function is to act as an instruction manual for completing an IDR during the AFH IDR Panel pilot project.

This guidebook provides core business process information, but is not the law. Federal and state laws regarding the IDR process have precedence over this document.

***ALTSA MISSION, VALUES AND VISION***

**Aging and Long-Term Support Administration (ALTSA)**

* **Mission:**

To transform lives by promoting choice, independence and safety through innovative services.

* **Values:**
* **Honesty and Integrity –** because leadership and service require a clear moral compass
* **Pursuit of Excellence –** because it is not enough to get the job done, we must always challenge ourselves to do it better.
* **Open Communication –** because excellence requires teamwork and a strong team is seen, heard and feels free to contribute.
* **Diversity and Inclusion –** because only by including all perspectives are we at our best and only through cultural competency can we optimally serve our clients.
* **Commitment to Service** – because our challenges will always exceed our financial resources, our commitment to service must see us through.
* **Vision -** Ensure that:
* People are healthy,
* People are safe,
* People are supported, and
* Taxpayer resources are guarded

***RESIDENTIAL CARE SERVICES (RCS)***

* **Our purpose** - To promote and protect the rights, security and well-being of individuals living in licensed or certified residential settings.
* **Our objectives include:**
* Advocacy partnerships with vulnerable individuals, their representatives, family members, providers, and others working for their benefit.
* A fair, consistent, and efficient regulatory system that promotes positive outcomes.
* A division culture that values learning, respect, improvement, teamwork, and adaptability.
* Individual and organization efforts to build a working environment that attracts and retains a highly skilled workforce.

***GUIDING PRINCIPLES, CODE OF ETHICS and CONFLICT OF INTEREST***

**Guiding Principles**

* Expectation that all parties act in good faith, treat others with respect and professionalism recognizing that disagreements will occur.
* Panel process must comply with legal requirements of the program.
* Panel process must not alter or delay required timetables associated with adverse compliance actions.
* Panel process is informal and does not limit any other state or federal appeal rights
* The panel will not review minor editorial changes.
* If editorial changes are requested, IDR staff will refer the licensee back to field offices to resolve the matter.
* The panel process may not be used to challenge any other aspect of the licensing or investigative process including:
* The choice of remedies recommended or applied because of deficiencies.
* Failure of department staff to comply with the survey/licensing process
* Inconsistency of department staff in citing deficiencies among facilities
* Inadequacy or inaccuracy of the IDR process
* Other previously administered citation(s)
* The IDR is an informal administrative process and is not a formal evidentiary hearing.
* The facility must indicate if it chooses to have legal counsel present, so RCS may also have counsel present (if preferred); facility counsel may provide legal advice.
* The disputing provider and RCS staff must choose **one person** to address the panel during the presentation
* Regardless of panel size or structure, final decisions agreed to by the panel are considered recommendations to RCS..
* RCS has ultimate decision-making authority regarding whether or not to accept the panel’s recommendation(s).
* The panel chair will excuse any participants who become belligerent or unruly.

**Code of Ethics**

* This Code of Ethics is an effort to stress the fundamental rules considered essential to the IDR process. Preservation of the highest standards of integrity and ethical principles is vital to the credibility of the review process:
* Individual panel members must maintain a high standard of professional competence with regard to the regulations of the program panel.
* Panel members must avoid partisanship.
* Panel members must report possible conflict of interest immediately to the IDR Volunteer Coordinator.
* Panel members must meet requirements in the DSHS guidelines for volunteers. These guidelines can be found at the Informal Dispute Resolution AFH Pilot Project at: <https://www.dshs.wa.gov/altsa/informal-dispute-resolution-adult-family-home-pilot-project>
* Panel members must sign a non-disclosure statement.
* Panel members must keep all information discussed during deliberations strictly confidential.
* Panel members must not discuss particulars of deliberations in any forum outside the IDR process itself.
* Panel members must not disclose the voting history of any panel member.
* Each IDR panel member is obligated to seek to avoid conduct that is inconsistent with the spirit and purpose of the IDR process.
* The IDR process provides a forum for the fair resolution of differences in professional opinion.

**Conflict of Interest**

* Individual panel members must disclose any actual or potential circumstance that a reasonable person would consider a conflict of interest.
* Based on any conflict of interest, RCS may decide, at its sole discretion, to replace the individual panel member with a backup.
* Examples of circumstances that should be disclosed include, but are not limited to the following:
* The panel member is currently, or was within the past two years, an employee of the facility or its parent organization;
* The panel member is currently or was within the past two years, under contract to provide services to the facility or its parent organization; The panel member is a former employee of the facility and left employment under adverse circumstances;
* The panel member has a family member receiving care from the facility;
* Individuals employed by organizations that represent the type of provider disputing the department’s findings. Such organizations may experience profit or loss depending on the regulatory decision. The panel member participated in or supervised staff who participated in the determination of the violation or enforcement action in dispute.
* Complaint/Inspection information must be kept confidential (consistent with the non-disclosure statement).
* Individual panel members must inform the panel chair of actual or potential violations of this Code of Ethics and fully cooperate with the panel’s inquiries.
* Individual panel members must not defend, support or ignore unethical conduct exhibited by colleagues or peers. The panel chair has authority to excuse anyone from the proceedings if the appearance of a conflict of interest exists.

***SECTION 2.***

***AUTHORITY***

* ***RCW 70.128.167***
* ***WAC 388-76-10990***

**RCW** [**70.128.167**](http://app.leg.wa.gov/RCW/default.aspx?cite=70.128.167)

**Disputed violations, enforcement remedies—Informal dispute resolution process.**

(1) The licensee or its designee has the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed by the department during a licensing inspection or complaint investigation. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification, deletion, or removal of a violation, or parts of a violation, or enforcement remedy imposed by the department.

(2) The informal dispute resolution process provided by the department shall include, but is not necessarily limited to, an opportunity for review by a department employee who did not participate in, or oversee, the determination of the violation or enforcement remedy under dispute. The department shall develop, or further develop, an informal dispute resolution process consistent with this section.

(3) A request for an informal dispute resolution shall be made to the department within ten working days from the receipt of a written finding of a violation or enforcement remedy. The request shall identify the violation or violations and enforcement remedy or remedies being disputed. The department shall convene a meeting, when possible, within ten working days of receipt of the request for informal dispute resolution, unless by mutual agreement a later date is agreed upon.

(4) If the department determines that a violation or enforcement remedy should not be cited or imposed, the department shall delete the violation or immediately rescind or modify the enforcement remedy. Upon request, the department shall issue a clean copy of the revised report, statement of deficiencies, or notice of enforcement action.

(5) The request for informal dispute resolution does not delay the effective date of any enforcement remedy imposed by the department, except that civil monetary fines are not payable until the exhaustion of any formal hearing and appeal rights provided under this chapter. The licensee shall submit to the department, within the time period prescribed by the department, a plan of correction to address any undisputed violations, and including any violations that still remain following the informal dispute resolution.

**WAC 388-76-10990**

**Informal dispute resolution (IDR).**

(1) When an adult family home disagrees with the department's finding of a violation under this chapter, the adult family home has the right to have the violation reviewed by the department under the department's dispute resolution process.

(2) The purpose of the review is to give the adult family home an opportunity to present information that might warrant modification or deletion of a finding of a violation.

(3) The adult family home may submit a written statement for review.

(4) In addition to a written statement, the adult family home may ask to present the information in person to a department designee.

(5) Requests for review must be made in writing to the department at the address provided in the department's certified notice within ten working days of receipt of the written finding of a violation.

(6) Orders of the department imposing license suspension, stop placement, or conditions on a license are effective immediately upon notice and shall continue pending dispute resolution.

***Section 3***

***POLICIES AND PROCEDURES***

* ***Provider Notification of IDR Rights***
* ***Provider IDR Request Procedure***
* ***Receipt/Scheduling – IDR Requests***
* ***Department Evidence***
* ***Panel Expectation***
* ***IDR Volunteer Coordinator***
* ***IDR Panel Member Structure***
* ***In Person and Telephone IDR Reviews***
* ***Desk IDR Reviews***
* ***Analysis Considerations***
* ***Panel Recommendations***
* ***Provider IDR Results Communication***

***PROVIDER NOTIFICATION OF IDR RIGHTS***

* RCS informs providers of their right to an IDR review in two forms:
  + Cover Letters of SODs without enforcement; and
  + Cover Letters of SODs with enforcement
* Cover letters of SODs will:
  + Explain the providers’ rights.
  + Provide the needed information to acquire the IDR Request Form from the DSHS website.
  + Instruct providers on the requirement for submitting documents.
  + Indicate submission timelines that must be followed.
  + Include the address and e-mail address that requests need to be sent to.

***PROVIDER IDR REQUEST PROCEDURE***

* Providers requesting an IDR must submit an “[IDR Request Form](https://www.dshs.wa.gov/altsa/informal-dispute-resolution-adult-family-home-pilot-project)” to headquarters within 10 working days of receipt of the SOD.
* The request must include all disputed citations along with specific explanation(s) regarding why each citation is being disputed.
* The request must indicate the type of review they prefer: in person, telephone or desk review.
* The department prefers that requests be sent electronically to [rcsidr@dshs.wa.gov](mailto:rcsidr@dshs.wa.gov), but will accept document by mail or fax.
* Providers must include all supporting documents, pictures, and evidence they want considered during the review along with the IDR Request Form.
* The panel’s consideration of documents will be enhanced if they are tabbed to correspond to the citation that applies.
* The department will not accept late requests, supporting documents, pictures, or any other evidence for any reason.
* If editorial changes are requested, IDR staff will refer the licensee back to field offices to resolve the matter.

***RECEIPT/SCHEDULING – IDR REQUEST***

* IDR Program AA will date stamp request when received.
* IDR Program AA will determine whether the request was timely, complete and accurate.
* If the request is not timely, complete and accurate, the IDR Program AA will mail the provider a “Denial Letter”.
* If the request is approved, the IDR Program AA will contact the provider by phone to schedule the IDR.
* If the request is approved and contact is made with the provider, the IDR Program AA will mail a scheduling letter to the provider that includes:
  + Date and time of scheduled IDR review
  + Type of IDR review requested (direct, phone, desk)
  + Location of the IDR panel review meeting or the telephone number if the provider chose to participate by phone
  + Provider’s disputed violations/enforcements actions
  + List of individuals attending the IDR review
* The IDR Program AA will follow previously established process for creating an IDR file, entering data into the IDR database, and contacting interested parties to inform them of the IDR request.
* IDR requests will be scheduled in the order they are postmarked, faxed or emailed.

***Residential Care Services: EVIDENCE***

* The original IDR request and all accompanying documentation originating from the provider will be sent to the field office/staff where the SOD originated.
* If RCS wants panel reviewers to consider documents in response to the provider’s claims, the documents must be received by the IDR Program AA within at least 10 (ten) working days after the date they receive the notice of request for IDR from the provider (and any supporting documents).
* Late documentation sent by RCS will not be considered during the IDR.

***PANEL EXPECTATION***

* The IDR Volunteer Coordinator will ensure delivery of all materials to panel members at least 12 (twelve) working days in advance of the IDR review.
* Panelists will be expected to review materials in preparation for each case prior to the IDR review.
* It is imperative that panelists identify any conflict of interest as soon as possible in order to ensure a backup panelist can be identified.
* Once committed to serve as a panel member, attendance is **VITAL**. Late withdrawal from the panel could result in the need to reschedule the panel.

***IDR VOLUNTEER COORDINATOR***

* The department has now assigned one person the title of IDR Volunteer Coordinator. In this role, the person will be responsible for:
* Community outreach and recruitment of prospective panel members.
* Processing volunteer applications and documents.
* Developing and managing the pool of volunteers involved with the AFH pilot.
* Managing and supporting volunteers assigned to the panel, managing the volunteer program, and providing ongoing support to volunteers.

***IDR PANEL MEMBER STRUCTURE***

* Two Provider Representatives:
* May not be employees of the provider associations affiliated with the type of facility disputing the citation(s)
* One RCS Representative:
* Hasn’t participated in or overseen the violation or enforcement action under dispute
* One Consumer:
* Possibly a resident receiving services or a resident advocate
* Must not have any association with the facility that has requested the review
* One Panel Chair:
* Non-voting panel member
* Will vote to break a tie if the panel is at a deadlock
* Ensures that the final panel recommendation is consistent with State and Federal regulatory requirements
* Presents the review to the Office Chief of Business Operations and Director of RCS for a final decision if in disagreement with all or part of the panel’s decision
* The IDR panel may meet as long as there is a quorum. For purposes of IDR, a quorum must include at least, three panel members; at least one must be a provider and another must be an RCS representative (not including the panel chair).

***IN PERSON AND TELEPHONE IDR REVIEWS***

* IDR Panel Meetings will be held monthly through April 2020.
* Providers and their employees may participate in the IDR review in person, by telephone or may submit records for a desk review.
* One person from the facility or their representative, must present their case to the panel.
* Submission of large volumes of overly detailed, redundant, or irrelevant material will impede the review process.
* Only those individuals directly involved with the IDR will be allowed to observe the meeting.
* The number of persons allowed to attend an IDR in person or by telephone should be kept to a minimum of one to three people.
* At the IDR meeting, both the provider and the state are given the opportunity to present information and evidence to support their case.
* The provider will give the first presentation and will be followed by the RCS staff.
* Panel members will have an opportunity to ask questions of each party during their presentation, however this is discouraged because time will be set aside at the end of each presentation for questions.
* In consideration of panelist’s workload and the need to keep the process efficient and timely, each of the presentations are limited in time.
* The provider will have fifteen (15) minutes per deficiency not to exceed a total of thirty (30) minutes to summarize its position on the deficiencies in dispute.
* RCS staff will have twenty (20) minutes to summarize its position on the deficiencies in question.
* Should either party need to clarify a response to the panel, the panel chair will, at their discretion, allow a limited time for the response.
* The IDR panel chair will manage responses and time.
* Oral presentations should focus on the specific reasons that the inspection results are invalid and point the panel to the submitted documentation that supports the facility’s position.
* The department SOD is a “stand alone” document and should be considered complete, accurate and appropriate and that supports the violation(s) and/or enforcement action(s).

***DESK IDR REVIEWS***

* In lieu of an in person or telephone review, the provider may request a document only review called a desk review.
* All requirements for submission of evidence apply to a desk review.
* Panel members are expected to have reviewed the material prior to the date of the IDR.
* When in person and telephone reviews are complete, the panel will take time to discuss and make recommendations for desk reviews.

***ANALYSIS CONSIDERATIONS***

* Conduct a detailed examination of various types of input to determine if there are any facts that suggest a change to the content of the disputed citation or enforcement action. Types of input include:
  + The relationship of the evidence in the SOD to the facts the provider presented.
  + Evidence in relationship to the regulation cited.
  + Notes from the IDR review.
  + Highlighted points in the presentation and submitted documents.
  + Answers to any questions that came up during the course of the meeting.
  + Applicable RCWs and WACs.
  + Review of violations in FMS that may be helpful in the analysis (i.e. provider history of citations, enforcement etc.)
* Analysis – Philosophy:
  + Identify the significant evidence for decision-making. What does it mean? What else might it mean?
  + Are there any patterns in the evidence? How does it fit together?
  + Is there any evidence that does not fit the pattern? How might this be explained?
  + Are there sufficient interviews, observations, and record reviews to demonstrate a preponderance of evidence exists?
  + Is there sufficient evidence that counters arbitrary and capricious discretionary decisions?
  + Do not make changes unless you are sure the weight of the presented facts rise to the level that there is no violation before deleting a violation or there is no evidence of failed practice.
  + IDR philosophy is that the evidence in the disputed citation is complete, accurate and appropriate and supports the violation(s) and/or enforcement action(s).

***PANEL RECOMMENDATIONS***

* All panel members, except the panel chair, must vote on their recommendation to the state agency. If the panel member’s vote ends in a tie, the panel chair will vote to break the tie.
* One goal of the panel is that the recommendation can be made by consensus.
* A role of the panel chair is to ensure that the panel is aware of the relevant regulation(s).
* In addition, the panel chair will review the final recommendation to determine whether the outcome complies with established regulation(s) regardless of the vote count.
* If the panel chair’s review results in a recommendation to amend or delete a citation, and the panel chair agrees, the panel chair must take the following steps:
  + Ensure the provider receives a new amended version of the SOD.
  + Notify involved parties of the decision.
  + Record the amendments in FMS.
* If the panel chair’s opinion is that, the panel recommendation is not consistent with established regulations, the panel chair will take the following steps:
  + Make brief written recommendation to the Office Chief of Business Operations.
  + If the Office Chief of Business operations agrees with the recommendations of the panel chair, the recommendation will be forwarded to the Division Director for a final decision.
* Ultimate decision-making authority rests with the state agency.

***PROVIDER IDR RESULTS COMMUNICATION***

* If no change as a result of the IDR:
  + Mail/Deliver IDR outcome letter to provider and all involved parties
  + Record outcome results in database and FMS.
* If changes to SOD and/or Enforcement Action as a result of the IDR:
  + Mail/Deliver IDR outcome letter amended SOD and (if applicable) amended Enforcement Action to provider and all associated parties.
  + Record outcome results in IDR database and FMS.