



STATE OF ALABAMA DEPARTMENT OF  
**PUBLIC HEALTH**

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State Health Officer

**ALABAMA DEPARTMENT OF PUBLIC HEALTH**  
**Bureau of Health Provider Standards**

**Subject:**

Independent Informal Dispute Resolution (IIDR) Process  
Effective Date: March 1, 2012

**Purpose**

Under sections 1819(h)(2)(B)(ii)(IV) and 1919(h)(2)(B)(ii)(IV) of the Social Security Act (the Act) and regulations at 42 CFR 488.331 and 488.431 skilled nursing facilities (SNF), nursing facilities (NF) and dually participating facilities (SNF/NFs) are provided the opportunity to request and participate in an Independent IDR (IIDR) if CMS imposes civil money penalties against the facility and these penalties are subject to being collected and placed in an escrow account pending a final administrative decision. Independent IDR is an informal administrative procedure intended to provide facilities, under certain circumstances, the opportunity to dispute cited deficiencies through a process independent from the State survey agency. Independent IDR is not intended to be a formal or evidentiary hearing nor are the results of the Independent IDR process an initial determination that gives rise to appeal rights pursuant to regulations at 42 CFR 498.3(b). As such, the Independent IDR process provides recommendations to the State and CMS and such recommendations are not subject to appeal. Further the documents and written report created by the Independent IDR entity, the State and CMS, other than the final decision of the Independent IDR process, are pre-decisional and deliberative, and therefore are protected from disclosure under the deliberative process privilege. See *EPA v. Mink*, 410 U.S. 73, 88 (1973); see also 5 U.S.C. § 522(b)(5) (inter-agency and intra-agency memoranda and letters generated before adoption of final agency policy or decision are protected from disclosure under Exemption 5 of the Freedom of Information Act). CMS retains ultimate authority for the survey findings and imposition of civil money penalties.

The Process outlined in this policy is the means by which the Alabama state survey agency will provide the opportunity for IIDR. The objectives of this informal resolution process are to facilitate a conclusion on disputed deficiencies and to promote mutual exchange of information which enhances understanding of survey decisions.

## Policy

The Bureau of Health Provider Standards (the “Bureau”), through coordinated efforts, will provide Independent Informal Dispute resolution to skilled nursing facilities within 30 days of the imposition of a CMP by CMS and the receipt of a complete written request from the facility. A facility may request an Independent IDR for each survey that cites deficiencies at a scope and severity level of G or above for which a civil money penalty has been imposed and will be collected and placed in escrow. However, when a facility requests an Independent IDR for a survey, the facility cannot raise questions or issues regarding a previous survey, and consideration of such previous survey results is beyond the scope of the Independent IDR. Each Independent IDR is specific to the survey for which the facility either received Independent IDR or had an opportunity for it and did not request it. The Independent IDR process does not delay the imposition of any remedies, including a civil money penalty. During the Independent IDR process a facility may dispute the factual basis of the cited deficiencies for which it requested Independent IDR. During the Independent IDR process, a facility may not challenge other aspects of the survey process, such as:

- Scope or severity classifications, with the exception of assessments that constitute substandard quality of care or immediate jeopardy;
- Remedy(ies) imposed;
- Alleged failure of the survey team to comply with a requirement of the survey process;
- Alleged inconsistency of the survey team in citing deficiencies among other facilities;
- Alleged inadequacy or inaccuracy of the IDR or Independent IDR process.

The focus of the Independent IDR process is the deficiency or deficiencies from a survey for which CMS imposed a civil money penalty that will be collected and placed in escrow under §488.431(b). The IIDR process does not include survey findings that have already been the subject of an informal dispute resolution under §488.331 for the particular deficiency citations at issue in the independent process under §488.431, unless the informal dispute resolution under §488.331 was completed prior to the imposition of the civil money penalty.

However, while such factors as the scope and severity classification, and the amount of the penalty, are not the subjects of the Independent IDR, State survey agencies and CMS will take into consideration any changes in deficiency findings that result pursuant to State or CMS review of the completed Independent IDR process. Based on such review, States and CMS will assess whether any changes to scope and severity or civil money penalty amount are warranted.

The opportunity for an Independent IDR must be provided within 30 calendar days of CMS’s notice of imposition of a civil money penalty that will be collected and placed in an escrow account. The CMS RO will communicate the offer for an Independent IDR in its initial Notice of Imposition of a Penalty letter to a facility. The Independent IDR is conducted only upon the facility’s request. In addition, the notice will provide the State survey agency contact information, including the name, address, and telephone number of

the person and/or agency or office, the facility must contact to request an Independent IDR. The Notice of Imposition of a Penalty letter must be sent to the facility by certified mail return receipt requested and may also be sent by e-mail and/or fax. The Statement of Deficiencies (Form CMS-2567) may be included with the Notice of Imposition of a Penalty letter. The CMS RO must confirm receipt by the facility of such notice letter. A copy of this letter will also be sent to the State survey agency. The facility must request an Independent IDR within ten calendar days of receipt of the offer. This request must specify which deficiency citations it wishes to dispute; and provide a reason why the facility believes each disputed deficiency should not stand.

### **Independent Informal Dispute Resolution Procedures for Health Care Deficiencies**

**Failure to submit the complete request and all additional documentation for IIDR within ten calendar days after receipt of the offer will result in the right to IIDR expiring.**

The facility must hand deliver or fax such an IIDR request to the Bureau by the close of business on the tenth calendar day, or a mailed request must be postmarked by the tenth calendar day to be considered timely. The facility must include, with their request for IIDR to the Bureau, any additional documentation such as facility policies and procedures, resident medical records, letters from treating physicians, considered necessary to support the position of the facility with respect to the deficiencies under consideration. If a facility redacts patient identifiable information, there must be clear cross reference to each resident involved in the finding being disputed, (i.e., use of resident identifier provided by the survey team from their sample selection). This additional information will be sent to each of the IIDR panel members within two work days of receipt. This will allow time for the panel to review the Statement of Deficiencies and to review all additional information submitted by the facility and other parties. **Issues not raised** and **evidence not submitted** with the IIDR request **will not** be allowed to be presented at the IIDR meeting. The written request for informal dispute resolution must provide factual and relevant reasons why deficiencies are being disputed and the additional information and documentation submitted must provide the basis for the facility's position that the deficiencies did not exist at the time of the survey, or in the case of substandard quality of care or jeopardy, why the deficiency level should be changed. If facilities submit additional documents that were not made available during the survey, the facility must fully explain in the submission letter why the documents were not produced during the survey or submitted to the Director of Quality Assurance by the third calendar day following the survey. Documents not produced prior to the IIDR request should be viewed with a healthy dose of skepticism. Documents not submitted in advance of the IIDR meeting may not be presented or discussed at the IIDR meeting. 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 IIDR request contains additional information (which is not clearly noted to be a late entry and properly authenticated, timed and dated), a report will be made to the Board of Nursing or other appropriate licensing authority. The request for IIDR and supporting information should be directed to:

Diane Mann, IIDR Coordinator  
201 Monroe Street, RSA Tower, Suite 600 (36104 zip code)  
P.O. Box 303017, Montgomery, AL 36130-3017  
Phone: (334)206-5078  
Fax: 334-206-5303

At the time that the facility is notified of the date the IIDR is scheduled, the facility will be expected to submit a list of all persons attending the IIDR and their title/position/discipline.

### **How the Health Care Independent Informal Dispute Resolution will be conducted**

The IIDR Coordinator (A Bureau management level employee who is not a surveyor) and clerical staff are responsible for recording and tracking all IIDR requests from skilled nursing facilities. As soon as a request is received, the IIDR Coordinator will notify by email all Bureau management staff and the supervisor for the survey team which performed the survey of the IIDR request. A letter will be sent by overnight mail within two work days of the request of the IIDR to the state and local ombudsman involved with the facility asking that they review the CMS Form 2567 referenced for this IIDR (already sent routinely to the ombudsman) and inviting them to provide written comments, mailed to:

Diane Mann, IIDR Coordinator  
IIDR Panel \_\_\_\_\_ (date of IIDR).  
201 Monroe Street, RSA Tower, Suite 600 (36104 zip code)  
P.O. Box 303017, Montgomery, AL 36130-3017

If there is an involved resident as specified in the SOM, chapter 7 at 7213.3, a letter will be sent by overnight mail within two work days of the request of the IIDR to the involved resident or the resident's legal representative providing the survey date and a brief summary description in lay terminology of the noncompliance for which the facility is requesting an IIDR. The letter will provide the name and phone number of the contact person at the Bureau office who is available to provide assistance with the submission of written comments, including travel by a surveyor (not involved with this survey) to the nursing home or the home address of the legal representative to personally visit with and explain the deficiency statement to the person, and assist in developing a written response to the panel. Such written response to be mailed to:

Diane Mann, IIDR Coordinator  
IIDR Panel \_\_\_\_\_ (date of IIDR).  
201 Monroe Street, RSA Tower, Suite 600 (36104 zip code)  
P.O. Box 303017, Montgomery, Alabama 36130-3017

Letters from the Ombudsman or involved resident or resident's legal representative will be sent to the IIDR Panel by overnight mail within two work days of receipt.

The IIDR panel will consist of four individuals assigned on a rotating basis with three members per conference. Three are nurses with extensive clinical experience employed as Professors of Nursing in a School of Nursing at a state university. The fourth panelist is an attorney under contract with the Department of Public Health with extensive experience presiding over hearings related to licensure disputes.

For disputed deficiencies of a scope and severity of G or above, and for which a civil money penalty has been imposed and will be collected and placed in escrow, the IIDR Coordinator will schedule a face-to-face conference to be conducted at the survey agency offices in Montgomery, Alabama. The date for the IIDR conference will be scheduled by the IDR/IIDR Coordinator after discussion with facility and agency staff. All parties will be notified of the date and time of the conference. All persons attending the IIDR conference will be required to sign an attendance list and a confidentiality statement prior to the start of each IIDR conference. If the facility staff do not attend the IIDR conference on the date and time scheduled, then the IIDR request will be considered to be withdrawn and the matter concluded. A letter will be sent within two work days to the facility and to the Regional Office notifying them of this conclusion of the matter.

The survey findings in the Statement of Deficiencies and all information submitted by the facility in advance of the IIDR conference relevant to the disputed deficiencies may be discussed at the IIDR conference. This conference is an opportunity for the facility to informally dispute the survey findings. Facilities and surveyors will be allowed a maximum of 30 minutes each to discuss each deficiency under review with the 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 the facility Medical Director. Facilities that are part of a chain may bring one corporate representative. If a fact witness is also in corporate management, that individual will be designated as one of the five facility employees, not as a corporate representative and the facility may bring an additional corporate representative in addition to the corporate individual who is designated as a fact witness. Except as specified above, outside consultants, including attorneys, may not attend IIDR conferences. The Bureau may or may not have in attendance: members of the survey team, the supervisor of the survey team, the Director of Quality Assurance, the Long Term Care and Program Directors, and the Medical Director. Others present will be the IIDR panel and IIDR Coordinator. Senior Bureau management staff may attend and answer questions from the IIDR panel about federal rules and procedures but shall not otherwise participate in the conference.

EXCEPTION: In cases where the disputed deficiency citation concerns the work of a facility consultant, then that consultant may attend. For example, if the facility is cited as a result of the work of its pharmacy consultant, then the pharmacy consultant may participate in the IIDR conference. In the event that a consultant participates in the IIDR conference, the consultant shall not be considered as a corporate representative. Written comments from an involved resident or resident representative and from the State's Long Term Care Ombudsman will be reviewed by the panel in advance of the IIDR and considered in their final decision.

### **Independent Informal Dispute Resolution for Life Safety Code Deficiencies**

A facility may request an IIDR for each survey for which a Life Safety Code deficiency is cited at the scope and severity of G or above for which a civil monetary penalty has been imposed and will be collected and put in escrow. The opportunity for an Independent IDR must be provided within 30 calendar days of CMS's notice of imposition of such a civil money penalty. However, when a facility requests an Independent IDR for a survey, the facility cannot raise questions or issues regarding a previous survey, and consideration of such previous survey results is beyond the scope of the Independent IDR. Each Independent IDR is specific to the survey for which the facility either received Independent IDR or had an opportunity for it and did not request it. The Independent IDR process does not delay the imposition of any remedies, including a civil money penalty. During the Independent IDR process a facility may dispute the factual basis of the cited deficiencies for which it requested Independent IDR. During the Independent IDR process, a facility may not challenge other aspects of the survey process, such as:

- Scope or severity classifications, with the exception of assessments that constitute immediate jeopardy;
- Remedy(ies) imposed;
- Alleged failure of the survey team to comply with a requirement of the survey process;
- Alleged inconsistency of the survey team in citing deficiencies among other facilities;
- Alleged inadequacy or inaccuracy of the IDR or Independent IDR process.

The facility must submit a written request for an Independent IDR within ten calendar days of receipt of the offer. This request must specify which deficiency citations it wishes to dispute. The facility's request must include a detailed, written statement describing specific Code references they believe were met at the time of the survey and explaining why they believe that no deficiency should have been written; or for immediate jeopardy citations, why the scope and severity should be reduced. The Director of Facilities Management of the Alabama Department of Public Health (ADPH) will be contacted by the IIDR Coordinator within two work days of receipt of the request for IIDR and a copy of the Life Safety Code Statement of Deficiencies and all of the documentation submitted by the facility will be sent to the Facilities Management Director. Within two work days the Facilities Management Director will contact the State Fire Marshal, schedule a meeting date and time to review the deficiencies, and provide that State Fire Marshal with the Statement of Deficiencies and the information submitted by the facility. The IIDR Coordinator will be informed by the Facilities Management Director of the date and

time of the IIDR. The facility will be notified in writing of the date and time of the IIDR no later than five work days prior to the scheduled meeting. The State Fire Marshal (or his designee) and the Director of Facilities Management will constitute the panel for Life Safety Code IIDR. The Director of Facilities Management will function in an advisory role with respect to the Medicare and Medicaid program requirements, including the Code of Federal Regulations, the State Operations Manual, Appendix I, Appendix PP, and Appendix Q. The attendees will be required to sign an attendance list, complete a specific attestation confirming that no conflict of interest exists at the time of the review, and sign a confidentiality statement prior to the start of each IIDR meeting. The panel will meet on the date specified and review the findings in the Statement of Deficiencies and the documentation submitted by the facility in support of their position. The IIDR Coordinator will attend the meeting and provide technical and secretarial support.

### **Result of the Independent Informal Dispute Resolution meeting**

The IIDR panelists will provide a written record of their decision as soon as practicable but no later than ten calendar days after completing its review. The report will contain the result for each deficiency challenged and a brief summary of the rationale for that result. The panel's decision may result in a recommendation that: (1) no change be made to a cited deficiency; (2) a deficiency should be deleted; (3) findings or examples should be deleted or modified from a deficiency statement; (4) scope and severity be amended based on the relevant information; (5) information be placed in a different or new tag.

Upon receipt of the Independent IDR written record, the State survey agency will review the Independent IDR recommendation(s) and:

- 1) If the State survey agency agrees with the Independent IDR recommendation(s) and no changes will be made to the disputed survey findings, the State survey agency will send written notification of the final decision to the facility and the CMS Regional Office within ten calendar days of receiving the written record from the Independent IDR panel.
- 2) If the State survey agency agrees with the IIDR recommendation(s) or has received a final decision from the CMS RO and changes will need to be made to the disputed survey findings, the State survey agency will provide written notification of the results and final decision to the facility and the CMS Regional Office within ten calendar days of receiving the written record and will:
  - 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 into consideration approvable recommendations from the Independent IDR regarding the deficiency(ies).
  - c) Annotate deficiency(ies) citations as "deleted as recommended."

d) A State survey agency manager or supervisor will sign and date the revised CMS Form-2567.

e) Within two work days the State survey agency will recommend to CMS in writing that any enforcement action(s) imposed solely because of deleted or altered deficiency citations be reviewed, changed or rescinded.

**NOTE:** Based on a final IDR/IIDR recommendation and final State and CMS action, if one or more deficiencies on the Form CMS-2567 have changed, the State survey agency will provide a revised Form CMS-2567 to the facility within ten calendar days, and the facility must submit and sign a new plan of correction with changes that address the deficiencies cited. Any Form CMS-2567 and/or plan of correction that is revised or changed as a result of IDR/IIDR will be mailed to the State long term care ombudsman within ten calendar days in accordance with §7904 of the SOM. Only such final statement of deficiencies and plans of correction constitute public documents which are subject to disclosure.

3) If the State survey agency disagrees with one or more of the recommendations of the Independent IDR panel, the complete written record will be sent to the applicable CMS RO for review and final decision. The State survey agency should provide the portion(s) of the Independent IDR recommendation with which it disagrees, the basis for its disagreement and any relevant survey documents to the CMS RO. As soon as practicable, but no later than ten calendar days, the CMS RO will review the Independent IDR recommendation and records along with the State's written disagreement of the Independent IDR's recommendation and will provide written notification to the State survey agency of the final decision. The State survey agency will then send written notification of the final decision to the facility within ten calendar days of receiving the final decision from the CMS RO.

**NOTE:** Regulations at §488.431(a)(1) require that an Independent IDR will be completed within 60 days of a facility's timely request. Completed means that a final decision from the Independent IDR process has been made, a written record generated AND the State survey agency has sent written notice of the Independent IDR recommendation to the facility.

Statements of Deficiencies with pending Independent IDR will be entered into the Automated Survey Processing Environment (ASPEN) system within ten work days of the exit for that survey but will not be used to calculate the Five-Star score, posted to Nursing Home Compare, or available for public review or reporting until the Independent IDR is fully processed and all related work is completed and successfully uploaded to the national repository.

Independent IDR requests from the facility and necessary changes after completion of the Independent IDR process will be entered in the ASPEN system within ten working days.



## **Professional Behavior for Health Care IIDR**

Respectful and professional behavior is expected at all times on the part of 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 Independent 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 IIDR request must be received by the Bureau as specified in the out of compliance letter from the CMS Regional Office, or else the right to an IIDR is waived.
- 3.) The request for IIDR does not delay in the enforcement process, nor does it extend any deadline for appealing deficiencies to the Alabama Medicaid Agency or to CMS.
- 4.) IIDRs 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 IIDR to preserve its right to an appeal. Requesting an IIDR does not toll or extend the deadline for a facility to request an appeal.
- 5.) Allegations of surveyor misconduct are not germane to the IIDR conference. Facilities should address, in writing, any complaints about surveyor behavior to the surveyor's supervisor or the Director of the Bureau of Health Provider Standards.
- 6.) It is important that the IIDR panel hear the points of view both the survey team and the facility staff. At the same time, however, IIDR 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.
- 7.) 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 or, for substandard quality of care of immediate jeopardy, changed. Therefore, the facility staff will be called upon first during the IIDR conference.
- 8.) The survey team will be given an opportunity to respond after the facility staff has given its reasons for disputing each tag.

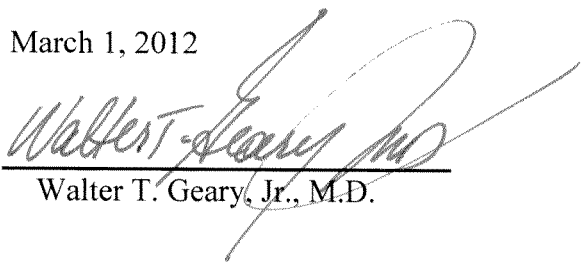
- 9.) The panelists should listen carefully to both sides and make a separate decision about each disputed tag or example. Citations of deficiency or examples should be overturned for the following reasons only:
- a. The facts cited in the CMS 2567 statement of deficiencies fail to demonstrate that the 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 the IIDR panel 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.

- 10.) IDR panelists will assemble immediately after the IIDR conference to make their determination. The IIDR Coordinator will remain with the panel to provide technical and clerical assistance. In accord with the CMS guidelines the panel has ten calendar days to present their written record to the state survey agency. Management and survey staff will not attend the post IIDR meeting of the panelists, but senior management will be available to answer technical questions about the federal regulations and CMS interpretations of the regulations.

Approved/Date: March 1, 2012

Bureau Director

  
Walter T. Geary, Jr., M.D.