

ISDH Long Term Care  
Newsletter Issue # 11-28  
December 30, 2011

In Today's Issue:

- Informal Dispute Resolution Process



## Informal Dispute Resolution Overview

The Indiana State Department of Health (ISDH) is pleased to announce the implementation of a new informal dispute resolution (IDR) process for nursing homes. The new informal dispute resolution process is effective January 1, 2012. While there are still implementation details to be worked out, the ISDH wanted to inform you about this new process and independent option.

Pursuant to federal certification regulations, state survey agencies for many years have been required to provide nursing homes with the opportunity for an informal dispute resolution to refuse the findings of a survey. Under that traditional process, the informal dispute resolution was completed by ISDH Surveyor Supervisors. There was no state fee to facilities for the informal dispute resolution process.

In late 2003, the ISDH implemented a voluntary independent informal dispute resolution process. The independent process was conducted by the Michigan Peer Review Organization (MPRO). The nursing home was required to pay MPRO for the cost of the independent process. In anticipation of the new independent process, the facility-paid independent process with MPRO was terminated in November 2011.

In March 2010, Congress passed the Patient Protection and Affordable Care Act of 2010. The Act requires states to implement an independent informal dispute resolution process. The Centers for Medicare and Medicaid Services (CMS) issued federal regulations and survey guidance letters implementing the revised process. The regulations require implementation of the new process on January 1, 2012.

The ISDH prepared a proposed state informal dispute resolution process and submitted to CMS on November 30, 2011. On December 22, 2011, CMS Region V Office notified the ISDH that the proposed Indiana process complies with federal regulations and is approved for implementation.

## Informal Dispute Resolution Process

The ISDH has prepared a new informal dispute resolution policy. [ISDH 2011-03-LTC](#) is the Informal Dispute Resolution Policy for Long Term Care Facilities. [ISDH 2011-03-A-LTC](#) is an attachment providing State Contact Information for requesting the independent informal dispute resolution. [ISDH 2011-03-B-LTC](#) is an attachment providing a timeline for the independent informal dispute resolution process.

The following are key components of the new informal dispute resolution process:

1. The new ISDH Informal Dispute Resolution Policy and Procedure is effective January 1, 2012.
2. The ISDH will continue to offer traditional informal dispute resolution for all licensing and certification surveys conducted at comprehensive care facilities. The "informal dispute resolution" process refers to the review process conducted by ISDH Long Term Care Supervisors. The informal dispute resolution process may be either a paper review or a face-to-face review as requested by the facility. There is no fee to the facility for the informal dispute resolution process.
3. Effective January 1, 2012, an independent informal dispute resolution process is available to skilled nursing facilities (SNF) and nursing facilities (NF) that meet certain requirements related to a civil money penalty (CMP) imposed by the Centers for Medicare and Medicaid Services (CMS). The process is conducted by a CMS-approved "independent entity" that has contracted with the ISDH to provide this service. There is no fee to the facility for the independent informal dispute resolution process.
4. The Independent Informal Dispute Resolution process will only apply to standard (annual) and/or complaint surveys begun on or after January 1, 2012, that initiate an enforcement action for which a civil money penalty is imposed and subject to being placed in escrow. Any revisit survey conducted on or after January 1, 2012, that is associated with standard or complaint surveys begun prior to January 1, 2012, will not be subject to the Independent Informal Dispute Resolution Process.
5. Only civil money penalties which are imposed based on a deficiency or deficiencies cited for actual harm or immediate jeopardy to resident health or safety (i.e., at a scope and severity level of G or above) will be subject to civil money penalty collection and escrow provisions. Those deficiencies which result in the imposition of such civil money penalties will trigger a facility's opportunity to participate in the independent informal dispute resolution process. CMS will provide notice of the opportunity to participate in the independent informal dispute resolution process. The facility will request an independent informal dispute resolution through the ISDH.
6. The ISDH will be contracting with an independent entity for the independent informal dispute resolution process. The ISDH will provide contact and process information for that entity when a facility requests the independent process.

## Independent Informal Dispute Resolution Entity

CMS independent informal dispute resolution regulations require the state to select an independent entity to complete the independent process. The independent entity must meet selection criteria (included in the ISDH Informal Dispute Resolution Policy Letter) and be approved by CMS Region V Office.

In early December 2011, the ISDH published a notice of contract opportunity to begin the state contracting process. As required by the state contracting process, an information session for potential vendors was held on December 9. A request for proposals was published on the Indiana Department of Administration Procurement Site.

The Department of Administration is currently processing proposals. The Department of Administration and ISDH will be reviewing proposals in the near future to select an independent entity. Once approved by CMS Region V Office, the ISDH will complete a contract with that independent entity. The ISDH expects to have an independent entity selected in January 2012. The ISDH will issue an announcement when the independent entity is selected.

## Informal Dispute Resolution Information Center

The ISDH fully expects that there will be questions about the process. This is definitely a work in progress and there will need to be adjustments to the process as we implement. The first federal guidance was issued on October 14. CMS issued significant changes to that guidance and subsequently issued an interim guidance on December 2. States therefore have not had much time to implement this process so we are still in the process of identifying needs.

To assist facilities and advocates with finding information, the ISDH has created an Informal Dispute Resolution Information Center on our web site. The Information Center is intended to house advisories and resources related to the informal dispute resolution process. Documents such as those discussed above will be included on this web site in the near future. The direct web address is [www.in.gov/isdh/25304.htm](http://www.in.gov/isdh/25304.htm).

A quick reminder. Tomorrow is the last day of the year. The ISDH must determine an occupancy rate for nursing homes based on that date. The ISDH therefore needs every nursing home to enter their end of month census on the ISDH Bed and Personnel Tracking System. Thank you for your assistance.

On behalf of all of us at the Indiana State Department of Health, I wish you a safe, healthy and happy new year!

Terry Whitson  
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