



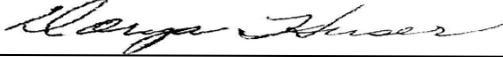
**OKLAHOMA STATE DEPARTMENT OF HEALTH  
PROTECTIVE HEALTH SERVICES  
INTERNAL MANAGEMENT MANUAL**

PHS-LTC-IP: 2012-01

Revised Date: 02/22/12

**TITLE:** Oklahoma Independent Informal Dispute Resolution Policy for Medicare/Medicaid Certified Facilities

**RESPONSIBLE SERVICE:** Long Term Care

**APPROVED:**   
\_\_\_\_\_  
Dorya Huser, Chief  
Protective Health Services/Long Term Care

**OBJECTIVE:** The Independent Informal Dispute Resolution (IIDR) is an informal administrative procedure intended to provide facilities the opportunity to dispute cited deficiencies through a process independent of the State survey agency.

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.

The IIDR process is reviewed and approved by CMS before implementation and any subsequent changes to an approved IIDR process must be submitted as soon as possible to the applicable CMS RO for approval prior to these changes taking effect. The IDR and IIDR are part of the survey and certification process. The IIDR process is in writing and available for review upon request.

The IIDR is not an initial determination that gives rise to appeal rights, and documents generated by the IIDR process may not be disclosed under Federal or State Freedom of information laws.

**COVERED FACILITIES:** Covered facilities are skilled nursing facilities (SNF), nursing facilities (NF), and dually-participating SNF/NF's that have civil money penalties imposed by the Centers for Medicare & Medicaid Services (CMS) that will be placed in a CMS escrow account.

**BACKGROUND:** Chapter 42 Code of Federal Regulations (CFR) §488.331 requires that CMS and the States offer covered facilities an informal opportunity to dispute cited deficiencies. Section 6111 of the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act) (Pub. L. 111-148), enacted on March 23, 2010, and the final administrative rule published in the Federal Register on March 18, 2011, at 76 FR 15106 and accessible at <http://edocket.access.gpo.gov/2011/pdf/2011-6144.pdf> provides a facility with an opportunity to request an IIDR upon receipt of the CMS initial *Notice of Imposition of a CMP*. The IIDR process must be offered to nursing homes for deficiencies that lead to the imposition of a CMP and for which notice has been provided to the nursing home that the CMP will be collected and placed in escrow. S&C Memorandum SC-11-16-NH provided details regarding the final administrative rule and provided the basis for the Oklahoma IIDR process.

**GOVERNING REQUIREMENTS:** Chapter 42 CFR §488.431  
Chapter 42 CFR §488.331  
CMS State Operations Manual §7213

**PROCEDURE:** **IIDR Entity**

The IIDR entity will be organizationally separate from the survey agency. “Organizationally separate” means a distinct office or division that functions independently from the office or division that conducts survey or certification activities of nursing homes.

An IIDR panel shall be composed of a minimum of three (3) individuals not to exceed five (5) individuals. No panelist shall be less than twenty-one (21) years of age. Each panelist will have an understanding of Medicare and Medicaid program requirements. No current survey agency representative will qualify as a panelist. An applicant shall not have a conviction of a felony in connection with the management or operation of a home or facility.

Each applicant for a panel position shall have two (2) years experience working in long term care and shall be in good standing with appropriate certification or licensing boards. The applicant will complete 6 hours of IIDR training that includes orientation with the following program requirements including, but not limited to:

42 CFR 483, Subpart B, and Part 488, Subparts A, E and F

The State Operations Manual (SOM) Chapter 7 Definitions and §7212, 7213, and 7900

The SOM, Appendix P

The SOM, Appendix PP

The SOM Appendix Q

Applicable health care standards of practice, health care management, and/or life safety code knowledge and experience, relevant to the disputed issues.

The IIDR panelist shall have no financial or other conflict of interest. Examples of conflict of interest include; the panelist has financial interest in a covered facility; the panelist was employed by the State survey agency or the State ombudsman program within the past year; the applicant was employed by CMS, Survey and Certification, Division of Nursing Homes within the past year; the panelist is a family member who is either a resident or an employee of the facility involved in the IIDR; the panelist is currently employed by the facility or organization involved in the IIDR; the panelist has worked within the past year as an employee, consultant or volunteer for the facility or a related corporation, involved in the IIDR; the panelist has ownership interest in the facility involved in the IIDR.

If one of these or any other conflict of interest occurs, the panelist with the conflict of interest will recuse himself/herself from any presentations by facility and agency staff, discussions, decision making for the particular nursing home that the conflict exists.

All panel applicants will complete and sign an application form that includes an acknowledgement of conflict of interest, agreement to required training, and acknowledgement of no felony conviction in connection with the management or operation of a facility or in the care or treatment of a resident of a Long Term Care facility.

The State survey agency and the Independent IDR entity or person must enter into a written contract or Memorandum of Understand (MOU) which ensures that the independent entity or person meet all IIDR requirements set forth by §7213. A copy of the signed contract or MOU must be provided to the applicable CMS RO.

The IIDR Coordinator will compile and maintain a list of qualified panel members. Contact information, including the name, address, phone number and email of the persons who will be conducting the IIDR.

### **Notification**

In order to phase in the new CMP collection and escrow provisions, CMS intends to initially collect and escrow only those CMPs which are imposed as a result of the most serious deficiencies. Therefore, beginning January

1, 2012, and until further notice, only CMPs which are imposed based on a deficiency or deficiencies cited for actual harm or immediate jeopardy to resident health or safety (i.e., at the scope and severity (s/s) level of G or above) will be subject to the new CMP collection and escrow provision (Refer to SOM §7213). Those deficiencies which result in the imposition of such CMPs will trigger a facility's opportunity to participate in the IIDR process. For deficiencies that are less than G (S/S levels D, E, and F), any CMPs imposed for those deficiencies will continue to be collected under the current process (without IIDR).

Within thirty (30) calendar days of the CMS notice of imposition of a CMP, the Centers for Medicare & Medicaid Regional Office (CMS RO) will offer the facility an opportunity for IIDR. That offer will be communicated in the initial *Notice of Imposition of a CMP* letter to the facility.

In addition, the following survey agency contact information will be provided in the notice:

IIDR Coordinator  
Protective Health Services/Long Term Care  
Oklahoma State Department of Health  
1000 NE 10<sup>th</sup> Street  
Oklahoma City, OK  
405-271-6868  
IIDR Coordinator@health.ok.gov

Beginning on January 1, 2012, CMS may collect and place imposed CMPs in an escrow account on whichever of the following occur first:

The date on which the IIDR process is completed, or  
The date which is 90 calendar days after the date of the notice of imposition of the CMP.

### **Request for IIDR**

The IIDR is conducted only upon the facility's request. There will be no charge to the facility. The facility must request an IIDR within ten (10) calendar days of receipt of the offer from CMS. The IIDR process must be initiated within thirty (30) calendar days from the CMS CMP notice of imposition and it will be completed within 60 calendar days of receipt of the facility's request. Completed means that a final decision from the IIDR process has been made, a written report/record generated and the State Survey Agency has provided written notice of this decision to the facility.

The facility may request an IIDR for all deficiencies on a survey with a CMP imposed that will be collected. Upon a timely request for an IIDR,

an IDR of that survey will stop and all deficiencies will be reviewed by the IIDR entity.

Deficiencies pending IDR or IIDR will be processed in CMS' data systems as set forth in SOM §7213 and applicable ASPEN manuals.

The facility cannot raise questions or issues regarding a previous survey.

The IIDR process does not delay the imposition of any remedies.

A facility may dispute the factual basis of the deficiencies, but may not dispute scope and severity (s/s) assessments with the exception of s/s assessments that constitute substandard quality of care or immediate jeopardy.

The IIDR process will not be available for an 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, remedies imposed by the enforcing agency, or alleged inadequacy of the IDR or IIDR process. Scope and severity classification and the amount of a CMP cannot be the subject of an IIDR.

The IIDR will not include survey findings that have already been the subject of an informal dispute resolution under 42 CFR §488.431 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 CMP.

### **Opportunity to Comment**

The IIDR Coordinator shall notify the involved resident(s) or the appropriate resident representative(s), and the State's long term care ombudsman of the opportunity to submit written comments prior to the completion of the IIDR process.

An involved resident is a complainant or one who is the subject of a complaint investigation. The resident representative means either the resident's legal representative or the individual filing a complaint involving or on behalf of a resident.

The State survey agency's request for comments must include:

A brief description of the findings of noncompliance as set forth in SOM §7213.

Contact information for the State survey agency or the IIDR entity or person regarding when, where and how potential commentator must submit their comments.

Instruction that comments must be written and provided to the IIDR entity through the IIDR Coordinator by email using the email address below, or by mail using the address below.

Instruction to provide comments at least five days prior to the scheduled IIDR to allow time for distribution to the panel.

Instruction to address any questions or concerns to the IIDR Coordinator.

IIDR Coordinator  
Protective Health Services/Long Term Care  
Oklahoma State Department of Health  
1000 NE 10<sup>th</sup> Street  
Oklahoma City, OK 73117  
[IIDRCoordinator@health.ok.gov](mailto:IIDRCoordinator@health.ok.gov)

Please address any questions or concerns to the IIDR coordinator.

The State survey agency's request for comment from an involved resident or resident representative must include all components delineated above and contact information for the State's long term care Ombudsman (1-800-211-2116).

### **IIDR Scheduling**

The IIDR Coordinator will check the schedules of surveyors and facility staff to confirm attendance availability and schedule the IIDR including scheduling a room for a face-to-face meeting. IIDR's will be scheduled on the third Monday of each month. If scheduling conflicts between the parties occurs, the third Friday of the month will be used. If a telephone conference is requested in lieu of the face-to-face meeting, the IIDR Coordinator will locate and schedule a room at the OSDH for use by the panel. The IIDR meeting shall be scheduled to allow sufficient travel time for both the facility and survey staff. 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 survey agency's argument.

### **IIDR Panel Determination – Written Record**

Following the IIDR, the panel shall consider the applicable federal and/or state rule and statute, guidance documents, oral statements, comments from appropriate resident or resident representative(s), comments from the State's long term care ombudsman, and all submitted documents in making a determination. The panel shall issue an IIDR determination

letter and report to the State survey agency no later than ten (10) business days after the IIDR has been conducted. The IIDR determination will be provided to the State survey agency prior to the collection of the CMP. The IIDR determination report shall identify each deficiency (or tag) disputed, each disputed item (or finding) within a deficiency, the facts and a summary of the rationale for the determination, and the determination of the panel.

Failure of the IIDR entity to comply with IIDR procedures does not invalidate any deficiencies or remedies imposed.

The IIDR determination and records generated by the IIDR entity will be sent to the State survey agency for review, retention and issuance of the final determination. Records generated by the IIDR entity will be kept secure and confidential in accordance with applicable laws and SOM § 7213.

OSDH shall send the panel's determination via email, facsimile, or certified mail return receipt requested to the facility, CMS, the State ombudsman, and the involved resident(s) and/or the involved resident's representative. The IIDR Coordinator will confirm delivery and receipt.

### **State Survey Agency Final Results – Written Record**

The survey agency will make a decision based on the determination of the IIDR panel. If the state survey agency agrees with the determination, the OSDH will provide within 10 calendar days the final results to the facility which shall contain the result for each deficiency challenged in the IIDR process and a brief summary of the rationale for the result. No changes will be made to the disputed survey findings; the State survey agency will notify the facility within ten (10) calendar days of receiving the IIDR written record.

If the state survey agency disagrees with the IIDR determination the entire written record will be submitted to the CMS RO for final results. The written record shall include:

Each deficiency or survey finding that was disputed;

A summary of the IIDR recommendation for each deficiency or finding and the rationale for that result;

Documents submitted by the facility to dispute a deficiency, to demonstrate that a deficiency should not have been cited, or to demonstrate a deficient practice should not have been cited as immediate jeopardy or as substandard quality of care; and,

Any comments submitted by the Ombudsman and/or involved resident(s) or resident(s)'s representatives.

If the survey agency disagrees with the recommendation of the IIDR entity, the complete written record will be sent to the CMS RO for review and final decision following procedures set forth in SOM §7213. CMS retains ultimate authority for survey findings and imposing CMPs.

When the facility is successful at demonstrating a deficiency should not have been 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 IIDR final determination notice.

Any enforcement action(s) imposed based on the amended deficiency citation shall be rescinded or adjusted as appropriate by the Oklahoma State Department of Health (OSDH) Long Term Care enforcement staff. The OSDH enforcement staff shall notify the facility of any amendments to enforcement actions(s).

If one or more deficiencies on the Form CMS-2567 have changed, the facility must submit a new signed 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 may be disclosed when a clean plan of correction is not submitted and signed by the facility. Any amendments as a result of an IIDR 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.

The IIDR process is in writing and available for review upon request.

#### **Estimated State Budget for payment of expenses of an IIDR**

The IIDR panelists will volunteer, but will be reimbursed for travel expenses. The panel will consist of four (4) persons and an alternate. It is estimated that no more than four (4) IIDR's will be conducted per month. The current mileage reimbursement rate for Oklahoma is \$0.55 per mile. Average travel miles for each panelist is calculated at sixty (60) per panelist for five (5) panelist. At this rate the monthly costs would be approximately \$660.00 per month or \$7,920 per year.

Today's Date

Esther Houser  
Address  
Oklahoma City, OK

RE: Facility, Survey Exit Date, Independent Informal Dispute Resolution (IIDR) Scheduled for January 32, 2012

Dear Ms. Houser,

Section 6111 of the Patient Protection and Affordable Care Act of 2010 enacted on March 23, 2010, provides a facility with an opportunity to request an IIDR upon receipt of the Centers for Medicare & Medicaid Services (CMS) initial *Notice of Imposition of a Civil Money Penalty (CMP)* which includes the offer of IIDR.

As a part of the IIDR process, the State long term care ombudsman has the opportunity to submit written comments prior to the completion of the IIDR process. The above referenced facility was imposed a CMP and offered the opportunity for an IIDR. The IIDR has been scheduled for (date).

SUMMARY OF DISPUTED DEFICIENCIES:

List Summary of Deficiencies

Please address any written comments that you would like to provide to the IIDR panel for consideration to:

IIDR Coordinator  
Protective Health Services/Long Term Care  
Oklahoma State Department of Health  
1000 NE 10<sup>th</sup> Street  
Oklahoma City, OK 73117  
[IDRCoordinator@health.ok.gov](mailto:IDRCoordinator@health.ok.gov)

Provide your comments at least five days prior to the scheduled IIDR to allow time for distribution to the panel.

If you have any questions, please contact the IIDR Coordinator at 405-271-6868 or at the email address provided above.

Sincerely,

Ruth Gomboc  
IDR Coordinator  
Long Term Care  
Protective Health Services

c: Judy Thomas, Centers for Medicare and Medicaid Service, Dallas Regional Office  
Facility File  
Enforcement Coordinator

Today's Date

Involved Resident  
Address  
City, State, Zip

RE: Facility, Survey Exit Date, Independent Informal Dispute Resolution (IIDR) Scheduled for January 32, 2012

Dear Ms. Involved Resident or Resident Representative,

Section 6111 of the Patient Protection and Affordable Care Act of 2010 enacted on March 23, 2010, provides a facility with an opportunity to request an IIDR upon receipt of the Centers for Medicare & Medicaid Services (CMS) initial *Notice of Imposition of a Civil Money Penalty (CMP)* which includes the offer of IIDR.

As a part of the IIDR process, the involved resident (or resident representative) has the opportunity to submit written comments prior to the completion of the IIDR process. The above referenced facility was imposed a CMP and offered the opportunity for an IIDR. The IIDR has been scheduled for (date).

SUMMARY OF DISPUTED DEFICIENCIES:

List Summary of Deficiencies

Please address any written comments that you would like to provide to the IIDR panel for consideration to:

IIDR Coordinator  
Protective Health Services/Long Term Care  
Oklahoma State Department of Health  
1000 NE 10<sup>th</sup> Street  
Oklahoma City, OK 73117  
[IDRCoordinator@health.ok.gov](mailto:IDRCoordinator@health.ok.gov)

Provide your comments at least five days prior to the scheduled IIDR to allow time for distribution to the panel.

The Oklahoma State Ombudsman can provide assistance to residents or resident representatives when concerns arise about the quality of care or quality of life resident(s) receive in long term care facilities. The Ombudsman can be reached at 1-800-211-2116.

If you have any questions, please contact the IIDR Coordinator at 405-271-6868 or at the email address provided above.

Sincerely,

Ruth Gomboc  
IDR Coordinator  
Long Term Care  
Protective Health Services

c: Judy Thomas, Centers for Medicare and Medicaid Services, Dallas Regional Office  
Facility File  
Enforcement Coordinator