

NURSING HOME
Informal Dispute Resolution
(RCS)
Guidelines

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DEFINITIONS

AA: Administrative Assistant

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

Centers for Medicare and Medicaid Services (CMS): Federal agency responsible for regulation of Nursing Homes

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

Confidential: Restricting the sharing of information with the exception of involved department staff

Department: AL TSA

Department Staff: Staff employed by AL TSA

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

Division Director: Director of Residential Care Services

Enforcement Action: RCS's responses to serious noncompliance with RCW 18.51, WAC 388-97, 42 CFR 488.331 and SOM 7212 1 – 4

Evidence: Data presented as proof of facts that may 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

In-Person: Review will be conducted virtually using video technology

Licensee: Individual or entity licensed as a Nursing Home (NH) provider

Panel IDR: IDR heard by a volunteer panel. (Presently only used in the NH program)

Panel Chair: RCS staff person responsible for directing panel meetings

Provider: May be used interchangeably with licensee

Quorum: Must include at least one provider and one RCS representative (not including the panel chair).

Residential Care Services (RCS) –Residential Care Services is a Division within AL TSA and provides the regulatory oversight of Nursing Homes.

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

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

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

Statement of Deficiencies: (SOD) Report submitted by RCS staff documenting proof of the citation or enforcement (commonly referred to by the DSHS document number 2567)

Supporting Documentation: Relevant documents submitted to support dispute of the citation or enforcement

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

Traditional IDR: IDR heard by a single Department Staff not involved with decision making related to the citation or enforcement action

SECTION 1.

- ***Preface***
- ***AL TSA 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 providers the opportunity to dispute regulatory decisions and ensure that citations and enforcement actions are supported by fair and consistent application of the regulations using evidence informed practice (when available and applicable).

This guidebook offers defined, structured, and adaptable steps to meet this goal. Its function is to act as an instruction manual for completing both traditional and panel IDRs.

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.

AL TSA MISSION, VALUES AND VISION

Aging and Long-Term Support Administration (AL TSA)

- **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

- Act in good faith, treat others with respect and professionalism recognizing that disagreements will occur.
- Comply with legal requirements of the program.
- Remain consistent with required timetables associated with adverse compliance actions.
- RCS regulated settings have a practice in place where the provider can contact the assigned Field Manager (FM) to request simple or minor edits without requesting an IDR. A minor or simple edit means a change to a SOD that would not lead to modification, deletion, or removal of a violation, parts of a violation, or an enforcement remedy imposed by the Department of Social and Health Services. Examples include:
 - Reference to a client or resident identified as part of a sample.
 - Date.
 - Client, resident, or staff identifier.
 - Gender identification of a client or resident; and
 - Title or name of a document.

This internal guidance does not negate a provider's option to request an Informal Dispute Resolution.

(See MB R22-044 for more details.)

- The IDR process will not be used to challenge any other aspect of the survey or investigative process including:
 - Scope and severity assessments of deficiencies with the exception of scope and severity assessments that constitute substandard quality of care or immediate jeopardy

- 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) or enforcement actions.
- IDR is an informal administrative process and is not a formal evidentiary hearing.
- Final decisions recommended in a panel IDR are not considered final decisions. **RCS has ultimate decision-making authority with regards to the final IDR decision.**

Code of Ethics

This Code of Ethics are fundamental rules considered essential to the IDR process.

- Preservation of the highest standards of integrity and ethical principles are vital to the credibility of the IDR process:
 - Individuals making IDR recommendations and/or decisions must maintain a high standard of professional competence with regard to program regulations.
 - All reviewers must avoid partisanship.
 - All reviewers must report possible conflicts of interest to RCS management staff immediately.
 - IDR program managers must meet requirements established for DSHS employees. Panelists must meet requirements in the “DSHS Guidelines for Volunteers”. These guidelines can be found at the Nursing Home IDR website at:
- All reviewers must sign a non-disclosure statement annually.
- All reviewers must keep information discussed during deliberations strictly confidential.
- For the **panel** process, reviewers must keep the voting history of individual panel member confidential.
- All reviewers are obligated to avoid conduct that is inconsistent with the spirit and purpose of the IDR process.
- The IDR process provides a forum for fair resolution of differences in opinion.

Conflict of Interest

- All reviewers 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 reviewer.
- Examples of circumstances that should be disclosed include, but are not limited to the following situations:
 - The reviewer is currently, or was within the past two years, an employee of the facility or its parent organization.

- The reviewer is currently or was within the past two years, under contract to provide services to the facility or its parent organization; the reviewer is a former employee of the facility and left employment under adverse circumstances.
- The reviewer has a family member receiving care from the disputing facility.
- Individuals employed by organizations that represent the type of provider disputing the department's findings.
- The reviewer 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).
- Reviewers must inform RCS of actual or potential violations of this Code of Ethics and fully cooperate with any inquiries.
- All reviewers must not defend, support, or ignore unethical conduct exhibited by colleagues or peers. The department has authority to excuse anyone from conducting an IDR review if the appearance of a conflict of interest exists.

SECTION 2.

AUTHORITY

- **RCW 18.51.060**
- **WAC 388-97-4420**
- **42 CFR 488.331**
- **SOM 7212 1-4**

RCW 18.51.060

Penalties—Grounds.

(5)(d) A nursing home provider shall have the right to an informal review to present written evidence to refute the deficiencies cited as the basis for the stop placement. A request for an informal review must be made in writing within ten days of the effective date of the stop placement.

WAC 388-97-4420

Informal department review.

(1) For Medicare or Medicaid certified nursing homes, the informal department review process described in this section is the only opportunity for the nursing home to dispute the federal deficiency citation report, unless a federal sanction is imposed.

(2) The nursing home licensee has the right to an informal department review of disputed state or federal citations, or both.

(3) A licensee must make a written request for an informal department review within ten calendar days of receipt of the department's written deficiency citation(s) report. The request must be directed to the department's designated local aging and disability services administration office and must identify the deficiencies that are being disputed.

(4) At the informal department review, the licensee or nursing home may provide documentation and verbal explanations related to the disputed federal or state deficiencies, or both.

(5) When modifications or deletions are made to the disputed federal or state deficiency citations, or both, the licensee or nursing home must modify or delete the relevant portions of the plan of correction within five days of receipt of the modified

or deleted deficiency(ies). The licensee or nursing home may request from the department a clean copy of the revised deficiency citation report.

(6) If the licensee or nursing home is unwilling to provide the modified plan of correction, the department may impose a per day civil fine for failure to return the modified deficiency citation report to the department in accordance with this subsection.

Section 3

POLICIES AND PROCEDURES

- ***Provider Notification of IDR Rights***
- ***Provider IDR Request Procedure***
- ***Receipt/Scheduling – IDR Requests***
- ***RCS Evidence***
- ***Panel Expectation***
- ***IDR Volunteer Coordinator***
- ***IDR Panel Member Structure***
- ***In Person and Telephone IDR Reviews***
- ***Desk IDR Reviews***
- ***Analysis Considerations***
- ***PANEL IDR Recommendations***
- ***Traditional IDR 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
 - Enforcement letters
- Cover letters to SODs and Enforcement letters:
 - Explain the providers' rights.
 - Provide the website needed for information to request an IDR.
 - Inform providers of the option to request a "panel" or "traditional" IDR.
 - Instruct providers on the requirement for submitting documents.
 - Indicate submission timelines that must be followed.
 - Include the address, fax and/or email address that requests must be sent to.

PROVIDER IDR REQUEST PROCEDURE

You may request a "Panel" or "Traditional" IDR as explained below.

Panel IDR Procedures (Reviewed by 1 Provider, 1 RCS Staff, 1 Resident Advocate and a Panel Chair. You may request a Panel IDR if you are disputing three or fewer citations or enforcement actions.)

- Providers requesting a panel IDR must submit the request to headquarters within 10 calendar days of receipt of the SOD.
- The IDR must be submitted using an "IDR Request Form" which can be found on the IDR web page at: [Information for Nursing Home Professionals | DSHS \(wa.gov\)](#)
- The request must include a separate "IDR Request Form" for each citation or enforcement action along with a brief explanation about why each citation or enforcement action is being disputed. [NH IDR Request Form](#)
- The request must indicate the type of review: in person, telephone or desk review.
- During the pandemic, in-person IDRs have been suspended and substituted with virtual meetings using the TEAMS application.
- The department prefers requests be sent electronically to RCSIDR@dshs.wa.gov but will accept documents by mail or fax.
- Providers must include all supporting evidence they wish to have considered during the review at least 20 calendar days from the date they receive the SOD in dispute.
- The review will be enhanced if relevant documents are tabbed to correspond to the citation or enforcement action that applies.
- If minor editorial changes are requested, IDR staff will refer the licensee back to field offices to resolve the matter. This guidance does not negate the provider's option to request an IDR.
- A minor or simple edit means a change to a SOD that would not lead to modification, deletion, or removal of a violation, parts of a violation, or an enforcement remedy

imposed by the Department of Social and Health Services. Examples of minor editorial changes are as follows:

- Reference to a client or resident identified as part of a sample;
 - Incorrect date;
 - Incorrect client, resident, or staff identifier;
 - Gender identification of a client or resident; or
 - Incorrect title or name of a document.
- The department will not accept late requests or evidence for any reason.
 - If this process is not followed, your IDR may be denied.

Traditional IDR Procedures (Reviewed by IDR Program Manager)

- Providers requesting a traditional IDR must submit the request to headquarters within 10 calendar days of receipt of the SOD.
- The IDR must be submitted using an “IDR Request Form” which can be found on the IDR web page at: [NH IDR Request Form](#)
- The request must include a separate “IDR Request Form” for each citation or enforcement action along with explanation(s) about why each citation or enforcement action is being disputed.
- The request must indicate the type of review: in person, telephone or desk review.
- During the pandemic, in-person IDRs have been suspended and substituted with virtual meetings using the TEAMS application.
- The department prefers requests be sent electronically to RCSIDR@dshs.wa.gov but will accept documents by mail or fax.
- The department prefers that supporting evidence be submitted at least seven days prior to the date of the IDR to ensure materials are reviewed prior to the IDR.
- If minor editorial changes are requested, IDR staff will refer the licensee back to field offices to resolve the matter. This guidance does not negate the provider’s option to request an IDR.
- A minor or simple edit means a change to a SOD that would not lead to modification, deletion, or removal of a violation, parts of a violation, or an enforcement remedy imposed by the Department of Social and Health Services. Examples of minor editorial changes are as follows:
 - Reference to a client or resident identified as part of a sample;
 - Incorrect date;
 - Incorrect client, resident, or staff identifier;
 - Gender identification of a client or resident; or
 - Incorrect title or name of a document.
- The department will not accept late requests for any reason.
- If this process is not followed, your IDR may be denied.

RECEIPT/SCHEDULING – IDR REQUEST

- IDR Program AA will date stamp the IDR Request when received by RCS and determine whether the request was timely, complete, and accurate.
- If the request is not timely, complete, and accurate, the IDR Program AA will notify the provider that their IDR request has been denied.
- If a **panel** request is approved, the IDR Program AA will contact the provider to acknowledge receipt of the request and notify them of the panel date and deadline for submitting supporting documentation.
- If the provider chooses to use the **traditional** method for their IDR, the IDR Program AA will contact the provider to schedule the IDR.
- If the request is approved and contact is made with the provider, the IDR Program AA will send 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 review meeting or the telephone number if the provider chooses to participate by phone.
 - Provider's disputed violations/enforcements actions.
 - The names and titles of provider participants who will be attending the IDR.
- The IDR Program AA will create an IDR file, enter data into the IDR database, and contact interested parties to inform them of the IDR request.
- IDR requests will be processed, and the date of the IDR, will be determined by the order the requests are postmarked, faxed, or emailed. **Panel** IDRs occur monthly, while **traditional** IDRs are scheduled as soon as a time slot is available.
- The provider's IDR request will be sent to the RCS office/field staff where the SOD originated.
- For **panel** IDRs, RCS office/field staff are given 10 (ten) calendar days from the date they received the provider's request for IDR to submit relevant working papers. Late documentation sent by RCS will not be considered during the **panel** IDR.

PANEL MEMBER EXPECTATIONS

- Become familiar with relevant materials in advance of the IDR review.
- Notify the volunteer coordinator as soon as possible after receiving materials for review.
- Identify any conflict of interest as soon as possible 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 PANEL MEMBER STRUCTURE

- One Provider Representative:
 - May not be employees of the provider associations affiliated with the type of facility disputing the citation(s).
 - May be a former NH provider or consultant.
- One RCS Representative:
 - Has not 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.
 - Ensures that the final panel recommendation is consistent with State and Federal regulatory requirements.
 - If the Chair disagrees with the panel recommendation and feels it is not consistent with State or Federal regulatory requirements, the decision will be reviewed by the RCS Business Operations Office Chief and Division Director.
- The IDR panel may meet as long as there is a quorum (see definitions).

IN PERSON (VIRTUAL) AND TELEPHONE IDR REVIEWS

- IDR **Panel** Meetings will be held monthly.
- **Traditional** IDRs will be scheduled throughout each month on a first come, first served basis.
- Providers and their employees may participate in the IDR review in person, by telephone, or may submit records for a desk review.
- During the pandemic, virtual meetings have substituted for in person meetings using the TEAMS application.
- 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 participate in the meeting.
- The number of persons allowed to attend an IDR in person or by telephone should be kept to a minimum of no more than three people.
- If a **panel** IDR is chosen:
 - Ninety minutes is allotted for each panel review.
 - Only one person may present to the panel.
 - Both the provider and the state are given the opportunity to present information to review evidence previously submitted.

- The provider will give the first presentation and will be followed by the RCS staff responsible for issuing the citation and/or enforcement action.
- The provider will have a total of thirty (30) minutes to summarize its position on the all the deficiencies in dispute.
- RCS staff will have twenty (20) minutes to summarize their position on the deficiencies in question.
- The provider will have an opportunity to briefly rebut the RCS presentation. The amount of time given for this rebuttal will be at the chair's discretion.
- Panel members will then have a brief period to ask clarifying questions of either party. The panel chair will, at their discretion, limit the time for questioning. Questions may be answered by any of the parties involved.
- Oral presentations should focus on the specific reasons that the citation results are invalid and point the panel to the submitted documentation that supports the facility's position.
- If a **traditional** IDR is chosen:
 - The provider will be given a maximum of two hours to present their dispute to the IDR program manager.
 - Documents may be submitted up to the date of the IDR and possibly after the IDR if requested by the IDR program manager. Time given for the provider to collect documents is up to the discretion of the IDR program manager.
 - Based on information gathered during the traditional IDR, the IDR program manager may contact field staff responsible for initiating the citation or enforcement action with questions and/or request relevant working papers.
- Regardless of the IDR type, the department SOD/2567 is considered 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

- The provider may request a document only review.
- If a **panel** IDR is chosen:
 - Panel members are expected to have reviewed the material prior to the date of the IDR.
 - All requirements for submission of evidence apply.

If a **traditional** IDR is chosen:

- The IDR program manager will review materials and may contact field staff responsible for issuing the citation or enforcement action.
- The IDR program manager will gather information necessary to make an IDR decision.

- The IDR decision will be completed at the discretion of the IDR program manager.

ANALYSIS CONSIDERATIONS

- Reviewers 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 facts presented by the provider.
 - Evidence in relationship to the regulation cited.
 - Notes from the IDR review.
 - Points highlighted by the provider.
 - Answers to any questions that came up during the course of the meeting.
 - Applicable regulations.
 - Review of violations in ASPEN 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 that 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 rises 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).

Once the IDR result is final, no further dispute can be made related to the decision.

PANEL IDR RESULTS

- All panel members, except the panel chair, must vote on their recommendation to the state agency.
- 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/2567.
 - Notify involved parties of the decision.
 - Record the IDR results in the department database.
- 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 may be forwarded to the Division Director for a final decision.
- Ultimate decision-making authority rests with the state agency.

TRADITIONAL IDR RESULTS

- The IDR program manager will review evidence to determine whether the outcome complies with established regulation(s).
- If the IDR program manager decides to amend the SOD, the following steps must be taken:
 - Notify involved parties of the decision.
 - Record the IDR results in the department database.
 - Ensure the provider receives a new amended version of the SOD.