

The Independent Informal Dispute Resolution (I-IDR) Process

Introduction

Section 6111 of the Patient Protection and Affordable Care Act of 2010¹ mandates that each state develop a process for providing nursing facilities an opportunity to request an I-IDR process if the Centers for Medicare and Medicaid (CMS) imposes a civil money penalty (CMP) that is subject to collection and placement in an escrow account. Process requirements upon which states can model their I-IDR process were promulgated as a final regulation in 42 CFR §§488.331 and 488.431.² Unlike the IDR process which allows providers to challenge deficiency citations, a provider cannot opt to seek an I-IDR unless they receive notification from CMS of their facility's eligibility to participate in the I-IDR process.

Beginning January 1, 2012, CMS may collect an imposed CMP (and place it in escrow pursuant to 42 CFR §488.431(b)) when one of the following conditions exists:

- The date the I-IDR process is completed; OR
- UP to 90 calendar days after the date of the notice to impose the CMP

Initially, deficiencies cited at "G" or above (i.e., actual harm or immediate jeopardy to resident health or safety) will be eligible for this new process. Deficiencies cited at "F" and below will not be eligible for the I-IDR, and CMPs will continue to be collected under the current processes.

If eligible for an I-IDR, providers will be notified by the applicable CMS Regional Office that it is eligible to request an I-IDR within 30 calendar days of the notice of CMP. All I-IDRs must be completed within 60 calendar days of receipt of the facility's I-IDR request.

The [Office of Licensure and Certification \(OLC\)](#) shall ensure timely notification to involved residents, or appropriate representatives, and the applicable local ombudsman of the opportunity to submit comments regarding the cited deficiency.

In Virginia, the OLC shall schedule and the Adjudication Officer shall conduct all I-IDR conferences.

General Rules

- A. If eligible, a provider must request an I-IDR within 10 calendar days of the receipt of the offer made by CMS.

Note: CMS has up to 30 calendar days after imposing a CMP to notify the provider that the facility is eligible to request an I-IDR.

¹ Public law 111-148, enacted March 23, 2010

² Effective March 18, 2011

Virginia Department of Health
Office of Licensure and Certification

- B. Once notified by CMS of I-IDR eligibility, providers can choose from three methods for addressing their objections:
 - 1. Telephone;
 - 2. In writing; or
 - 3. Face-to-face meeting

- C. The entire I-IDR process must be completed within 60 calendar days of receipt of the provider's request for the I-IDR. Therefore, the method chosen for the I-IDR (phone call, in writing or face-to-face meeting) must be accomplished by the 50th day or within 10 calendar days prior to the 60th day.

NOTE: "Completed" means that a final decision from the I-IDR process has been made, a written record generated and the State Survey Agency has sent written notice of this decision to the facility.

- D. Based on the written record, the State Agency shall issue the final decision report to the provider.

- E. The provider cannot utilize survey findings which have already been the subject of an IDR under 42 CFR § 488.331 for a particular deficiency, *unless* the IDR was completed prior to the imposition of the CMP.

- F. The focus of the I-IDR process is the cited deficiency (or deficiencies) that led to the imposition of the CMP. Like the IDR process, the I-IDR process cannot be used to challenge other aspects of the survey process such as:
 - 1. Scope and severity (S/S) assessments with the exception of assessments constituting substandard quality of care or immediate jeopardy;
 - 2. Remedies imposed;
 - 3. Alleged failure of the survey team to comply with a requirement of the survey process;
 - 4. Alleged inconsistency of the survey team in citing deficiencies among other facilities; or
 - 5. Alleged inadequacy or inaccuracy of the IDR or I-IDR processes.

- G. Facility staff or facility consultants may be in attendance during the conference call or face-to-face meeting to provide support and corroborate the provider's case. Only one lawyer may speak on behalf of the facility. The inability of said persons to be present as scheduled cannot be used to delay the I-IDR which must be completed within 60 calendar days of receipt of the facility's I-IDR request.

- H. The I-IDR constitutes an informal administrative process that in no way is to be construed as a formal evidentiary hearing. There will be no opportunity for cross-examination. The rules of evidence *do not* apply. Only VDH's Adjudication Officer as the presiding official may ask questions.

Procedure for provider requesting an I-IDR

- A. I-IDR requests shall be in writing and received by OLC within 10 calendar days of receipt of eligibility. The request shall be sent to:

Virginia Department of Health
Office of Licensure and Certification

Director – Long Term Care
VDH/Office of Licensure and Certification
9960 Mayland Drive, Ste. 401
Richmond, Virginia 23233
Or Faxed to: 804.527.4502

Only facilities that have received notification from CMS are eligible to request an I-IDR.

- B. The written request shall include:
1. The specific deficiency or deficiencies in dispute;
 2. The reason or reasons the deficiency or the related survey finding is disputed;
 3. The desired method for resolving the issue: (i) desk audit, (ii) telephone, (iii) face-to-face meeting; and
 4. Names and positions of persons in attendance, including counsel; and
 5. All written information the provider wishes considered during the I-IDR.

Note: An I-IDR is not an opportunity for providers to submit documents or material that was requested and/or should have been provided during the on-site survey for which the deficiency was determined.

- C. The provider will be notified in writing if the I-IDR request is incomplete, incorrect or invalid. Failure to correct and return a complete and accurate I-IDR request within 5 calendar days may result in cancellation of I-IDR eligibility.

Virginia Department of Health
Office of Licensure and Certification

APPENDIX A
Developing and Implementing the Federal I-IDR Process for Virginia

Qualifications of the VDH Adjudication Officer

A. VDH's Adjudication Officer shall have an understanding of Medicare and Medicaid program requirements including, but not limited to:

1. 42 CFR Part 483, Subpart B, and Part 488, Subparts A, E, and F
2. The State Operations Manual (SOM) including:
 - a. Chapter 2, Section 2700
 - b. Chapter 3, Section 3300
 - c. Chapter 5
 - d. Chapter 7, Definitions, Section 7212, Section 7213, and Section 7900
 - e. Appendix P, Appendix PP, and Appendix Q, and
 - f. The Principles of Documentation for the CMS 2567 (SOM Exhibit 7A)
 - g. All Survey and Certification Program Memos related to Long-Term Care
3. Applicable health care standards of practice, health care management, and/or life safety code knowledge and experience.

B. The selected individual:

1. Shall have no financial or other conflict of interest and
2. May be from a component of an umbrella State agency provided that the component is organizationally separate from the State survey agency.

II. Scheduling and administering the I-IDR process

A. OLC shall:

1. Ensure the involved persons are notified of the facility's I-IDR request and schedule the I-IDR conference
2. Notify both the State and Local Ombudsman of the facility's challenge to specific deficiencies and invite the ombudsman to provide written comments
3. Provide the State and Local Ombudsman with a resident specific contact request advising the resident of the facility's challenge to specific deficiencies, and inviting the resident to provide written comments, or
4. Contact the resident's representative by telephone or letter to provide notification of the facility's challenge to specific deficiencies and invite the representative to provide written comments
5. Forward written information from the survey team to the Adjudication Officer and the provider within 10 working days of receipt from the provider.
6. Maintain a written record of the I-IDR that shall include:

Virginia Department of Health
Office of Licensure and Certification

- a. Each deficiency or survey finding that was disputed;
 - b. A summary of the I-IDR recommendation for each deficiency or finding and the rationale for that result;
 - c. 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;
 - d. Any comments submitted by the Ombudsman and/or residents or resident representatives; and
 - e. Any relevant State Survey Agency comments used to determine the deficiency or respond to the facility's I-IDR request.
- B. Following the completion of the I-IDR review:
1. If OLC agrees with the I-IDR recommendation(s) and no changes will be made to the disputed survey findings, OLC will send written notification of the final decision to the facility within 10 calendar days of receiving the written record from the Adjudication Officer.
 2. If OLC disagrees with one or more of the recommendations of the Adjudication Officer, the complete written record will be sent to CMS RO for review and final decision. OLC should include the portion(s) of the I-IDR recommendation with which it disagrees, the basis of its disagreement, and any relevant survey documents
 - a. As soon as practicable, but no later than 10 calendar days, the CMS RO will review the I-IDR recommendation and will provide written notification to OLC of the final decision
 - b. OLC will then send written notification of the final decision to the facility within 10 calendar days of receiving the final decision from CMS RO.
 3. If OLC agrees with the I-IDR recommendation(s) or has received a final decision from CMS RO and changes will need to be made to the disputed survey findings, OLC will provide written notification of results and final decision to the facility within 10 calendar days of receiving the written record.
 4. OLC will disclose to the State long term care ombudsman any survey report and/or plan of correction that is revised or changed as a result of I-IDR

Virginia Department of Health
Office of Licensure and Certification

APPENDIX B
Resident/Family member notification of I-IDR
(Printed on OLC Letterhead paper)

DATE

To
Address
City, State, zip code

Dear

During the Medicare/Medicaid survey ending (date), surveyors found (facility in city and state) had deficient practices related (your or resident's name) care and services. The Centers for Medicare & Medicaid Services (CMS) imposed a civil monetary penalty based on the findings from the (survey end date) survey.

CMS permits the facility to dispute the findings and penalty in a process called an Independent Informal Dispute Resolution (IIDR). The process gives you the opportunity to submit written comments for consideration during the IIDR.

If you would like to submit comments, please forward them within 10 days of receipt of this letter to:

_____, Director
Division of Long Term Care
Office of Licensure and Certification
9960 Mayland Drive
Henrico, VA 23233

If you have any questions in reference to this letter, please contact this office at (804) 367-2100 and ask to speak to the supervisor for the facility. Thank you.

Sincerely,

_____, Director