

Informal Dispute Resolution for Home Health Agencies



Indiana Department of Health (IDOH)
Consumer Services and Health Care Regulation Commission
Division of Program Performance and Development
Program Policy and Procedure
Document Number: 2022-01-HCBC
Effective Date: Nov. 7, 2022
Created: Oct. 28, 2022

Title:

Informal Dispute Resolution for Home Health Agencies

Purpose:

To outline the process for home health agencies (HHAs) to request an informal review of their disputes of survey findings and to outline the informal dispute resolution (IDR) review process conducted by the Indiana Department of Health (IDOH)

General Policy:

Pursuant to Title 42 of the Code of Federal Regulations (CFR), Part 488.745, and the Centers for Medicare and Medicaid Services (CMS) State Operations Manual (SOM), Chapter 10 for federally certified home health agencies, Section 10009, IDOH is required to provide home health agencies, at the agency's request, an opportunity for an informal dispute resolution (IDR) review of refuted citations.

1. An IDR review is offered for condition-level survey findings warranting a sanction, cited on Form CMS-2567 Statement of Deficiencies, because of the following:
 - Federal or state survey
 - Complaint investigation
 - Follow-up survey/revisit
2. Deficiencies cited at the standard level are not eligible for or subject to the IDR process.
3. Agencies may also request an IDR of deficiencies cited on the Statement of Deficiencies for violations of Title 410 of the Indiana Administrative Code (IAC), Article 17, when the findings of the deficiency are not the same findings for a federal deficiency, cited during the same survey.
4. The IDR process is not a substitute for formal appeal procedures. The IDR review, including any written communication, face-to-face or video conference meetings, constitutes an informal administrative process that is in no way to be construed as a formal evidentiary hearing. The IDR process does not contemplate bargaining between agencies and IDOH. The IDR review is an

opportunity for HHAs to refute survey findings that the facility believes should not have been cited and to present evidence to support that belief.

5. The IDR process may not be used to delay the formal imposition of sanctions or to challenge any other aspect of the survey process, including:
 - The severity assessment of a deficiency(ies) at the standard level that constitutes substandard care or immediate jeopardy
 - Sanctions imposed by the enforcing entity
 - 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 agencies
 - Alleged inadequacy or inaccuracy of the IDR process
6. Since CMS has ultimate oversight responsibility relative to IDOH's performance, CMS may examine specific IDR decisions or the overall IDR process to determine whether the decision is consistent with CMS policy. For dually participating or Medicare-only agencies, 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 IDR and make its own binding determinations of noncompliance.

Policy: Informal Dispute Resolution (IDR)

1. The informal dispute resolution process will be conducted by IDOH IDR program staff.
2. HHAs have the option of a face-to-face conference, video conference, or desk (paper) informal dispute resolution review.
3. The informal dispute resolution process is not a formal or evidentiary hearing, and the results are not an initial determination that gives rise to appeal rights. The informal dispute resolution process is intended to allow HHA staff to directly communicate with IDOH IDR program staff and address issues identified in the survey findings. To achieve that goal, only HHA employees and HHA corporate staff may attend face-to-face conference and video conference IDR meetings. IDOH does not conduct telephone conferencing as part of the IDR process. These meetings are not a legal proceeding or an open meeting.

Non-facility employees, such as attorneys, outside consultants and residents/family members, are not allowed to attend face-to-face and video conference informal dispute resolution meetings.

4. There is no fee for the Informal Dispute Resolution process.

Procedure: Procedure for the Informal Dispute Resolution Process

1. When the Division electronically sends the HHA a Form CMS-2567 Statement of Deficiencies that has condition-level or state-level deficiencies cited, the HHA will also receive a letter regarding the opportunity to request an informal dispute resolution review. This letter will include the following information.



- The agency may request the opportunity for IDR, and the written request must include an explanation of the specific deficiencies that are being disputed.
 - The written request must be made within the same 10-calendar day period the HHA has for submitting an acceptable plan of correction to IDOH.
 - The e-mail address for questions about the status of an IDR request.
2. Even though an IDR is requested, the HHA must still submit an acceptable plan of correction within the 10-calendar day timeframe.
 3. To request an informal dispute resolution process, the HHA must submit the completed informal dispute resolution request electronically, including supporting documentation, with the plan of correction through the Consumer Services and Regulatory Affairs Information System (CSRAIS or Gateway).
 4. A written IDR request submitted with the plan of correction must include an explanation of the specific deficiencies that are being disputed, a detailed explanation of why the deficiency is considered invalid with supporting documentation, and why this information was not available at the time of the survey or investigation. A sole statement of disagreement is not sufficient to remove a deficiency.
 5. Copies of any documents submitted with the informal dispute resolution request must have resident names and other identifying information redacted and replaced with resident identifiers from the survey report, labeled appropriately with pertinent portions underlined, highlighted, or otherwise marked.
 6. Upon receipt of the informal dispute resolution request and supporting documentation:
 - IDR program staff accesses the Gateway and prints out and/or saves electronically the CMS-2567 Statement of Deficiencies, plan of correction, and supporting documents included as part of the request.
 - For a face-to-face or video conference informal dispute resolution request, an IDR program staff member contacts the HHA and sets up an appointment. A confirmation letter is sent through the Gateway by IDR program staff to the HHA verifying the meeting date, time, and, if applicable, location. Face-to-face meetings are held at the IDOH office.
 - The IDR meeting will be scheduled for one hour. The HHA will inform the IDOH program staff how many people from the HHA will be attending the meeting.
 - For desk (paper) review informal dispute resolutions, the same system is followed but a letter is sent through the Gateway by program staff to the HHA confirming receipt of the paper review informal dispute resolution request. The CMS 2567 Statement of Deficiencies, plan of correction, and supporting documents are given to the Director of the Informal Dispute Resolution Program for review.
 - The informal dispute resolution request will not be processed until all the information is received. If the informal dispute resolution record submitted is incomplete, program staff will contact the HHA to obtain the omitted information. The omitted information must be submitted to IDOH within five calendar days of the date the IDR request was submitted with the plan of correction.



7. The informal dispute resolution review and final determination will be completed within 45 calendar days of the initial receipt of the complete paper review request or the face-to-face/video conference meeting.
8. The IDR process may involve a review of the following:
 - Form CMS 2567 Statement of Deficiencies
 - CMS guidance and guidelines in the State Operations Manual
 - Documentation submitted by the facility
 - Surveyor notes/documentation from the survey
 - Any other information pertinent to the issues identified in the IDR, including any research/review of standards of practice, disease processes and drugs
9. When the IDR process is completed and a determination is made, the Director of the Informal Dispute Resolution Program and/or IDR program staff will:
 - Document the determination on the informal dispute resolution record and update the state and federal database in the Internet Quality Improvement and Evaluation System (iQIES)
 - Notify the HHA of the outcome of the informal dispute resolution review in a letter sent through the Gateway
 - Send informal dispute resolution changes and determinations to CMS Region V Office, IDOH Home and Community Based Care Division director and deputy director, area supervisor, surveyors listed on the CMS-2567, and Office of Legal Affairs (as applicable)
 - Save the completed informal dispute resolution packet in the electronic filing system
10. Home and Community Based Care (HCBC) program staff will make needed changes to the Form CMS-2567 Statement of Deficiencies resulting from the review process. Providers will receive notification from the Gateway that the CMS-2567 has been updated.
11. The HCBC program staff will review the informal dispute resolution results and determine if any remedies previously imposed were based on a modified or deleted deficiency. If indicated, the HCBC program staff will send an amended enforcement letter to modify and/or rescind the enforcement action.
12. The Director of the Informal Dispute Resolution Program will complete a statistical report of all informal dispute resolution data quarterly and annually.

Attachments:

- [IDOH 2011-03-A-LTC](#) Informal Dispute Resolution State Contact Information
- [IDOH 2011-03-C-LTC](#) Informal Dispute Resolution Timeline

