INFORMAL DISPUTE RESOLUTION FOR NURSING HOMES AND FACILITIES SERVING PEOPLE WITH DEVELOPMENTAL DISABILITIES (FDD)

Department of Health Services / Division of Quality Assurance
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INTRODUCTION

This publication describes the procedure under which health care facilities may work to informally resolve differences they have with citations issued by the Division of Quality Assurance (DQA). The procedure takes effect August 1, 2021.

Significant changes include:

- Effective August 1, 2021, all IDR and IIDR for Wisconsin will be conducted by iMPROve Health.
- Facilities may send their supporting documentation electronically to iMPROve Health through their secure IDR portal www.improve.health/idr
- The charge for desk and telephone IDR conducted by a professional reviewer has not changed. Desk review is provided at no charge to the provider; the fee for telephone review is $100. Review by an expert reviewer is $50.00 per hour. The complete fee schedule is provided on pages 4 and 5 of this publication.

OVERVIEW

On January 1, 1995, the Division of Quality Assurance (DQA) implemented a standardized process for informally resolving disagreements facilities may have with citations issued by DQA surveyor(s). The Informal Dispute Resolution (IDR) process has been developed with the expectation that all parties will act in good faith, treat others with respect and professionalism, and recognize that there will be issues of honest disagreement.

The goals of informal dispute resolution are to (1) ensure that the Statement of Deficiencies (SOD) and the federal and state data systems accurately identify a provider's state of compliance relative to the regulations and (2) to resolve differences:

- Outside of formal litigation, thereby avoiding the costs of protracted litigation (although the process does not preclude a facility from requesting a hearing where applicable);
- In a timely manner, while the issues and facts are still fresh; and
- Prior to the entry of the survey results into the federal data system.

iMPROve Health's review process includes reviewing the regulatory standard, the statement of deficiency, and the information provided by the health care facility. If an expert opinion is requested, iMPROve Health will provide consultant reviewers to provide advice and judgments on specific aspects of a cited deficiency. Upon completion of IDR reviews, iMPROve Health will provide the appropriate DQA Regional Office with written recommendations that may include the following: withdraw citations, keep citations as written, modify or withdraw examples from the citation(s), lower or raise the federal scope/severity level, and lower or raise the state classification.

The process of IDR renders a *de novo* (new) look at disputed citations. The process does not alter or delay the required timetables associated with licensure or certification termination or other adverse action. This informal process does not limit the legal appeal processes that are afforded facilities under state and federal laws and regulations. Allegations concerning survey team conduct during the survey should not be reported under this process, but rather to the Regional Field Operations Director (RFOD) or the Bureau of Nursing Home Resident Care Director.

The IDR process begins during the survey with communication between the surveyor(s) and the facility. The survey coordinator meets with the provider daily, or as needed, to share preliminary survey findings. Federal survey protocols dictate the information that can be shared before exit, especially if it impacts the eventual scope or severity of a deficiency. If you think this process is not occurring during a survey, we ask that you immediately contact the Regional Field Operations Director or Field Operations Supervisor assigned to your facility. Surveyors also meet with the provider at the exit conference to present a preliminary summary of the survey findings.

We encourage facilities to use these meetings to provide additional clarifying facts and information to surveyors, so that material can be considered in the final decision-making process. Facilities may also provide additional information to the survey team between the date of the exit conference and the date any deficiencies are served.

Once the SOD is received, facilities that disagree with examples, individual citations, or all the citations, may request that differences be resolved through IDR.

PROCEDURE

1. Timeframes and Procedures for Requesting IDR

a. A facility that wishes to request a telephone or desk review must:

- Request IDR on or before the tenth calendar day following receipt of the SOD (or the first working day if the due date is on a weekend or holiday or within 12 calendar days if the e-SOD was received on a Friday). The day the facility receives the SOD is Day 0.
- Provide supporting documentation to MPRO on or before the tenth calendar day following receipt of the SOD (or the first working day if the due date is on a weekend or holiday or within 12 calendar days if the e-SOD was received on a Friday). The day the facility receives the SOD is Day 0.
- Materials received after Day 10 will not be considered during the IDR review.

b. The request for IDR should be emailed to dhsdqaidrintake@dhs.wisconsin.gov. If you are unable to email this form, FAX the form to DQA Central Office, ATTN: IDR Intake. (Telephone and FAX numbers are listed at the end of this memo.) The *IDR Request* should also be included in the IDR review packet received by iMPROve Health on or before Day 10.

c. The request for IDR must be made on a fully completed *IDR Request* (DQA form F-62514, available as an appendix to the SOD transmittal letter.)

d. The facility will electronically submit the IDR review packet with *IDR Request Form* through iMPROve Health through their secure IDR portal at www.improve.health/idr. Submission of the IDR review packet is only accepted by electronic submission through iMPROve Health's Secure IDR Portal

e. Upon receipt of the request for IDR, iMPROve Health will note the type of review requested (desk or telephone) and assign an IDR reviewer.

NOTE: The State Operations Manual allows facilities ten calendar days from receipt of the SOD to submit a written request for IDR, and to document why specific federal deficiencies are being disputed. The CMS-2567 survey packet must be sent to the federal Centers for Medicare and Medicaid Services (CMS) within 45 days of the date of exit. This brief period means that requests for IDR and supporting documentation received by iMPROve Health after Day 10 will not be considered for IDR.

2. Submitting Documentation to iMPROve Health

a. The IDR review packet must include:

- A fully completed *IDR Request* (DQA form F-62514, available as an appendix to the SOD transmittal letter);
- One copy of the SOD without a Plan of Correction;
- One copy of the resident and staff identifier list, and
- One complete copy of your supporting documentation for IDR review.

  Tips for submitting supporting documentation:
  - Number all pages.
  - Highlight or circle areas you are calling attention to in your narrative.

b. When submitting supporting documentation to iMPROve Health, facilities must include the following information:

- The specific reason *each* federal tag or state code is being disputed (e.g., disagreement with the tag or code that was chosen, disagreement with the state classification, availability of supporting information that disputes or further clarifies the facts, or errors in documentation on the SOD). Reasons for dispute must be highlighted on submitted documents, or a cover letter must be included detailing the points of contention, or both.
- The desired outcome for *each* disputed federal tag and state code (e.g., withdraw the citation, change state classification, withdraw specific examples, or change federal tag or state code).
- The relevance of the documentation to the dispute. Material that does not highlight or identify specific entries to be reviewed for each disputed citation, or that does not explain the relevance of the documentation to the dispute, will not be considered. The facility should explain, when applicable, why the material was not shown to the survey team during the discussion of survey findings.

3. The IDR Session

a. The type of IDR review will depend on your selection on the IDR request form, with the following exception:

If IDR is requested, iMPROve Health will conduct only desk reviews for federal citations at a scope and severity level of A, B, and C – (Severity Level I citations), and state stand-alone correction orders and notations.

b. Two qualified reviewers will review citations of substandard quality of care, immediate jeopardy, conditions of participation, and repeat standards for FDDs, in order to agree upon a decision.

c. A facility may request IDR by a reviewer with expertise related to specific concerns that are identified in the statement of deficiency. iMPROve Health will provide these reviewers and bill the facility for their services at a rate of $45.50 per hour, with a ½-hour minimum of review time.

d. After receiving a timely request for a virtual or telephone IDR, the iMPROve Health IDR Reviewer will schedule the call as soon as practicable. The call will be held on a mutually agreed upon date**.**

e. The IDR call will be limited to one hour, unless the iMPROve Health IDR Reviewer agrees to an extension. The duration of the IDR will be established prior to the start of the IDR based on the number and complexity of identified issues. To make the best use of the available time, facilities are encouraged to prioritize their concerns and present new information succinctly.

f. The IDR meeting is intended to be an open, good faith negotiation between parties who wish to resolve their differences. The purpose of this conference is to allow the facility to provide a brief overview of the material it has submitted and to answer any questions that iMPROve Health may have about the material. This is an informal conference. The iMPROve Health IDR Reviewer will describe the purpose of the meeting. The provider may explain how and why it disagrees with the survey team's conclusions. The provider should be able to identify the specific parts of the Statement of Deficiencies with which he/she disagrees. The disagreement may be with either statement of fact or surveyor conclusions.

g. DQA Regional Field Operation Director (or designee) and/or attorneys representing the facility may participate in the IDR. In some cases, an Ombudsman from the Board on Aging and Long-Term Care, a representative from CMS or WDHS.

4. Post-IDR Session

a. iMPROve Health will submit their IDR recommendations to the appropriate DQA Regional Office no later than 21 calendar days following receipt of the SOD by the facility.

b. As directed by CMS, DQA will retain the responsibility to review and the authority to overturn the iMPROve Health IDR recommendation(s). DQA will review the recommendation(s) and will communicate the final IDR decision, including iMPROve Health's recommendation(s), to the facility no later than 24 calendar days following receipt of the SOD. A copy of iMPROve Health Independent Review Recommendation Summary Report will be sent to the facility upon completion of the IDR process.

c. Amending the Statement of Deficiency. When changes are made to the SOD summary report, the iMPROve Health IDR Reviewer will ask whether the facility is requesting a "clean" SOD rather than an "amended" SOD. The request for a "clean" SOD must be made at this time. A "clean" SOD means the original SOD is withdrawn and a second SOD is generated by the computer after the changes have been entered into the system. A facility is responsible for ensuring its Plan of Correction is transferred to the "clean" SOD. A "clean" SOD will not be generated for superficial errors or minor inconsistencies in the SOD, such as:

- A minor typographic error;
- A staff, resident or surveyor identifier number is incorrect (it may be appropriate to clarify and update the identifier list), or
- For simple wording changes, e.g., the facility desires language to read "rule out possible pulmonary emboli" rather than what was stated on the SOD as "rule out pulmonary emboli."

d. In these cases, or where a request is not made by the facility for a "clean" SOD, DQA will revise its survey findings by amending the original SOD. An amended SOD means that additions or deletions are made on the original SOD by crossing out or inserting text, and noting in the margin of the SOD that the changes are the results of IDR.

e. For SODs alleging a Class A, B, or C violation, any appeal of the original SOD is eliminated when the original SOD is withdrawn. An appeal of the original SOD does not carry over or transfer to the "clean" SOD. The facility must file a new request for hearing if the "clean" SOD is subject to appeal and the facility wishes to appeal the violation.

5. Availability of IDR

a. For both nursing homes and FDDs, the availability and use of IDR:

- Applies to all citations issued by DQA.

  It does not apply to a re-cited citation where (a) the re-cited facts are identical to the facts on the previous citation; and (b) the previous citation has already gone through IDR. In general, this exception will apply to structural deficiencies. For example, a facility that was re-cited for not replacing an improperly rated fire door could not request a second IDR because the situation ("the door") remained the same. On the other hand, a facility may be able to request IDR on a re-cited activity deficiency because activities are fluid and changeable. A re-cited deficiency will have different facts because it may address different residents, different frequencies of participation, or different activities in which a resident did or did not participate. Upon receipt of an IDR request for a citation for which IDR is not applicable, DQA will notify iMPROve Health**.**

- Applies to any new citation issued because of IDR.

  A "new" citation means a deficiency or violation (a) that was not known before the IDR, because new facts were learned during the IDR; or (b) that was substantially changed because of IDR. A deficiency is substantially changed when facts are materially altered and the information is cited under a different federal or state regulation. Upon receipt of an IDR request for a citation for which IDR is not applicable, DQA will notify iMPROve Health.

- Does not prevent providers licensed under Wis. Admin. Code chs. DHS 132 or 134 from filing a formal state appeal under Wis. Stat. § 50.04(4)(e).

  Appeals must be made within sixty (60) calendar days of receipt of the SOD. If, as a result of IDR, a facility continues to disagree with DQA's decision, the appealed citations will remain in dispute and may proceed to full litigation and hearing. As stated in paragraph (4)(c) and (d) above, the issuance of a "clean" SOD results in withdrawal of the original SOD. The original appeal does not transfer automatically to the new "clean" SOD. A new state appeal request is required if the facility wishes to appeal the "clean" SOD.

- Does not exempt a facility from submitting an acceptable Plan of Correction for each citation on or before the tenth calendar day following receipt of the SOD (or the first working day if the due date is on a weekend or holiday or within 12 calendar days if the E-SOD was received on a Friday). The day the facility receives the SOD is day 0.

b. For federally certified nursing homes, generally the IDR process cannot be used solely to challenge the scope and severity of a particular citation without challenging the underlying facts and examples containing therein. If the underlying facts and examples change because of IDR, a by-product of the dispute may be a change in the scope and severity designation. Scope and severity can be directly challenged without challenging the underlying facts and examples, if a change in scope and severity will change a designation of substandard quality of care or lower the category of a Civil Money Penalty.

6. Charge for IDR

DESCRIPTION	AMOUNT	PAID BY	PAID TO
Desk	$0 No charge to provider	DQA	iMPROve Health
Telephone	$100 per IDR	Provider	DQA
Reviewer			
Professional*	$120.00 per hour	DQA	iMPROve Health
Expert**	$200.00 per hour	DQA	iMPROve Health
	$50.00 per hour	Provider	DQA

*A “professional” reviewer is defined as someone who is qualified through training and experience to conduct Informal Dispute Resolution. This may include, but is not limited to, a registered nurse or a social worker.

**An “expert” reviewer is defined as someone with experience related to specific concerns identified in the Statement of Deficiency. This may include, but is not limited to, a physician, pharmacist, psychologist, etc. A provider that requests services of an “expert” reviewer will be invoiced to reimburse DQA for the contractor expenses off $50.00 per hour.

No charges will be assessed until the completion of the IDR. At the conclusion of the telephone IDR, DQA will send an invoice to the facility requesting payment for $100. The facility will send payment directly to DQA.

IDR REQUESTS

If you wish to request IDR, email the *IDR Request* (DQA form F-01395) to: dhsdqaidrintake@dhs.wisconsin.gov

If you are unable to email this form, FAX the form to:

DHS / DQA Central Office
ATTN: IDR Intake
Telephone: 608-266-2966
Fax: 608-267-7119

Questions regarding the IDR process conducted by iMPROve Health should be directed to:

iMPROve Health
Phone: 248-465-1038
Email: IIDRgroup@improve.heatlh

REGIONAL FIELD OPERATIONS DIRECTORS (RFODs)

For all other issues related to the survey and enforcement process, please contact the Regional Field Operations Director for the region in which your facility is located. Regional contact information is located at: http://www.dhs.wisconsin.gov/rl_dsl/contacts/reglmap.htm

ATTACHMENT A – IDR PROCESS FLOWCHART