

MINNESOTA DEPARTMENT OF HEALTH
Facility and Provider Compliance Division

Information Bulletin:

March 2004

**Independent Informal Dispute Resolution Process for Nursing Facilities and Skilled
Nursing Facilities**

Introduction and Background:

Federal law requires the Center for Medicare and Medicaid Services (CMS) and each state to develop an Informal Dispute Resolution Process (IDR) under 42 CFR 488.331. An informal dispute process is available under Minnesota Statutes Section 144A.10, subdivision 15. A bulletin explaining the process was issued in April of 2000 called Information Bulletin 00-6; NH-39; Informal Dispute Resolution Process for Nursing Facilities and Skilled Nursing Facilities. The process created by Section 144A.10, subdivision 15, remains available to facilities that do not elect to use the alternative IIDR process described below. This bulletin does not amend or revoke the April 2000 bulletin.

It is the goal of the MDH to assure that deficiencies are accurate at the time they are officially sent to the facility. If the facility is aware of information that could negate or modify a deficiency after the exit, this information must be sent to the survey team supervisor or the director of the Office of Health Facility Complaints within 48 hours of the exit. In the case of deficiencies issued by OHFC, the exit is the completion of the written report.

It is the goal of the MDH to have an IDR process that is fair, straightforward, and efficiently conducted. The MDH takes seriously and is aware that some providers fear retribution or retaliation if they use the IDR process. If you have concerns that retribution or retaliation may be occurring, please submit specific examples to division supervisory or management staff. Our staff is aware that conduct by them leading to fear of retribution or retaliation is not acceptable and will subject individuals to disciplinary action.

Any IDR process will not delay the formal imposition of remedies nor delay the requirement for the timely submission of a plan of correction.

Any IDR process is intended to review the accuracy of the issued deficiency. If the facility has other concerns about the survey process, we request that those concerns be addressed to the management or supervisory staff in the Facility and Provider Compliance Division.

What is the New IDR Process?

An alternative review process called the Independent Informal Dispute Resolution Process (IIDR) for survey disputes effective July 1, 2003 is available under Minnesota Statutes Section 144A.10, subdivision 16. It provides for a review by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) of facility information to support its dispute of any deficiency issued during a standard survey or an Office of Health Facility Complaints

investigation. The statute specifies that the findings of the ALJ will not be binding on the Minnesota Department of Health, meaning that the Department will continue to issue the final decisions in disputed cases. Decisions made by the Department shall be in accordance with federal regulations and procedures. Final decisions of the Minnesota Department of Health are not binding on the Center for Medicare and Medicaid Services.

At the time of submission of an informal dispute resolution, the facility will need to select whether the current IDR process is requested or whether the facility is requesting a review under the IIDR. The facility decision is final.

How to request an IIDR:

All requests for IIDR must be in writing and submitted to:

Nursing Home Informal Dispute Process
Minnesota Department of Health
Facility and Provider Compliance Division
P.O. Box 64900
St. Paul, MN 55164-0900

Facility Responsibility in the IIDR Process:

- Mail the IIDR request to the above address no later than ten (10) calendar days of facility receipt of the final statement of deficiencies on the CMS form 2567.¹
- List in writing each deficiency the facility disputes.
- State whether the review will be conducted in writing, by telephone, or in person. Give dates when the facility is not able to participate in the review.
- State if the facility has an attorney, and the estimated number of persons that will be attending the review if it will be conducted in person or by telephone. The facility is not required to appear with an attorney, but if it intends to do so, it must indicate that fact in its request so that MDH may also have counsel present if it wishes.
- Attempt to limit the in person or telephone review the meeting to approximately two (2) hours. The in-person reviews will be conducted at the Office of Administrative Hearings in Minneapolis, or the Minnesota Department of Health in St. Paul, MN.
- Provide any information it intends to rely upon to MDH no later than ten (10) calendar days after receipt of the notice from the OAH regarding the IIDR and required information exchange.
- Provide the ALJ with any information the facility intends to rely upon in the review three (3) business days prior to the date of the review.
- Pay the MDH for the proportion of costs that represent the sum of deficiency citations supported in full or in substance divided by the total number of deficiencies disputed. MDH shall provide an invoice to the facility after the IIDR process is complete.
- Submit an acceptable plan of correction within ten (10) calendar days of receipt of the CMS form 2567.

¹ For any information sent by mail, the date of the postmark must be no later than the time period specified in this bulletin.

Responsibilities of the MDH in the IIDR Process:

After the Minnesota Department of Health Department (MDH) receives the facility request for IIDR, the MDH will:

- Immediately, but no later than three business days after receipt of the facility request, file the facility request with the OAH by e-mail, fax or mail, requesting the appointment of an ALJ to review the request. MDH will copy the facility on the filed request by regular mail.
- Inform the Office of the Ombudsman for Older Minnesotans that an IDR request has been received.
- Upon receipt of the OAH notice of review, provide the facility with surveyor notes, documents, tapes, records relied upon to support the deficiency no later than ten (10) calendar days following the MDH's filing of the IIDR request with OAH. MDH will be responsible to assure that the release of data under this provision conforms to requirements contained in the licensure rules, the provisions of the Data Practices Act, provisions of the Vulnerable Adult Abuse Reporting Act and federal requirements.
- Provide the ALJ with any information MDH intends to rely upon in the review at least three (3) business days prior to the review.
- Within ten (10) calendar days of receipt of the ALJ findings to the MDH, the commissioner will mail a final decision to the facility indicating whether the commissioner accepts or rejects the recommendations of the ALJ.
- Reimburse the OAH for the costs incurred by that office for the IIDR, and invoice the facility for its respective portion of the cost after the close of the proceeding.
- If the facility is successful in the IIDR process, MDH will mark the deficiency "deleted", sign and date the survey report form; and recommend to CMS the rescission of any enforcement action imposed solely because of that deficiency citation; or adjust the scope and severity assessment, if necessary to reflect the determination of the IIDR and consistent with federal procedures. If changes to the deficiencies would modify findings in any state correction order, the MDH shall modify those orders consistent with the IIDR final decision.
- Issue a revised statement of deficiencies within ten (10) days from receipt of the request.
- Not include the appealed deficiencies on the facility OSCAR Report until the commissioner has finally decided the appeal.

Office of Administrative Hearings Responsibilities:

The Office of Administrative Hearings will:

- Assign an ALJ to conduct the IIDR review upon receipt of the request from MDH.
- Within three business days of receipt of the MDH request for IIDR, send the facility and MDH notice of the date and location of the face-to-face meeting, or the date of the telephone meeting, and the date by which the facility and MDH must have all of their argument and supporting information to the ALJ for consideration.
- Schedule the face-to-face or telephone meeting to occur within twenty (20) calendar days of the date of the notice sent to facility and MDH from OAH.

- Conduct an in-person or telephone review that the parties will attempt to limit to approximately one to two hours in length.
- Issue findings within ten (10) working days of the close of the review and mail the findings to the facility and MDH.

The findings shall be one or more of the following:

- (1) Supported in full. The citation is supported in full, with no deletion of findings and no change in the scope or severity assigned to the deficiency citation.
- (2) Supported by substance. The citation is supported, but one or more findings are deleted without any change in the scope or severity assigned to the deficiency.
- (3) Deficient practice cited under wrong requirement of participation. The citation is amended by moving it to the correct requirement of participation.
- (4) Scope not supported. The citation is amended through a change in the scope assigned to the citation.
- (5) Severity not supported. The citation is amended through a change in the severity assigned to the citation.
- (6) Not deficient practice. The citation is deleted because the findings did not support the citation or the negative resident outcome was unavoidable.

The findings of the ALJ are not binding on the commissioner.

Questions?

Submit your written questions to:

Nursing Home Informal Dispute Process
Minnesota Department of Health
Facility and Provider Compliance Division
P.O. Box 64900
St. Paul, Minnesota 55164-0900

Or

Email to:

Fpc-web@health.state.mn.us