

**Division of Health Improvement (DHI)
Programs Operation Bureau Health Facility
Long Term Care (LTC)
Informal Dispute Resolution (IDR) Committee
Operating Rules**

1. The Committee will be comprised of: DHI Programs Operation Bureau (POB) Chief as Chairperson; POB Program Manager for LTC or alternate (will only vote on Health issues); POB Survey Reviewer (as a non-voting member, will attend in order to assist with regulation language and interpretive guidelines); POB Architect (will only vote on Life Safety Code issues); POB Training Coordinator (as a non-voting member will attend in order to identify and document training opportunities for surveyors); representative from Aging and Long Term Services Department (Ombudsman) or alternate; Medical Assistance Division representative or alternate and a LTC Facility representative or alternate.
2. Members must withdraw from voting or decision making when there is a conflict of interest. Conflict of interest may include: having personal involvement in the onsite survey for the facility whose IDR is being considered or membership on a board or financial interest in the facility reviewed, or other self-disclosed conflicts.
3. Members will not bring personal issues to the meetings. The focus of decision-making shall be on a review of the information provided and objective opinions based thereon. Members' current or past experience with particular facilities should not be offered as a basis for a member's recommendations.
4. Members must try to come to consensus when deciding on deficiencies or tags. If consensus cannot be reached, a vote will be taken.
5. Members or their representatives may vote. The Chairperson is not a voting member unless there is a tie vote among the members.
6. Members must keep information about specific facilities and deficiencies CONFIDENTIAL. Following each meeting, copies of the IDR documents that have been provided to committee members will be collected and shredded.
7. It is the responsibility of committee members to communicate and share with their peers and counterparts information on the meeting process that may help to improve the quality of committee's recommendations.
8. Members should refer to regulations to assure deficiencies are decided correctly.
9. The committee makes recommendations on each review requested. The DHI Deputy Director will make the final determination on the committee's recommendations.

10. The committee will meet monthly.
11. The Committee will review all requested Informal Reviews submitted for health or life safety tags cited during annual surveys, revisits, or complaints for nursing facilities, except for those that are determined to be presented in a manner that cannot be utilized by the Committee (see below).
12. The Committee may refuse to take action on materials submitted, if they are not presented in a manner that is clear to the members. Such materials may be returned to the facility allowing them an opportunity to resubmit the materials in a manner that is acceptable to the Committee.
13. The meeting may be attended by a limited number of interested parties with prior approval of the Committee chair. Requests to participate will not be honored for individuals who may have a conflict of interest with the proceedings. Discussion and contributions to the meeting will be limited to Committee members. Surveyors from the office that conducted the survey being reviewed may not attend the portion of the meeting that applies to their office. Employees or other individuals associated with a facility being reviewed may not attend the portion of the meeting that applies to their facility.
14. There is no provision for oral presentations by facility or surveyor representatives.

INFORMAL DISPUTE RESOLUTION POLICY

SCOPE: This informal process gives Assisted Living Facility, Nursing Facility and Home Health Agency providers' one opportunity to refute cited deficiencies.

INTENT:

1. Provide an informal and impartial opportunity to resolve disputes related to survey deficiencies.
2. Focus the review on documentation for the basis of the deficiency findings.
3. Determine if a deficiency is valid, needs modification or deletion.

MEMBERSHIP:

The IDR Committee will be comprised of: DHI Programs Operation Bureau (POB) Chief as Chairperson; Program Manager for LTC or alternate (will only vote on Health issues); Survey Review Supervisor (as a non-voting member, will attend in order to assist with regulation language and interpretive guidelines); Architect (will only vote on Life Safety Code issues); Training Coordinator (as a non-voting member will attend in order to identify and document training opportunities for surveyors); representative from Aging and Long Term Services Department (Ombudsman) or alternate; Medical Assistance Division representative or alternate and a LTC Facility representative or alternate.

PROCEDURES:

1. The Department shall notify the facility of the right to request informal review at the same time that the Department provides the facility with the statement of deficiencies. In the case of a follow-up survey, the facility may request informal review of only deficiencies that were cited on the follow-up survey, but not on the original survey. The facility may not request informal review of deficiencies cited on the original survey that were cited as not corrected on the follow-up survey.
2. The written request and supporting documentation for an informal review of specific deficiency (ies) must be post-marked within 10 calendar days (or the next day if the 10th calendar day falls on a holiday or a weekend) of receipt of the statement of deficiencies (CMS-2567).
3. Request for Informal Review does not relieve the facility from providing an acceptable Plan of Correction (PoC) within ten calendar days of receipt of deficiencies.

4. Facilities may not use the IDR process to delay the formal imposition of remedies or to challenge any other aspect of the survey process, including the following:
 - A. Only scope and severity assessments that constitute substandard quality of care or immediate jeopardy may be disputed. The facility must provide specific justification based on the findings in the deficiency. A statement that scope and severity is disputed without supporting rationale will not be reviewed. Scope and severity will be reviewed for any other deficiency only when a finding under that deficiency has been adjusted by the IDR committee.
 - B. Civil Monetary Penalties (CMP) cannot be disputed through the IDR process.
 - C. Alleged failure of the survey team to comply with a requirement of the survey process.
 - D. Alleged inconsistency of the survey team in citing deficiencies among facilities.
 - E. Alleged inadequacy or inaccuracy of the IDR process.
5. The request for an IDR shall include:
 - A. Identification of the specific deficiencies and findings for which the facility is requesting review.
 - B. A written statement explaining why the facility believes the deficiency should not have been cited. Plans of corrections are not reviewed as criteria to determine if a deficiency exists.
 - C. If attachments are submitted, they should be clearly identified, labeled and cross-referenced to the finding/deficiency being appealed. The facility should highlight or otherwise note what is relevant to the deficiency, and isolate the appropriate narrative in the attachments and reference them in the informal review narrative.
 - D. If attachments are included, indicate if they were provided to or requested by the surveyors at the time of survey.
 - E. Facility forms used in documentation should be specific to survey findings, with a narrative explaining the relevancy of the form. Providing blank forms does not support how the form was completed at the time of the survey.

- F. The name and telephone number of an individual at the facility with whom the Department may contact concerning the request
- 6. Resident/surveyor/facility names will be blocked out or deleted on the 2567 and attachments by the bureau prior to review by the committee. Resident/surveyor/facility names will be replaced with other identifiers.
- 7. The review shall be conducted at the next scheduled IDR meeting. The Committee Members shall rely on the CMS-2567, survey worksheets, forms or documentation supplied by the facility and/or surveyor as the basis for determination if deficiency exists.
- 8. When a request for an IDR is made, District Offices will be notified by e-mail that a specific deficiency is being reviewed. The Office will be notified of the facility that is requesting an IDR, the date of the facility's survey, and a synopsis on the basis for disputing the deficiency. The written request from the facility stating the basis for disputing a deficiency will not be provided to the District Office. The survey team, in consultation with their District Office Manager, is able to provide any additional information (copies of records or notes or clarifying statements) that support the deficiency or may request the Training Coordinator to select particular information from the records sent to the Santa Fe central office. Supplemental information will be scanned and emailed to the Training Coordinator. The Training Coordinator will include this information or other information gathered in Santa Fe at the surveyor's request, in the packet that is sent out to the IDR members prior to the monthly meetings. *Note: This opportunity to provide additional information precludes surveyors from going back on site to gather additional supporting information. What is to be sent to the Training Coordinator is information gathered during the survey.*
- 9. The committee may render the following recommendations:
 - A. Deletion of deficiency.
 - B. The scope and severity assessment should be adjusted, if necessary, due to dispute of substandard quality of care or immediate jeopardy or to reflect the outcome of informal dispute resolution, e.g., elimination of deficiencies.
 - c) Deletion of findings,
 - d) Recommend editorial changes to written findings to clarify or correct typos or grammatical errors and refer back to the survey team for their reconsideration.

10. The facility will be notified, in writing, of the decision within 10 working days of the IDR review. The decision shall summarize the deficiency, the facility's request, and the rationale for the decision. The final disposition sent to the provider shall be maintained as a part of the permanent record with a copy sent to the state long-term care ombudsman's office.
11. If changes are made to the CMS-2567, then a "clean" CMS-2567 will be sent to the facility. The facility, within 5 working days of receipt, must provide acceptable PoC's.
12. Failure of the Department to meet any of the time frames specified herein shall not invalidate the deficiency.