Informal Dispute Resolution (IDR) Independent Informal Dispute Resolution (IIDR) Key Elements & Updates

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Session Objectives

- Identify key regulatory differences between IDR and IIDR
- Identify key components of informal deficiency review and a complete organized case
- Understand the process reviewers utilize in making a recommendation to a state agency

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Session Objectives

#1

Identify key regulatory differences between IDR and IIDR

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What is the IDR Process?

IDR process provides nursing homes a *single, informal opportunity* to dispute survey findings subsequent to the receipt of the official Statement of Deficiencies (SOD or 2567).

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What is the IDR Process?

- Federal certification regulation 42 CFR 488.331 requires the Centers for Medicare & Medicaid Services (CMS) and the state's offer facility representatives an informal opportunity, at their request, to dispute survey findings subsequent to the receipt of the official SOD or 2567
- If successful, the findings should be removed or modified and a revised 2567 will be issued

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What is the IDR Process?

- The IDR process may not address:
  - Scope and severity of non-SQOC or IJ deficiencies
  - Remedies
  - Requirements of survey process
  - Inconsistency of the survey team in citations
  - Inadequacy or inaccuracy of the IDR process

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What is the IDR Process?

- Details found in state operations manual (SOM) chapter 7, 7212
- CMS is the ultimate authority for the survey findings and imposition of civil money penalties (CMPs)

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What is the IDR Process?

Every state handles the IDR process a little differently.

Examples include IDR reviews provided by:

- Panel of experts, e.g. 3-7 person committee or panel that may include representatives from the agency, a trade association, a nursing home administrator and/or director of nursing

OR…

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What is the IDR Process?

- Designated individual(s) from state agency
- Choice of state agency or independent, e.g., MPRO. Facility pays MPRO for IDR review
- All independent and all paid by state agency

Types of IDR Reviews

- Desk/written (Tennessee reviews are conducted this way by MPRO for IIDR)
- Face-to-face
- Telephonic – approximately one hour; facilities opportunity to present case, state agency aware and may be on call

Independent IDR (IIDR) – Effective Date Jan. 1, 2012

Affordable Care Act and IIDR:

- Final Rule: The Final Rule CMS-2435-F affecting nursing homes was published on March 18, 2011
- Following a nursing home survey, state survey agencies are required to provide an opportunity for IIDR when Civil Money Penalty (CMP) is imposed

IIDR Process

Details can be found in:

CMS S & C: 12-08-NH Memo (Dec. 2, 2011)

Federal Requirements for the Independent Informal Dispute Resolution (Independent IDR) Process for Nursing Homes – Interim Advance Guidance

&

CMS S & C: 13-57-NH Memo (Aug. 30, 2013)

Escrow and Independent Informal Dispute Resolution Process for Nursing Homes – Applicable to All Civil Money Penalties

IIDR Process – Effective Date Jan. 1, 2012

- An opportunity for an IIDR is provided within 30 calendar days of the notice of imposition of a civil money penalty that is subject to being collected and placed in escrow
- The facility must request an IIDR within 10 calendar days of receipt of the offer

IIDR Process

CMS S & C: 12-08-NH Memo (Dec. 2, 2011)

- A facility may request an IIDR for each survey that cites deficiencies (at a scope and severity of G or above) for which a civil money penalty has been imposed and will be collected and placed in escrow

IIDR Process

Update to Dec. 2, 2011
CMS S & C: 13-57-NH Memo (Aug. 30, 2013)

- Effective Oct. 1, 2013, CMPs… all standard or complaint surveys… initiate an enforcement action in which a CMP is imposed where the highest level of deficiency is *less than a G level*, will also be subject to collection and escrow… also creates opportunity for the facility to request to participate in the IIDR process

IIDR Process

CMS S & C: 13-57-NH Memo (Aug. 30, 2013) also indicates:

- "States may not charge facilities for the Independent IDR process required under 42 CFR §488.431"

IIDR Process

Affordable Care Act and IIDR:

- IIDR does not remove or alter the existing informal process at §488.331(a) which remains for use
- IIDR is IN ADDITION to the current IDR process

IIDR Process

- The IIDR process does not delay the imposition of any remedies, including a CMP
- IIDR must be completed within 60 days of request
- IIDR must generate a written record
- Requires notification of *state ombudsman, involved resident and/or resident representative*

IIDR Process

- **"**Once a facility requests an Independent IDR, the state must notify the *involved resident* or *resident representative*, as well as the state's *long-term care ombudsman*, that they have an opportunity to submit written comment."

Notice must include:

- A brief description of the findings of noncompliance
- Designated contact person for questions
- For res/res reps, contact info for long-term care ombudsman

IIDR Process

- "Involved resident – is a resident who was the *subject of a complaint*, or who *filed a complaint* that led to a deficiency finding that is the subject of Independent IDR"
- "Resident representative – means either the resident's legal representative or the individual filing a complaint involving or on behalf of a resident"

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IIDR Process

States options for IIDR:

- IIDR may be conducted by:
- "A component of an umbrella state agency provided that the component is *organizationally separate* from the state 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"

OR

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IIDR Process

"An independent entity with specific understanding of Medicare and Medicaid program requirement selected by the state and approved by CMS" (e.g. MPRO)

IIDR Process

- States that already had a process in place that met these requirements were able to submit them to CMS for approval
- CMS approved each state's process whether conducted by state agency (organizationally separate) or an approved third party entity

IIDR Process

Can you do both IDR & IIDR?

- An IIDR will…
- "Not include the survey findings that have already been the subject of an informal dispute resolution under §488.331 for the particular deficiency citations at issue in the independent process under §488.431, unless the informal dispute resolution under §488.31 was completed prior to the imposition of the civil money penalty"

Independent IDR Process

Can you do both IDR & IIDR?

- The answer is yes if…
- "…the informal dispute resolution under §488.31 was completed prior to the imposition of the civil money penalty"

Independent IDR Process

What if the state survey agency disagrees?

- The complete written record will be sent to the applicable CMS regional office (RO) for review and final decision…
- Provide the portion(s) of the IIDR recommendation with which it disagrees, the basis for its disagreement and any relevant survey documents…"

IIDR Process

What if the state survey agency disagrees?

- CMS' RO will review the IIDR recommendation and records along with the state's written disagreement of the IIDR's recommendation and will provide written notification to the state survey agency of the final decision
- The state survey agency will then send written notification of the final decision to the facility within 10 calendar days of receiving the final decision from the CMS RO

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IIDR Process

A quick look at the differences:

IDR process	**Independent IDR process**
Facility is notified of opportunity to IDR with receipt of CMS -2567 SOD	Notified of opportunity to IIDR with CMS notification of imposition of CMP
Facility must request IDR within 10 calendar days	Facility must request within 10 days of offer of opportunity for IIDR from CMS
No completion timeframe indicated	Must be completed within 60 days of request
Must generate a written record	Must generate a written record
Notification of resident, etc., not indicated	Include notification of state ombudsman, involved resident/resident representative to provide opportunity for comment

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IIDR Process

A quick look at the differences:

IDR process	**IIDR process**
Must be CMS approved process and conducted by state or by an entity approved by CMS	Must be CMS approved process and conducted by state or by an entity approved by CMS such as component of State Agency as long as organizationally separate, or independent entity with specific understanding of Medicare/Medicaid program requirements selected by the state and approved by CMS
CMP payment due 15 calendar days after final administrative (formal) appeal upholding CMP	CMS may collect and place imposed CMPs in an escrow account on whichever of the following occurs first: 1)The date on which the IIDR process is completed or 2) The date that is 90 calendar days after the date of notification of imposition of CMP
CMS makes the final determination of the IDR	CMS makes the final determination of the IIDR

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Session Objectives

#2

Identify key components of an Informal Deficiency Review and a complete organized case

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Informal Deficiency Review – Survey Considerations

- Starts at entrance conference – open communication and information sharing
- During the survey – communicate with staff
- Exit conference – surveyor to communicate areas of concern… providers ask questions

Anatomy of your CMS-2567

3 Basic Components

1) Regulatory Reference

- A survey data tag number,
- The CFR or LSC reference,
- The language from that reference which specifies the aspect(s) of the requirement with which the entity was noncompliant.
- An explicit statement that the requirement was "NOT MET."

Anatomy of your CMS-2567

2) Deficient Practice Statement

- The specific action(s),error(s), or lack of action (deficient practice),
- Outcome(s) relative to the deficient practice, when possible
- A description of the extent of the deficient practice or the number of deficient cases relative to the total number of such cases,
- The identifier of the individuals or situations referenced in the extent of the deficient practice, and
- The source(s) of the information through which the evidence was obtained.

Anatomy of your CMS-2567

3) Relevant Facts and Findings

- The facts and findings relevant to the deficient practice, answer the questions: who, what, where, when, and how. They illustrate the entity's noncompliance with the requirement or regulation.
- Sources of Evidence may include:
  - Observation(s)
  - Interview(s)
  - Review of Record(s) and Other Document(s)

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IDR/IIDR Preparation

- Review the Statement of Deficiencies (SOD)/ CMS 2567
- Does the 2567 provide observations, record review, interviews, etc. that support the deficient practice statement?
- Refer to state operations manual EXHIBIT 7A PRINCIPLES OF DOCUMENTATION

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IDR/IIDR Preparation

- Read the deficient practice for each example and for each tag
- Address all examples separately and each stated deficient practice
- Re-read entire narrative and attachments to ensure you got it all covered for each deficient practice statement and each example/resident

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IDR/IIDR Preparation

- Is the issue cited at the correct tag?
- Is the issue cited at the correct scope and severity, if Immediate Jeopardy or Substandard Quality of Care?
- Is there new information available that could have been provided to surveyors at the time of the survey?

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Your Work Continues!

- Provide a narrative statement about the disputed citation; your point of view and what you are requesting
- Give an explanation of why you feel the deficiency is incorrect or invalid referring to the *specific regulatory language for the citation*
- Provide supporting documentation that demonstrates how you were in compliance with the regulation – if not available at time of survey explain why

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Considerations for IIDR Preparation

- Avoidable vs. Unavoidable
- Regulatory Language & Scope & Severity
  - *Reference **State Operations Manual** (SOM) **Appendix P** – Survey Protocol for Long Term Care Facilities & **Appendix PP** – Guidance to Surveyors for Long-term Care Facilities*
- Immediate Jeopardy
  - *Reference SOM **Appendix Q** – Guidelines for Determining Immediate Jeopardy*

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Considerations for IIDR Preparation

State Operations Manual and Appendixes

All available at www.CMS.gov

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Making the Most of an IIDR

Review of Common Problems and Documentation Concerns

Suggestions for Preparing Materials to Submit for IDR/IIDR Review

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Common Problems in Documentation

- Sending TOO MUCH documentation
  - Obscures the documents the reviewer will seek
  - Reviewer has to read it all and sometimes find more to support the citation
- Emotional narratives
- Requesting review of tag as past non-compliance

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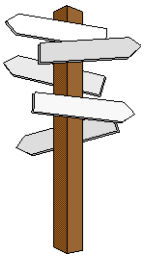
Common Problems in Documentation



- Attachments poorly organized
  - Lends confusion to the supporting evidence
  - May increase review time and therefore cost of review

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Common Problems in Documentation

- Chronology of events not easily determined
- Original dates and times questionable
- Dates not legible
- Dates cut out during copying

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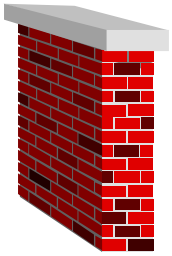
Common Problems in Documentation



- IDR requests submitted without any supporting documentation
- IDR requests that focus mainly on a narrative viewpoint
- Documents to support your rebuttal are highly recommended

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Suggestions for IIDR Case Materials

- Number the pages submitted
- Can be handwritten on each page
- Divider tabs, binders and staples not necessary for MPRO
- Mark exhibits that relate to narrative, “exhibit 1 or A”, page 1 of 4, RE: R #1

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Suggestions for IIDR Case Materials

- If requesting IIDR on multiple tags, make sure documents relate to specific tag
- Information of significance to the citation can be circled or boxed with a pen or highlighter
- Check each page after copying the original document
- Provide identifier lists if applicable

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Suggestions for Survey Time that Could Help Later… With Case Materials

Documentation of compliance with standards is most effective when it occurred prior to and/or during the survey, e.g. statements & interdisciplinary notes

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SESSION OBJECTIVES

#3

Understand the process MPRO reviewers utilize in making a recommendation to a state agency

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MPRO Overview

- Accredited by URAC, a national health care accrediting organization, as an Independent Review Organization (IRO)
- An IRO must have a regulatory compliance program and take steps to ensure:
  - The organization is not subject to any conflict of interest that could compromise the integrity of the external review process
  - The organization maintains confidentiality and documentation of all cases reviewed
  - Completes reviews timely

IIDR Review Goals

- To provide an objective and reliable review for each cited deficiency
- Complete each review within the required timeframe
- Ensure the quality of review decisions through internal monitoring and ongoing training of reviewers

IIDR Review Process:

- An objective process embedded in a continuous quality improvement framework
- The reviewers follow objective steps and an algorithm that equally considers information identified in the SOD and information submitted by the requesting nursing home

MPRO Reviewer Selection

- A reviewer with no identified conflict of interest is selected to complete a requested review
- MPRO forwards all documents received from requesting facility for review to the reviewer(s)
- Reviewer is notified of the review time frame and a due date
- MPRO currently has 10 reviewers. Experience varies between provider and surveyor background

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MPRO Overview

MPRO IDR/IIDR review personnel experience:

- IDR/IIDR review staff include long-term care directors of nursing, nurse consultants, former state surveyors/licensing officers, clinical social workers and nursing home administrators
- Reviewers receive orientation to the MPRO IDR process and take part in monthly training sessions with quarterly case QA reviews

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MPRO Capabilities Overview

- MPRO reviewers have experience with:
  - *Federal nursing home regulations*
  - *State specific nursing home regulations*
  - *Life safety code*
  - *Regulations for intermediate care facilities for developmentally disabled*
- Each professional reviewer is assigned a unique reviewer I.D. number

IIDR Review Process

- IDR reviewer reads the regulatory standard and interpretive guidelines pertinent to the citation under review (with each tag reviewed)
- This is important in each review even when reviewer is familiar with the regulation; it helps reviewer concentrate on focal issues of regulation
- Each example in the citation is considered individually

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Was There a Deficient Practice?

- The reviewer considers whether a deficient practice was identified in the citation

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Decision Point

Was there a deficient practice?	Was there a deficient practice?
↓	↓
Yes, continue review	**No, delete citation**

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Supporting Material

- The reviewer decides what specific documents would refute the citation or demonstrate that facility was in compliance with the regulation at the time of the survey

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Supporting Material Review

The reviewer:

- Looks for these specific documents in materials submitted with the request
- Examines these specific documents
- Carefully goes over all other facility-provided documents
- Does not have any copies of documents duplicated during the survey
- Does not have any surveyor notes

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Supporting Material Analysis

- Each example in the citation is considered individually
- Reviewer examines if documents submitted refute any or all cited examples

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Decision Point

All examples refuted	One or more examples remain
↓	↓
Yes, delete citation	Review remaining documents

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Less Than all Examples Refuted?

Some examples remain → **Amend citation**

All examples remain → **Support citation**

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Decision Point

If the citation was amended or supported

↓

Determine the scope and severity

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Recommendation

- The reviewer documents the IDR review outcome recommendation

Recommendations for Outcome Options

- Supported in full
- Amended (corrections or deletion of examples)
  - No change in scope and severity
  - Decrease scope and/or decrease severity
- Delete
- CMS has the ultimate authority for accepting the recommendation or not

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Review Process References

- Reviewer bases the recommendation on regulation, standards of practice, American Medical Directors Association (AMDA) clinical process guidelines, Centers for Disease Control and Prevention (CDC) infection control guidelines for long-term care and other reference materials
- Published, peer-reviewed professional magazines, such as American Journal of Nursing, Caring for the Ages, Provider Magazine, Advance for LTC Management, etc.
- Credible websites

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Clinical Standards of Practice

- Criteria for a standard of practice
  - Current
  - Published
  - Nationally recognized
  - Outcome oriented
  - Peer-reviewed

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Completed IDR Reviews

- MPRO returns a narrative written recommendation report to the state agency with rationale and references
- State agency reviews recommendation to determine their agreement with outcome

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Completed IDR Reviews

- Facility is notified of final outcome by state agency
- How contacted and what report is sent varies by state agency and if IDR or IIDR

Thank You
Any Questions?

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