



Oklahoma State
Department of Health

**OKLAHOMA STATE DEPARTMENT OF HEALTH
PROTECTIVE HEALTH SERVICES
INTERNAL MANAGEMENT MANUAL**

TITLE: Oklahoma Informal Dispute Resolution Process for Medicare/Medicaid Certified Facilities

Number: 1-7
Date: June 2002
Revised Date: March 2007

**RESPONSIBLE
SERVICE:**

Long Term Care

APPROVED:

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OBJECTIVE:

To establish an informal dispute resolution (IDR) process that offers providers one (1) opportunity to refute cited deficiencies after any survey.

This is not a formal evidentiary hearing; it is an informal administrative process to discuss deficiencies. As such, no party may be represented by an attorney.

**COVERED
FACILITIES:**

Skilled nursing facilities (SNF), nursing facilities (NF), skilled nursing facilities/nursing facilities (SNF/NF), and intermediate care facilities for the mentally retarded (ICF/MR).

BACKGROUND:

Chapter 42 Code of Federal Regulations (CFR) §488.331 requires that the Centers for Medicare & Medicaid Services (CMS) and the States, as appropriate, offer skilled nursing facilities (SNF), nursing facilities (NF), and skilled nursing facilities/nursing facilities (SNF/NF) an informal opportunity to dispute cited deficiencies upon the facility's receipt of the official form CMS-2567, Statement of Deficiencies. The IDR process must be in writing so that it is available for review upon request (Attachment A).

A written request for a hearing must be filed no later than sixty (60) days after the facility receives the enforcement letter, which accompanies the Statement of Deficiencies. Appeal and hearing procedures are set forth in the following:

Chapter 42 CFR §431, Subpart D (Attachment B)
Chapter 42 CFR §498.40, et. seq. (Attachment C)

Chapter 2 of the CMS State Operations Manual (SOM) §2724 contains the nursing facility's right to due process including the exit conference at the conclusion of a survey, an IDR and a formal hearing (Attachment D).

Chapter 7 of the CMS SOM §7212 contains the survey and enforcement process for skilled nursing facilities and nursing facilities (Attachment E).

Title 63 of the Oklahoma Statutes, §1-1912, §1-1914, §1-1914.1, §1-1914.3, §1-1914.4, §1-1914.5, §1-1914.6, §1-1914.7, §1-1914.8, §1-1914.9, §1-1914.10, §1-1916, and §1-1916.1 include provisions for informal dispute resolutions when it is determined that a facility is in violation of the Nursing Home Care Act. An IDR provides skilled nursing facilities (SNF), nursing facilities (NF), skilled nursing facilities/nursing facilities (SNF/NF), and intermediate care facilities for the mentally retarded (ICF/MR) an option to informally dispute deficiencies (Attachment F).

GOVERNING

REQUIREMENTS:

Chapter 42 CFR §488.331 (Attachment A)
Chapter 2, CMS State Operations Manual (SOM) §2724 (Attachment D)
Chapter 7, CMS State Operations Manual (SOM) §7212 (Attachment E)
Title 63 of the Oklahoma Statutes (O.S.), §1-1901 et seq. (Attachment F)

DEFINITIONS:

"Deficiency" means a violation or alleged violation by a facility of applicable state or federal laws, rules, or regulations governing the operation or licensure of a facility. This may also be referred to as a "tag" or "citation."

"Deficiency identification number" means an alphanumeric designation of a deficiency by the State Department of Health that denotes the applicable state or federal rule, regulation, or law allegedly violated and that is used on the statement of deficiencies. This number may also be referred to as a "tag" or "citation."

"Impartial decision maker" means an individual employed by or under contract with the State Department of Health (OSDH) to conduct an informal dispute resolution for the agency.

"Informal dispute resolution" means a nonjudicial process or forum before an impartial decision maker that provides a facility cited for deficiency with the opportunity to dispute a citation for deficiency;

"Party" means a facility requesting an informal dispute resolution, the State Department of Health, or both.

"Resident identifier" means the number that is used to identify a facility resident in lieu of the resident's name on the statement of deficiencies.

"Staff identifier" means the number that is used to identify a facility staff member in lieu of the staff member's name on the statement of deficiencies.

"State survey agency" means the State Department of Health, the federally designated state entity that performs Medicaid and Medicare surveys and inspections of Oklahoma facilities.

"Statement of deficiencies" means a statement prepared by the State Department of Health citing the applicable state or federal laws, rules, or regulations violated by a facility and the facts supporting the citation.

PROCEDURE:

Notification

Facilities are notified of their opportunity for an IDR in the Enforcement letter that accompanies the official form CMS-2567, Statement of Deficiencies (Attachment G).

IDR Type

There are three IDR types: face-to-face meeting, telephone conference, and record review. Face-to-face meetings and telephone conferences shall be limited to no more than two (2) hours in length. If the facility does not identify an IDR type on their request, the IDR shall be conducted as a record review. The impartial decision maker may opt to conduct a telephone conference.

Requesting an IDR

The facility's request is the provider's opportunity to present reasons why the deficiency is disputed. The facility shall address each deficiency in the same order as cited on the official Statement of Deficiencies, provide the reason each deficiency is disputed and present any documentary evidence related to the deficient practice.

A request or scheduling of an IDR shall not delay the formal imposition of remedies or delay the effective date of any enforcement action against the facility.

A request for an IDR shall not affect or preclude the right of a facility to judicial or administrative appeal nor duplicate any procedures already held under the federal requirements for IDR [Title 63, O.S. §1-1914.5].

In order to be granted the opportunity for an IDR, the request must be submitted by the facility on the IDR request form, ODH Form 833 (Attachment H) and be submitted to the OSDH Long Term Care (LTC) IDR Coordinator within ten (10) calendar days from the facility's receipt of the official Statement of Deficiencies. An attachment is acceptable if additional space is needed to list dispute explanation(s). Failure to submit a completed IDR request form within this timeframe waives the facility's right to an IDR. A facsimile shall be acceptable provided the required documentation is submitted and received within the given timeframes.

Do not submit complaints about a surveyor or the survey process with your request for IDR. This is not within the realm of the IDR process. Complaints about a surveyor or the survey process should be submitted to the Director of LTC Survey in separate correspondence.

Documentation

A facility shall submit documentary evidence to the impartial decision maker that the facility believes has a bearing on or relevance to the deficiencies in dispute along with the IDR request form. These items shall be sent to the attention of the IDR Coordinator. The facility may request an extension from the decision maker for the submission of their documentary evidence at the time of their IDR request. An extension shall not exceed twenty (20) calendar days from the facility's receipt of the official Statement of Deficiencies. The OSDH impartial decision maker is not required to accept or review documentary evidence submitted outside of the given timeframe.

All documentary evidence submitted shall be in its original form and content as of the survey exit date. *No facility shall willfully file any false, incomplete or intentionally misleading information required to be filed under this Act [the Nursing Home Care Act], or willfully fail or refuse to file any information [Title 63, O.S. §1-1916].* **The facility name and the survey exit date shall be identified on all documents.** Copies of documents such as resident records, consultant reports, statements, etc. may be submitted for further review. These documents shall be retained with the facility records at the Department. Any record identifying a resident shall be redacted by the facility prior to submission. The facility shall use resident identifiers consistent with the Department's identifiers used in the Statement of Deficiencies in lieu of resident names. The facility shall use staff identifiers consistent with the Department's identifiers used in the

Statement of Deficiencies in lieu of staff names. Submitted documentation must be legible.

Timelines to Withdraw IDR Request and to Schedule IDR

Timelines do not allow for rescheduled IDR meetings. If a provider is unable to attend on the scheduled date or a mutually agreeable date cannot be found, the IDR type shall revert to a record review. In the event of an unforeseen circumstance, a facility may request to reschedule the IDR. The facility must submit this request in writing with a brief explanation to the IDR Coordinator. The facility shall be permitted one reschedule request.

If a facility wishes to withdraw their IDR request, they must notify the IDR Coordinator in writing at least seventy-two (72) hours prior to their scheduled IDR. This allows the IDR Coordinator to provide sufficient notification to all parties.

Upon receipt of an IDR request form and documentary evidence, the IDR Coordinator shall review the request. The IDR Coordinator shall acknowledge an IDR request no later than the fifth (5th) business day after receipt. Facilities shall be notified of the scheduled date, time, and location of the IDR via email, facsimile, or certified mail return receipt requested within ten (10) calendar days of receiving the IDR request (Attachment I). The IDR shall be conducted no later than the fiftieth (50th) calendar day from the survey exit date unless scheduling circumstances do not permit.

Face-to-Face IDR

For a face-to-face IDR, the impartial decision maker shall conduct the meeting. The IDR Coordinator shall check the schedules of staff to confirm attendance and schedule the IDR. The IDR meeting shall be scheduled to allow sufficient travel time for both the facility and OSDH staff. A Survey Coordinator or other designated LTC representative (who were not a part of the survey team) shall be present. At least one (1) survey team member shall attend to provide information concerning findings on which the deficiencies were based. Each party shall be limited to no more than one (1) hour to present their arguments. The official Statement of Deficiencies may serve as the OSDH's argument.

Record Review IDR

For a record review, the facility shall provide the documentation detailed in this procedure, including a written statement setting forth the facility's position on accepting, rejecting, or modifying each deficiency in dispute. The written statement shall specify the documentary evidence that supports the position of the facility for each deficiency in dispute.

The IDR Coordinator shall forward the facility's submitted documents to the impartial decision maker, a Survey Coordinator or other designated LTC representative (who were not a part of the survey team), and at least one (1) survey team member for review.

A Survey Coordinator or designated LTC representative, and survey team member(s) shall submit to the impartial decision maker and IDR Coordinator a written statement in response to the facility's submitted documents. The official Statement of Deficiencies may serve as the OSDH's argument. The IDR Coordinator shall forward a copy of the written Departmental response to the facility.

Telephone Conference IDR

For a telephone conference IDR, the impartial decision maker, a Survey Coordinator or other designated LTC representative (who were not a part of the survey team), and at least one (1) survey team member, shall attend to provide information concerning findings on which the deficiencies were based. The decision maker shall record

attendees on a sign-in sheet. Each party shall be limited to no more than one (1) hour to present their arguments. The official Statement of Deficiencies may serve as the OSDH's argument.

Impartial Decision Maker's Determination

Following the IDR, the impartial decision maker shall consider the applicable federal and/or state rule and statute, guidance documents, oral statements and all submitted documents in making a determination. The impartial decision maker shall issue an IDR determination letter and report no later than seven (7) business days after the IDR has been conducted. The IDR determination report shall identify each deficiency (or tag) disputed, each disputed item (or finding) within a deficiency, the facts and persuasive arguments provided, and the determination of the impartial decision maker (Attachment J and K).

The IDR determination shall be sent to the state survey agency for review and issuance of the final determination. Each party shall be sent the decision maker's determination via email, facsimile, or certified mail return receipt requested.

State Survey Agency's Determination

Upon receipt of the impartial decision maker's determination, the state survey agency shall review the determination. The state survey agency shall notify each party of the state survey agency's determination to uphold in full or in part the impartial decision maker's determination. The state survey agency shall issue their determination no later than five (5) business days of receiving the decision maker's determination. The state survey agency's determination shall be sent to each party via email, facsimile, or certified mail return receipt requested. Other state agencies and the OSDH LTC Enforcement reviewer shall receive a copy of the state survey agency's determination as applicable (Attachment L). In accordance with Title 63, O.S. §1-1914.9, the state survey agency determination, in response to the decision of the impartial decision maker, is not subject to appeal, reargument, or reconsideration.

The facilities appeal rights regarding the survey findings continue as provided in state and federal statute and regulation.

For dually participating or Medicare-only facilities, state survey agency's IDR determinations are submitted at the time of issuance in the manner of a recommendation to CMS. If CMS has reason to disagree with those findings, it may reject the state's determination and make its own binding determination of noncompliance [Chapter 7 SOM §7212].

Post Determination

When the facility is successful at demonstrating a deficiency should not have been cited or not cited to the extent stated in the official Statement of Deficiencies, the deficiency shall be deleted or amended accordingly. The state survey agency shall issue an amended Statement of Deficiencies to the facility. The amended Statement of Deficiencies shall accompany the state survey agency's IDR determination notice.

Any enforcement action(s) imposed based on the amended deficiency citation shall be rescinded or adjusted as appropriate by the OSDH LTC Enforcement staff. The OSDH LTC Enforcement staff shall notify the facility of any amendments to enforcement action(s).

OSDH encourages the facility to submit a new plan of correction on the amended Statement of Deficiencies. The clean (new) copy will be the releasable copy **only** when a new plan of correction is both provided and signed by the facility. The original

Statement of Deficiencies is disclosable when a clean plan of correction is not submitted and signed by the facility. Any amendments as a result of an IDR must be disclosed to the ombudsman in accordance with Chapter 7 SOM §7904 [Chapter 7 SOM §7212].

If the facility is unsuccessful at demonstrating a deficiency should not have been cited, the deficiency shall remain as originally cited. No amendments shall be made to the Statement of Deficiencies.

IMPLEMENTATION: Effective date shall be immediately after final revisions.

[Code of Federal Regulations]
[Title 42, Volume 3]
[Revised as of October 1, 2002]
From the U.S. Government Printing Office via GPO Access
[CITE: 42CFR488.331]

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**TITLE 42--PUBLIC HEALTH
Volume 3**

**CHAPTER IV--CENTERS FOR MEDICARE & MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

PART 488--SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

Subpart E--Survey and Certification of Long-Term Care Facilities

Sec. 488.331 Informal dispute resolution.

(a) *Opportunity to refute survey findings.* (1) For non-Federal surveys, the State must offer a facility an informal opportunity, at the facility's request, to dispute survey findings upon the facility's receipt of the official statement of deficiencies.

(2) For Federal surveys, CMS offers a facility an informal opportunity, at the facility's request, to dispute survey findings upon the facility's receipt of the official statement of deficiencies.

(b)(1) Failure of the State or CMS, as appropriate, to complete informal dispute resolution timely cannot delay the effective date of any enforcement action against the facility.

(2) A facility may not seek a delay of any enforcement action against it on the grounds that informal dispute resolution has not been completed before the effective date of the enforcement action.

(c) If a provider is subsequently successful, during the informal dispute resolution process, at demonstrating that deficiencies should not have been cited, the deficiencies are removed from the statement of deficiencies and any enforcement actions imposed solely as a result of those cited deficiencies are rescinded.

(d) *Notification.* Upon request, CMS does and the State must provide the facility with written notification of the informal dispute resolution process.

[Code of Federal Regulations]
[Title 42, Volume 3]
[Revised as of October 1, 2002]
From the U.S. Government Printing Office via GPO Access
[CITE: 42CFR431.151]

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**TITLE 42--PUBLIC HEALTH
Volume 3**

**CHAPTER IV--CENTERS FOR MEDICARE & MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

PART 431--STATE ORGANIZATION AND GENERAL ADMINISTRATION

Subpart D--Appeals Process for NFs and ICFs/MR

Sec. 431.151 Scope and applicability.

(a) General rules. This subpart sets forth the appeals procedures that a State must make available as follows:

(1) To a nursing facility (NF) that is dissatisfied with a State's finding of noncompliance that has resulted in one of the following adverse actions:

- (i) Denial or termination of its provider agreement.
- (ii) Imposition of a civil money penalty or other alternative remedy.

(2) To an intermediate care facility for the mentally retarded (ICF/MR) that is dissatisfied with a State's finding of noncompliance that has resulted in the denial, termination, or nonrenewal of its provider agreement.

(3) To an NF or ICF/MR that is dissatisfied with a determination as to the effective date of its provider agreement.

(b) Special rules. This subpart also sets forth the special rules that apply in particular circumstances, the limitations on the grounds for appeal, and the scope of review during a hearing.

Sec. 431.152 State plan requirements.

The State plan must provide for appeals procedures that, as a minimum, satisfy the requirements of Secs. 431.153 and 431.154.

Sec. 431.153 Evidentiary hearing.

(a) Right to hearing. Except as provided in paragraph (b) of this section, and subject to the provisions of paragraphs (c) through (j) of this section, the State must give the facility a full evidentiary hearing for any of the actions specified in Sec. 431.151.

(b) Limit on grounds for appeal. The following are not subject to appeal:

- (1) The choice of sanction or remedy.

(2) The State monitoring remedy.

(3) [Reserved]

(4) The level of noncompliance found by a State except when a favorable final administrative review decision would affect the range of civil money penalty amounts the State could collect.

(5) A State survey agency's decision as to when to conduct an initial survey of a prospective provider.

(c) Notice of deficiencies and impending remedies. The State must give the facility a written notice that includes:

(1) The basis for the decision; and

(2) A statement of the deficiencies on which the decision was based.

(d) Request for hearing. The facility or its legal representative or other authorized official must file written request for hearing within 60 days of receipt of the notice of adverse action.

(e) Special rules: Denial, termination or nonrenewal of provider agreement. (1) Appeal by an ICF/MR. If an ICF/MR requests a hearing on denial, termination, or nonrenewal of its provider agreement--

(i) The evidentiary hearing must be completed either before, or within 120 days after, the effective date of the adverse action; and

(ii) If the hearing is made available only after the effective date of the action, the State must, before that date, offer the ICF/MR an informal reconsideration that meets the requirements of Sec. 431.154.

(2) Appeal by an NF. If an NF requests a hearing on the denial or termination of its provider agreement, the request does not delay the adverse action and the hearing need not be completed before the effective date of the action.

(f) Special rules: Imposition of remedies. If a State imposes a civil money penalty or other remedies on an NF, the following rules apply:

(1) Basic rule. Except as provided in paragraph (f)(2) of this section (and notwithstanding any provision of State law), the State must impose all remedies timely on the NF, even if the NF requests a hearing.

(2) Exception. The State may not collect a civil money penalty until after the 60-day period for request of hearing has elapsed or, if the NF requests a hearing, until issuance of a final administrative decision that supports imposition of the penalty.

(g) Special rules: Dually participating facilities. If an NF is also participating or seeking to participate in Medicare as an SNF, and the basis for the State's denial or termination of participation in Medicaid is also a basis for denial or termination of participation in Medicare, the State must advise the facility that--

(1) The appeals procedures specified for Medicare facilities in part 498 of this chapter apply; and

(2) A final decision entered under the Medicare appeals procedures is binding for both programs.

(h) Special rules: Adverse action by CMS. If CMS finds that an NF is not in substantial compliance and either terminates the NF's Medicaid provider agreement or imposes alternative remedies on the NF (because CMS's findings and proposed remedies prevail over those of the State in accordance with Sec. 488.452 of this chapter), the NF is entitled only to the appeals procedures set forth in part 498 of this chapter, instead of the procedures specified in this subpart.

(i) Required elements of hearing. The hearing must include at least the following:

(1) Opportunity for the facility--

(i) To appear before an impartial decision-maker to refute the finding of noncompliance on which the adverse action was based;

(ii) To be represented by counsel or other representative; and

(iii) To be heard directly or through its representative, to call witnesses, and to present documentary evidence.

(2) A written decision by the impartial decision-maker, setting forth the reasons for the decision and the evidence on which the decision is based.

(j) Limits on scope of review: Civil money penalty cases. In civil money penalty cases-

(1) The State's finding as to a NF's level of noncompliance must be upheld unless it is clearly erroneous; and

(2) The scope of review is as set forth in Sec. 488.438(e) of this chapter.

Sec. 431.154 Informal reconsideration for ICFs/MR.

The informal reconsideration must, at a minimum, include--

(a) Written notice to the facility of the denial, termination or nonrenewal and the findings upon which it was based;

(b) A reasonable opportunity for the facility to refute those findings in writing, and

(c) A written affirmation or reversal of the denial, termination, or nonrenewal.

[Code of Federal Regulations]
[Title 42, Volume 3]
[Revised as of October 1, 2002]
From the U.S. Government Printing Office via GPO Access
[CITE: 42CFR498.40]

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CHAPTER IV--CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 498--APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFS/MR AND CERTAIN NFS IN THE MEDICAID PROGRAM

Subpart D--Hearings

Sec. 498.40 Request for hearing.

(a) Manner and timing of request. (1) An affected party entitled to a hearing under Sec. 498.5 may file a request for a hearing with CMS or the OIG, as appropriate, or with OHA. (2) The affected party or its legal representative or other authorized official must file the request in writing within 60 days from receipt of the notice of initial, reconsidered, or revised determination unless that period is extended in accordance with paragraph (c) of this section. (Presumed date of receipt is determined in accordance with Sec. 498.22(b)(3)).

(b) Content of request for hearing. The request for hearing must--

(1) Identify the specific issues, and the findings of fact and conclusions of law with which the affected party disagrees; and

(2) Specify the basis for contending that the findings and conclusions are incorrect.

(c) Extension of time for filing a request for hearing. If the request was not filed within 60 days--

(1) The affected party or its legal representative or other authorized official may file with the ALJ a written request for extension of time stating the reasons why the request was not filed timely.

(2) For good cause shown, the ALJ may extend the time for filing the request for hearing.

State Operations Manual

Chapter 2 – The Certification Process

2724 - Exit Conference

(Rev. 1, 05-21-04)

Subsequent to the pre-exit conference held to allow team members to exchange and formulate survey findings, the surveyors conduct an exit conference (“an exit”) with the entity’s administrator, designee, and other invited staff. The purpose of the exit conference is to informally communicate preliminary survey team findings and provide an opportunity for the interchange of information, especially if there are differences of opinion. Although it is CMS’ general policy to conduct an exit conference, be aware of situations that would justify refusal to continue an exit conference. For example:

- If the provider is represented by counsel (all participants in the exit conference should identify themselves), surveyors may refuse to continue the conference if the entity’s attorney attempts to turn it into a evidentiary hearing; or
- Any time the provider creates an environment that is hostile, overly intimidating, or inconsistent with the informal and preliminary nature of an exit conference, surveyors may refuse to conduct or continue the conference.

Additionally, as discussed in §2714, if the entity wishes to audio tape the conference, it must tape the entire meeting and provide the surveyors with a copy of the tape at the conclusion of the conference. Videotaping is also permitted if it is not disruptive to the conference, and a copy is provided at the conclusion of the conference. It is at the sole discretion of the surveyor(s) to determine if videotaping is permitted.

It is critical that the surveyors establish and maintain control throughout the exit conference. Surveyors should present their findings but refrain from arguing with the provider. Be mindful that providers are likely to react defensively to surveyor findings. The provider has a right to disagree with the findings and present arguments to refute them. Surveyors should be receptive to such disagreements. If the provider presents information to negate any of the findings, surveyors should indicate their willingness to reevaluate the findings before leaving the facility. The survey team’s reasonableness demonstrates their fairness and professionalism. The degree of receptivity displayed by providers during the exit conference often depends upon the attitudes and survey style of the survey team.

If the LSC survey is conducted independently of the health survey, the fire authority conducts a separate exit conference.

The following guidelines are helpful to surveyors in performing an exit conference:

2724A - Introductory Remarks

(Rev. 1, 05-21-04)

Introduce yourself to those present. Restate why the survey was conducted. Express the team’s appreciation for anything the provider has done to facilitate the survey. Explain that the exit conference is an informal meeting to discuss preliminary survey findings and thereby assist the provider or supplier in developing an acceptable PoC, if appropriate and required. Indicate that official findings are presented in writing on Form CMS-2567 and will be forwarded to the provider within 10 working days. Indicate that the provider will, in turn, have 10 calendar days to submit a PoC. (See §2728.)

2724B - Ground Rules

(Rev. 1, 05-21-04)

Explain how you will conduct the exit conference and how the team's findings will be presented; for example, each surveyor may present a portion of the total findings. Inform the provider that where there are disagreements between the team and the provider about the findings that cannot be resolved during the conference or before the team leaves the facility, the provider will have the opportunity to submit additional evidence to the team, the State, and/or the RO after the conference. (See §2728.B. concerning provider attempts to refute survey findings on the Form CMS-2567.)

2724C - Presentation of Findings

(Rev. 1, 05-21-04)

In presenting findings, avoid reading your findings or referring to them by their data tag number. Explain why the findings are a violation of Medicare requirements. If the provider asks for the regulatory basis, provide it. Under no circumstances should you make general statements such as, "Overall the facility is very good." Stick to the facts. Do not rank requirements. Treat requirements as equally as possible. Cite problems that clearly violate regulatory requirements. Avoid statements such as, "The condition was not met," or "The standard was not met."

2724D - Closure

(Rev. 1, 05-21-04)

When you have completed the exit conference, explain the process to the provider. Inform the provider that you will send a formal statement of deficiencies, unless your procedures call for Form CMS-2567 to be left with the provider following the exit conference. Explain the due date for submitting a PoC and how the rest of the certification process works. If you have identified an immediate and serious threat to patient health and safety, explain the significance of that finding and the need for immediate corrective action. In this or any other instance when adverse action is anticipated, explain the implications. Make it clear that only compliance will stop the adverse action.

In an initial survey, the surveyor tells the provider or supplier to expect notification of initial approval or denial of Medicare participation from the RO, and notification by the SMA concerning Medicaid participation, if appropriate. The surveyor explains that the RO establishes the effective date of participation and notifies the provider or supplier in writing and that Medicare payment will not be made before the effective date.

Notices of Medicare recertification from the RO are not necessarily sent unless there are changes in approved services or in sizes of distinct parts certified. Notices of reapproval of NFs and ICFs/MR are made according to State policy.

State Operations Manual

Chapter 7 - Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities

Survey Process

7212 - Informal Dispute Resolution

(Rev. 1, 05-21-04)

7212A - Introduction

(Rev. 1, 05-21-04)

Title 42 CFR 488.331 requires that CMS and the States, as appropriate, offer skilled nursing facilities, nursing facilities, and dually participating facilities an informal opportunity to dispute cited deficiencies upon the facility's receipt of the official Form CMS-2567. A State does not need to create any new or additional processes if its existing process meets the requirements described in subsection C. The informal dispute resolution process, as established by the State or CMS regional office, must be in writing so that it is available for review upon request.

7212B - Purpose

(Rev. 1, 05-21-04)

The purpose of this informal process is to give providers one opportunity to refute cited deficiencies after any survey.

7212C - Mandatory Elements of Informal Dispute Resolution

(Rev. 1, 05-21-04)

The following elements must be included in each informal dispute resolution process offered:

1. Upon their receipt of the official Form CMS-2567, facilities must be offered one informal opportunity, if they request it, to dispute deficiencies with the entity that conducted the survey.
2. Facilities may not use the informal dispute resolution process to delay the formal imposition of remedies or to challenge any other aspect of the survey process, including the:
 - Scope and severity assessments of deficiencies with the exception of scope and severity assessments that constitute substandard quality of care or immediate jeopardy;
 - Remedy(ies) imposed by the enforcing agency;
 - 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 facilities;
 - Alleged inadequacy or inaccuracy of the informal dispute resolution process.
3. Facilities must be notified of the availability of informal dispute resolution in the letter transmitting the official Form CMS-2567. (See Exhibit 139 for transmission of Form CMS-2567.) Notification of this process should inform the facility:
 - That it may request the opportunity for informal dispute resolution, and that if it requests the opportunity, the request must be submitted in writing along with an explanation of the specific

deficiencies that are being disputed. The request must be made within the same 10 calendar day period the facility has for submitting an acceptable plan of correction to the surveying entity;

- Of the name, address, and telephone number of the person the facility must contact to request informal dispute resolution;
- How informal dispute resolution may be accomplished in that State, e.g., by telephone, in writing, or in a face-to-face meeting.
- Of the name and/or the position title of the person who will be conducting the informal dispute resolution, if known.

NOTE - Informal dispute resolution is a process in which State agency officials make determinations of noncompliance. States should be aware that CMS holds them accountable for the legitimacy of the process including the accuracy and reliability of conclusions that are drawn with respect to survey findings. This means that while States may have the option to involve outside persons or entities they believe to be qualified to participate in this process, it is the States, not outside individuals or entities, that are responsible for informal dispute resolution decisions. CMS will look to the States to assure the viability of these decision-making processes, and holds States accountable for them.

Since CMS has ultimate oversight responsibility relative to a State's performance, it may be appropriate for CMS to examine specific informal dispute resolution decisions or the overall informal dispute resolution process to determine whether a State is arriving at a correct result. For dually participating or Medicare-only facilities, informal dispute findings are in the manner of recommendations to CMS and, if CMS has reason to disagree with those findings, it may reject the conclusions from informal dispute resolution and make its own binding determinations of noncompliance.

4. Failure to complete informal dispute resolution timely will not delay the effective date of any enforcement action against the facility.
5. When a facility is unsuccessful during the process at demonstrating that a deficiency should not have been cited, the surveying entity must notify the facility in writing that it was unsuccessful.
6. When a facility is successful during the informal dispute resolution process at demonstrating that a deficiency should not have been cited:
 - The deficiency citation should be marked "deleted," signed, and dated by a supervisor of the surveying entity;
 - Any enforcement action(s) imposed solely because of that deficiency citation should be rescinded; and
 - The scope and severity assessment should be adjusted, if necessary, to reflect the outcome of informal dispute resolution, e.g., elimination of deficiencies.

NOTE - The facility has the option to request a clean (new) copy of the Form CMS-2567. However, the clean copy will be the releasable copy only when a clean (new) plan of correction is both provided and signed by the facility. The original Form CMS-2567 is disclosable when a clean plan of correction is not submitted and signed by the facility. Any Form CMS-2567 and/or plan of correction that is revised or changed as a result of informal dispute resolution must be disclosed to the ombudsman in accordance with §7904.

Deficiencies pending informal dispute resolution should be entered in the Automated Survey Processing Environment but will not be uploaded to the Online Data Input and Edit system for posting to the Nursing Home Compare website until informal dispute resolution has been completed.

7. A facility may request informal dispute resolution for each survey that cites deficiencies. The following table indicates when informal dispute resolution may be requested based on the results of a revisit or as a result of the previous informal dispute resolution outcome.

Situation	Eligibility for Informal Dispute Resolution
Continuation of same deficiency at revisit	Yes
New deficiency (i.e., new or changed facts, new tag) at revisit or as a result of an informal dispute resolution	Yes
New example of deficiency (i.e., new facts, same tag) at revisit or as a result of an informal dispute resolution.	Yes
Different tag but same facts at revisit or as a result of an informal dispute resolution	No, unless the new tag constitutes substandard quality of care

NOTE: A second informal dispute resolution is not offered about the existence of the deficiency(ies) as of the date of the first survey.

8. Written description of the surveying entity's informal dispute resolution process must be made available to a facility upon the facility's request.
9. States are encouraged to include in the informal dispute resolution process at least one person as part of the decision making process who was not directly involved in the survey. This may include, but is not limited to, another surveyor, ombudsman, a member of another survey team, etc.

7212D - Additional Elements for Federal Informal Dispute Resolution
(Rev. 1, 05-21-04)

In addition to those elements cited in subsection C, CMS has adopted the following elements to be incorporated in all cases involving deficiencies cited as a result of Federal surveys. They are designed to clarify and expedite the resolution process. States are free to incorporate these elements into their procedures.

1. Notice to the facility will indicate that the informal dispute resolution, including any face-to-face meetings, constitutes an informal administrative process that in no way is to be construed as a formal evidentiary hearing.
2. Notice to the facility will indicate that counsel may accompany it if there is a face-to-face meeting. If it chooses to be accompanied by counsel, then it must indicate that in its request for informal dispute resolution, so that CMS may also have counsel present.
3. CMS will verbally advise the facility of CMS' decision relative to the informal dispute, with written confirmation to follow.

**NURSING HOME CARE ACT
TITLE 63 OF THE OKLAHOMA STATUTES
SECTION 1-1901 ET SEQ.**

§63-1-1912. Notice of violation and right to hearing – Emergency orders - Appeal.

A. The State Department of Health shall promptly serve a notice of violation upon a licensee whenever upon inspection or investigation, the Department determines that:

1. The facility is in violation of the Nursing Home Care Act, any rule promulgated thereunder, or applicable federal certification criteria; or
2. The financial condition of the facility poses an immediate risk to the proper operation of the facility or to the health, safety or welfare of the residents of the facility.

B. Each notice of violation shall be prepared in writing and shall specify the nature of the violation, and the statutory provision, rule or standard alleged to have been violated. The notice of violation shall inform the licensee of its obligation to file a plan of correction within ten (10) working days of receipt of the notice of violation. In the case of a specialized facility for persons with mental retardation, the Department shall offer the licensee an informal opportunity comparable to the process offered to Medicaid-certified nursing facilities pursuant to 42 CFR 488.331, in order to dispute the alleged violations.

C. The Department shall notify the licensee of its intent to take any remedial action, impose administrative penalties, place a monitor or temporary manager in the facility, issue a conditional license, or suspend or revoke a license. The Department shall also inform the licensee of the right to an informal dispute resolution, hearing, or both.

D. Whenever the Department finds that an emergency exists requiring immediate action to protect the health, safety or welfare of any resident of a facility licensed pursuant to the provisions of this act, the Department may, without notice of hearing, issue an order stating the existence of such an emergency and requiring that action be taken as deemed necessary by the Department to meet the emergency. The order shall be effective immediately. Any person to whom such an order is directed shall comply with such order immediately but, upon application to the Department, shall be afforded a hearing within ten (10) business days of receipt of the application. On the basis of such hearing, the Department may continue the order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided in this subsection may appeal to the district court in Oklahoma County within thirty (30) days. Such appeal when docketed shall have priority over all cases pending on the docket, except criminal cases. For purposes of this subsection, the State Board of Health shall define by rule the term "emergency" to include, but not be limited to, a life-endangering situation.

[23]Added by Laws 1980, c. 241, § 12, eff. Oct. 1, 1980. Amended by Laws 1991, c. 127, § 7, emerg. eff. April 29, 1991; Laws 1995, c. 230, § 12, eff. July 1, 1995; Laws 2002, c. 230, § 6, eff. Nov. 1, 2002; Laws 2005, c. 460, § 1, eff. Nov. 1, 2005. [24]

§63-1-1914. Plan of correction of violations to be submitted - Report of correction - Petition for time extension - Contest of department action.

A. A facility shall have ten (10) working days after receipt of notice of violation in which to prepare and submit a plan of correction. The plan of correction shall include a fixed time period, not to exceed sixty (60) days within which the violations are to be corrected. The Department may extend this period where correction involves substantial structural improvement. If the Department rejects a plan of correction, it shall send notice of the rejection and the reason for the rejection to the facility. The facility shall have ten (10) working days after receipt of the notice of rejection in which to submit a modified plan. If the modified plan is not timely submitted, or if the modified plan is rejected, the Department shall impose a plan of correction which the facility shall follow.

B. If the violation has been corrected prior to submission and approval of a plan of correction, the facility may submit a report of correction in place of a plan of correction.

C. Upon a licensee's written request, the Department shall determine whether to grant a licensee's request for an extended correction time. Such request shall be served on the Department prior to expiration of the correction time originally approved. The burden of proof shall be on the licensee to show good cause for not being able to comply with the original correction time approved.

D. If a facility desires to contest any Department action under this section, it shall send a written request for an informal dispute resolution, hearing or both to the Department within ten (10) working days of receipt of notice of the contested action and the Department shall commence the informal dispute resolution or hearing.

[25]Added by Laws 1980, c. 241, § 14, eff. Oct. 1, 1980. Amended by Laws 1995, c. 230, § 13, eff. July 1, 1995; Laws 2005, c. 460, § 2, eff. Nov. 1, 2005. [26]

§63-1-1914.1. Remedies for violations - Considerations in determining appropriate remedy.

A. For violations of the Nursing Home Care Act, the rules promulgated thereto, or Medicare/Medicaid certification regulations:

1. The State Department of Health shall seek remedial action against a licensee, owner or operator of a facility and may, after notice and opportunity for a hearing, impose the remedy most likely to:

- a. gain and ensure continued compliance with the Nursing Home Care Act, the rules promulgated thereto, or federal certification standards or both rules and standards, or
- b. provide for the financial operation of the facility that ensures the health, safety and welfare of the residents;

2. In the alternative or in addition to any remedial action, the State Commissioner of Health may direct the Oklahoma Health Care Authority to withhold vendor payments due to a facility under its programs until such time as the corrections are made;

3. The Department may deny, refuse to renew, suspend or revoke a license, ban future admissions to a facility, assess administrative penalties, or issue a conditional license; and

4. a. Pursuant to an investigation or inspection that reveals a willful violation of rules pertaining to minimum direct-care staffing requirements, the Commissioner shall notify the Oklahoma Health Care Authority and the Authority shall withhold as a penalty a minimum of twenty percent (20%) of the vendor payments due the facility under its programs for each day such violation continues.
- b. The Commissioner shall impose an equivalent penalty amount under licensure standards for a facility that does not receive vendor payments under its program that is in willful violation of rules pertaining to minimum direct-care staffing requirements.

B. Whenever the Department takes remedial action against a facility because the financial condition of the facility has endangered or is at risk of endangering the proper operation of the facility or the health, safety or welfare of the residents of the facility, the Department shall also review the conditions of all other facilities in this state owned or operated by a person with a controlling interest as defined Section 1-851.1 of this title, and may take remedial action against the facilities as necessary or appropriate.

C. Remedial action as provided in subsection A or B of this section shall be based on current and past noncompliance or incomplete or partial compliance; repeated violations; or failure to substantially comply with the Nursing Home Care Act and rules promulgated thereto. In determining the most appropriate remedy, the Department shall consider at least the following:

1. The nature, circumstances and gravity of the violations;
2. The repetitive nature of the violations at the facility or others operated by the same or related entities;
3. The previous degree of difficulty in obtaining compliance with the rules at the facility or others operated by the same or related entities; and
4. A clear demonstration of good faith in attempting to achieve and maintain continuing compliance with the provisions of the Nursing Home Care Act.

[27]Added by Laws 1995, c. 230, § 14, eff. July 1, 1995. Amended by Laws 2000, c. 340, § 16, eff. July 1, 2000; Laws 2002, c. 230, § 7, eff. Nov. 1, 2002; Laws 2005, c. 460, § 3, eff. Nov. 1, 2005. [28]

§63-1-1914.3. Informal dispute resolution meeting.

A. An informal dispute resolution meeting may be conducted by the State Department of Health.

B. The State Department of Health shall assign all informal dispute resolutions to the unit or section charged with performing survey or inspection activity.

[31]Added by Laws 2005, c. 460, § 4, eff. Nov. 1, 2005. [32]

§63-1-1914.4. Definitions.

For purposes of this act:

1. "Deficiency" means a violation or alleged violation by a facility of applicable state or federal laws, rules, or regulations governing the operation or licensure of a facility;

2. "Deficiency identification number" means an alphanumeric designation of a deficiency by the State Department of Health that denotes the applicable state or federal rule, regulation, or law allegedly violated and that is used on the statement of deficiencies;

3. "Impartial decision maker" means an individual employed by or under contract with the State Department of Health to conduct an informal dispute resolution for the agency;

4. "Informal dispute resolution" means a nonjudicial process or forum before an impartial decision maker that provides a facility cited for deficiency with the opportunity to dispute a citation for deficiency;

5. "Party" means a facility requesting an informal dispute resolution, the State Department of Health, or both;

6. "State survey agency" means the State Department of Health, the federally designated state entity that performs Medicaid and Medicare surveys and inspections of Oklahoma facilities; and

7. "Statement of deficiencies" means a statement prepared by the State Department of Health citing the applicable state or federal laws, rules, or regulations violated by a facility and the facts supporting the citation.

Added by Laws 2005, c. 460, § 5, eff. Nov. 1, 2005.

§63-1-1914.5. Written request for informal dispute resolution.

A. A facility that wishes to challenge a deficiency through the informal dispute resolution process shall make a written request to the State Department of Health within ten (10) calendar days of the receipt of the statement of deficiencies from the State Department of Health.

B. The written request for an informal dispute resolution shall include:

1. A list of all deficiencies that the facility wishes to challenge; and

2. A statement indicating whether the facility wants the informal dispute resolution to be conducted by telephone conference call, by record review of the impartial decision maker, or by a meeting in which the facility and the State Department of Health appear before the impartial decision maker.

C. A request for an informal dispute resolution shall not:

1. Stay any action for enforcement or imposition of remedies;

2. Affect or preclude the right of a facility to judicial or administrative appeal; or

3. Duplicate any procedures already held under the federal requirements for informal dispute resolution.

Added by Laws 2005, c. 460, § 6, eff. Nov. 1, 2005.

§63-1-1914.6. Informal dispute resolution - Impartial decision maker.

A. Upon receipt of a request for an informal dispute resolution from a facility, the State Department of Health shall assign the matter to an impartial decision maker.

B. The impartial decision maker shall:

1. Schedule a time and date for a meeting; and

2. Inform the parties of the time and date of the informal dispute resolution.

C. If the request for an informal dispute resolution includes a request by the facility for a meeting at which the facility may appear before the impartial decision maker, the impartial decision maker shall:

1. Arrange for facilities appropriate for conducting the meeting; and
2. Inform the parties of the location of the meeting.

D. Each party shall submit to the impartial decision maker all documentary evidence that the party believes has a bearing on or relevance to the deficiencies in dispute by the date specified by the impartial decision maker.

E. 1. If the request for an informal dispute resolution does not include a request by the facility for a meeting at which the facility may appear before the impartial decision maker, or upon agreement of the facility and the Department, the impartial decision maker may conduct the meeting by telephone conference call or by a review of documentary evidence submitted by the parties.

2. a. If the informal dispute resolution is conducted by record review, the impartial decision maker may request, and the facility shall provide, a written statement setting forth the facility's position on accepting, rejecting, or modifying each deficiency in dispute.
- b. The written statement shall specify the documentary evidence that supports the position of the facility for each deficiency in dispute.
- c. The facility shall provide its written statement to the impartial decision maker and the Department.
- d. The Department shall then provide its written statement in rebuttal to the impartial decision maker and the facility.

Added by Laws 2005, c. 460, § 7, eff. Nov. 1, 2005.

§63-1-1914.7. Employment status of impartial decision maker.

The impartial decision maker in the informal dispute resolution process may be an individual employed by or under contract with the State Department of Health.

Added by Laws 2005, c. 460, § 8, eff. Nov. 1, 2005.

§63-1-1914.8. Informal dispute resolution - Procedure.

A. 1. In all informal dispute resolution cases except record review, the State Department of Health shall present the initial arguments.

2. The facility shall then present its arguments.

B. 1. The informal dispute resolution shall be limited to no more than two (2) hours in length, with each party being permitted one (1) hour to present its arguments.

2. However, the impartial decision maker may grant each party additional equal time for good cause as determined by the impartial decision maker.

C. 1. Rules of evidence or procedure shall not apply to the informal dispute resolution except as provided in this section.

2. The impartial decision maker may:

- a. accept any information that the impartial decision maker deems material to the issue being presented, and
- b. reject any information that the impartial decision maker deems immaterial to the issue being presented.

D. 1. The informal dispute resolution may not be recorded.

2. However, the impartial decision maker may make written or recorded notes of the arguments.

E. Only employees of the facility, attending physicians of residents of the facility at the time of the deficiency, pharmacists providing medications to residents of the facility at the time of the deficiency, and consultant pharmacists or nurse consultants utilized by the facility, or the medical director of the facility may appear or participate in the informal dispute resolution for, or on the behalf of, the facility.

F. Only employees of the Department may appear or participate at the meeting for, or on behalf of, the Department.

G. The State Long-Term Care Ombudsman, or designee, may appear at, or participate in, the meeting.

H. No party may be represented by an attorney.

Added by Laws 2005, c. 460, § 9, eff. Nov. 1, 2005.

§63-1-1914.9. Determinations - Impartial decision maker – State survey agency.

A. 1. Upon the conclusion of all arguments by the parties at the informal dispute resolution, the impartial decision maker shall issue a written statement of findings that shall be entitled "Determinations".

2. The determinations shall include:

- a. a recitation of the deficiency identification numbers,
- b. a statement of whether a disputed deficiency should remain, be removed, or be modified on the statement of deficiencies, and
- c. the facts and persuasive arguments that support the finding of the impartial decision maker for each deficiency identification number.

B. 1. The determination of the impartial decision maker shall be provided to all parties.

2. The State Department of Health shall review the determination and shall issue a written document entitled "State Survey Agency Determination".

C. A state survey agency determination is not subject to appeal, reargument, or reconsideration.

D. The Department shall deliver a copy of the state survey agency determination to the facility and to the impartial decision maker.

E. 1. In accordance with the state survey agency determination, the Department shall issue an amended state of deficiencies if the state survey agency determination results in modification to any deficiencies cited in the original statement of deficiencies.

2. If the Department determines that amendments to the statement of deficiencies should result in changes to the scope or severity assigned to any deficiency, the amended statement of deficiencies shall reflect the changes to the scope or severity of any cited deficiency.

F. The amended statement of deficiencies shall be provided to the facility.

Added by Laws 2005, c. 460, § 10, eff. Nov. 1, 2005.

§63-1-1914.10. Deficiencies.

A. The informal dispute resolution process is limited to deficiencies cited on a statement of deficiencies.

B. 1. If the impartial decision maker finds that matters not subject to informal dispute resolution are presented, the impartial decision maker shall strike all documentary evidence related to or presented for the purpose of disputing the matter not subject to informal dispute resolution.

2. The impartial decision maker may not include in the determination any matter not subject to informal dispute resolution.

Added by Laws 2005, c. 460, § 11, eff. Nov. 1, 2005.

§63-1-1916. Prohibited acts - Violations - Prosecution.

A. No person shall:

1. Intentionally fail to correct or interfere with the correction of a violation within the time specified on the notice or approved plan of correction under this act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension;

2. Intentionally prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the Department in the investigation and enforcement of this act;

3. Intentionally prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of official duties under this act;

4. Intentionally prevent or interfere with any such representative in the preserving of evidence of any violation of this act or the rules promulgated under this act;

5. Intentionally retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized under this act;

6. Willfully file any false, incomplete or intentionally misleading information required to be filed under this act, or willfully fail or refuse to file any information; or

7. Open or operate a facility without a license.

B. A violation of this section is a misdemeanor.

C. The district attorney of the county in which the facility is located, or the Attorney General, may be requested by the Department to initiate prosecutions under this section.

[47] Laws 1980, c. 241, § 16, eff. Oct. 1, 1980. [48]

§63-1-1916.1. Violations - Penalties - Criteria for determination of amount of penalty - Appeal - Surrender of license.

A. Any person who has been determined by the State Department of Health to have violated any provision of the Nursing Home Care Act or any rule promulgated or order issued pursuant to the provisions of the Nursing Home Care Act, may be liable for an administrative penalty for each day that said violation or violations continue to exist. Penalties of not less than Fifty Dollars (\$50.00) per day or more than Three Thousand Dollars (\$3,000.00) per day may be imposed for deficiencies that do not constitute immediate jeopardy to residents. Penalties of not less than Three Thousand Fifty Dollars (\$3,050.00) per day or more than Ten Thousand Dollars (\$10,000.00) per day may be imposed for deficiencies constituting immediate jeopardy to residents; provided, however, that specialized facilities for the developmentally disabled or nursing facilities licensed pursuant to this act, which do not participate in Medicaid or Medicare, shall be liable for the maximum penalty, not to exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The amount of the penalty shall be assessed by the Department pursuant to the provisions of subsection A of this section, after notice and opportunity for hearing. Within ten (10) working days of the inspection documenting the violation, the facility may appeal this decision pursuant to Article II of the Administrative Procedures Act. In determining the amount of the penalty, the Department shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation, the repetitive nature of the violation at this facility or others operated by the same entity, the previous degree of difficulty in obtaining compliance with the rules, and, with respect to the person found to have committed the violation, the degree of culpability, the facility's financial condition and substantial show of good faith in attempting to achieve compliance with the provisions of the Nursing Home Care Act.

C. Any license holder may elect to surrender his license in lieu of said fine but shall be forever barred from obtaining a reissuance of the license or any other license issued pursuant to the Nursing Home Care Act.

[49]Added by Laws 1989, c. 227, § 30, operative July 1, 1989. Amended by Laws 1991, c. 127, § 9, emerg. eff. April 29, 1991; Laws 1995, c. 230, § 16, eff. July 1, 1995. [50]

Excerpt from Enforcement Cover Letter

Informal Dispute Resolution

In accordance with 42 CFR §488.331, Chapter 7 State Operations Manual (SOM) §7212 and Oklahoma Statutes Title 63, §1-1901 et seq., facilities have one opportunity to dispute citations of deficient practice through an informal dispute resolution (IDR) process. *The IDR in no way is to be construed as a formal evidentiary hearing; it is an informal administrative process to discuss deficiencies.* If you choose to contest a cited deficiency, the facility must complete an IDR Request Form (ODH Form 833). An explanation must be listed for each disputed deficiency. An attachment is acceptable if additional space is required for the dispute explanation. The IDR Coordinator may be contacted to acquire a copy of the ODH Form 833 and the Oklahoma IDR Process for Medicare/Medicaid Certified Facilities. These documents may also be acquired by visiting the Oklahoma State Department of Health website at <http://www.health.state.ok.us/program/ltc/index.html>.

The IDR request must be submitted within ten calendar days from receipt of the Statement of Deficiencies (CMS-2567). This is the same requirement for submitting an acceptable Plan of Correction (PoC). Failure to submit a completed IDR Request Form and documentary evidence within this timeframe waives your right to the IDR. Failure to complete the IDR timely will not delay the effective date of any enforcement action against the facility. A designee of the Department shall conduct the IDR. The IDR may be accomplished by a record review, telephone conference or a face-to-face meeting. The facility shall receive written confirmation of the IDR determination.

The facility must submit the completed IDR Request Form and documentary evidence under separate cover to:

IDR Coordinator
Long Term Care
Protective Health Services
Oklahoma State Department of Health
1000 N.E. 10th
Oklahoma City, OK 73117-1299

Facilities may **not** use the IDR process to delay the formal imposition of remedies or to challenge any other aspect of the survey process, including the:

- Scope and severity assessments of deficiencies with the exception of scope and severity assessments that constitute substandard quality of care (SQC) or immediate jeopardy (IJ);
- Remedy (ies) imposed by the Department;
- 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 facilities; or
- Alleged inadequacy or inaccuracy of the informal dispute resolution process.

If you have any questions regarding the IDR process, please contact the IDR Coordinator via email at IDRCoordinator@health.state.ok.us, telephone at (405) 271-6868 or fax at (405) 271-3442.



**Long Term Care
Protective Health Services**
**Oklahoma State
Department of Health**

1000 Northeast Tenth Street
Oklahoma City, OK 73117
Phone (405) 271-6868
Fax (405) 271-3442

Informal Dispute Resolution Request Form

(The request form and process are available online at <http://www.health.state.ok.us/programs/lic/index.html>.)

Skilled nursing facilities (SNF), nursing facilities (NF), skilled nursing facilities/nursing facilities (SNF/NF), and intermediate care facilities for the mentally retarded (ICF/MR) must complete this form to dispute cited deficiencies. If you have any questions, contact the IDR Coordinator by telephone at (405) 271-6868 or via e-mail at IDRCoordinator@health.ok.gov.

Submission

Complete this form, attach all documentary evidence relevant to each disputed deficiency and submit within **ten (10) calendar days** of receiving the official Statement of Deficiencies. Submit this form to Oklahoma State Department of Health, Long Term Care, Attention: IDR Coordinator, 1000 NE 10th Street, Oklahoma City, OK 73117-1299. **An IDR will not be granted when a request form is incomplete or inaccurate. Documentary evidence submitted past the required timeframe will not be considered.**

IDR Type: (Check One) Face-to-Face Meeting* Record Review Telephone Conference
*2-hour meeting limit.

Facility Name: _____ Facility ID: _____

Facility Administrator: _____ E-mail: _____

Mailing Address: _____ Telephone Number: () _____

City: _____ Zip Code: _____ Facsimile Number: () _____

Date Statement of Deficiencies Received: ____/____/____ Survey Exit Date: ____/____/____

Dispute Description

Tag Number S/S Explanation of Dispute (Why is facility disputing the deficiency? List reason for each.)
A separate sheet may be attached, but must clearly identify the following: facility name, ID, survey exit date, tag number, scope & severity, and the explanation of dispute. All documentary evidence submitted must also identify these items.

1. _____

2. _____

3. _____

4. _____

Submitted by: _____ Date: ____/____/____

LETTER EXAMPLE: IDR NOTIFICATION



Oklahoma State
Department of Health

[Today in Words()]

VIA [Custom Text Prompt()EMAIL/PRIORITY/CERT/FAX]
[Custom Text Prompt()TrackingReceiptNo]

[Full Admin Name (Ms. Jo Adam, Director)()]

[Full Facility Mailing Address()]

Re: Informal Dispute Resolution Notification

Provider Number: [Provider ID (Medicare/OSCAR)()]

Dear [Short Admin Salutation (Mr. Jones)()]:

We have received your request for an Informal Dispute Resolution (IDR) concerning the deficiencies cited at your facility during the survey of [Exit Date (Words)()].

The meeting has been scheduled for [Custom Date Prompt()DATE of IDR] at [Custom Text Prompt()TIME AM/PM] in room [Custom Text Prompt()ROOM#] at the Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City. Please report to the receptionist on the **tenth** floor upon arrival and she will direct you to the conference room.

The Informal Dispute Resolution meeting is informal. It is regulation that attorneys do not attend. Testimony is not presented under oath and documentary evidence is submitted without formality.

If you wish to withdraw your IDR request, we must receive written notification at least seventy-two (72) hours prior to the meeting date. For your convenience, you may fax the notice to the attention of IDR Coordinator at (405) 271-3442. If you have any questions or need additional information, please call the IDR Coordinator at (405) 271-6868.

Sincerely,

IDR Coordinator
Long Term Care
Protective Health Services

c: IFMedicareMedicaidJudy Thomas, Centers for Medicare and Medicaid Services
IFSQCRoger Lanier, Oklahoma State Board of Examiners for LTC Administrators
Esther Houser, Ombudsman
Jerry Taylor
Facility File
[Custom Text Prompt()SurveyCoordinator]
Survey Team
IFSQCLisa McAlister, Nurse Aide Registry

LETTER EXAMPLE: IDR DECISION MAKER'S DETERMINATION



[Today in Words()]

VIA [Custom Text Prompt()EMAIL/PRIORITY/CERT/FAX]
[Custom Text Prompt()TrackingReceiptNo]

[Full Admin Name (Ms. Jo Adam, Director)()]
[Full Facility Mailing Address()]

**Re: [Facility Name()] [Custom Date Prompt()DateofIDR] Informal Dispute Resolution Determination Report
Provider Number: [Provider ID (Medicare/OSCAR)()]**

Dear [Short Admin Salutation (Mr. Jones)()]:

Thank you for participating in the Informal Dispute Resolution (IDR) process of the Department concerning the survey conducted at your facility on [Exit Date (Words)()]. The facility, the Department and all relevant persons were present at the meeting. The disputed deficiencies are discussed in the attached determination report.

A copy of this determination has been forwarded to the Department's state survey agency for review. The state survey agency shall issue their determination to your facility within ten (10) days of receiving this notice.

Sincerely,

IDR Decision Maker
Protective Health Services

lr

Enclosure

c: Mary Womack
Dorya Huser
[Custom Text Prompt()SurveyCoordinator]
Survey Team
Facility File

EXAMPLE: DECISION MAKER'S IDR DETERMINATION REPORT



**INFORMAL DISPUTE RESOLUTION
DETERMINATION REPORT**
Facility, City – Provider # 37** and/or License #**
DATE IDR
DATE Survey or Complaint Investigation

[Initial Comments if applicable]

Tag #___ (SS=_) *Description of Deficient Area* **Regulation 42 CFR** _____

Facility Dispute: *The facility's dispute is defined in this section.*

Dispute Finding: *The Decision Maker's finding(s) are identified in this section.*

Dispute Determination: *The Decision Maker's Determination is stated in this section.*

IDR Decision Maker's Name
 IDR Decision Maker
 Protective Health Services

LETTER EXAMPLE: STATE SURVEY AGENCY'S IDR DETERMINATION

Oklahoma State
Department of Health

[Today in Words()]

VIA [Custom Text Prompt() EMAILFAXetc]
[Custom Text Prompt()FAX-TRACKING#]

[Full Admin Name (Ms. Jo Adam, Director)()]

[Full Facility Mailing Address()]

Subject: State Survey Agency Informal Dispute Resolution (IDR) Determination

Re: [Provider ID (Medicare/OSCAR)()], [Facility Name()] [Custom Date Prompt() IDRConductedDate] IDR

Dear [Short Admin Salutation (Mr. Jones)()]:

The Department has received the determination of the IDR Decision Maker concerning the [Exit Date (Words)()] survey or complaint investigation conducted at [Facility Name()]. The findings of the IDR Decision Maker have been reviewed. It is the determination of the State Survey Agency to uphold the Decision Maker's determination. The amended [Custom Text Prompt()2567-Federal-StateorBoth] Statement of Deficiencies (Form CMS-2567) is enclosed. If applicable, further instructions regarding the impact of these changes on any previous enforcement action will be forthcoming from the Long Term Care Enforcement office.

The facility is encouraged to submit an amended plan of correction on the enclosed Statement of Deficiencies. The amended Statement of Deficiencies must be signed, dated, and indicate the signee's title in the appropriate spaces on page one (1). Return the amended Statement of Deficiencies with your plan of correction to:

Mr. Jerry M. Taylor, Enforcement Coordinator
Long Term Care
Protective Health Services
Oklahoma State Department of Health
1000 N.E. 10th
Oklahoma City, OK 73117-1299

The clean copy of the Statement of Deficiencies (Form CMS-2567) will be the releasable copy *only* when a clean (new) plan of correction is both provided and signed by the facility. The original Form CMS-2567 is disclosable when a clean plan of correction is not submitted and signed by the facility. [Chapter 7, State Operations Manual §7212]

Sincerely,

Dorya Huser, Chief
Long Term Care
Protective Health Services

lr

c: IFMedicareMedicaidJudy Thomas, Centers for Medicare & Medicaid Services
IFSQCRoger Lanier, Oklahoma State Board of Examiners for LTC Administrators
Esther Houser, Ombudsman
IDR Decision Maker
Mary Womack
IFSQCLisa McAlister, Nurse Aide Registry
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Survey Team
Facility File

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