TITLE 1 ADMINISTRATION

PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 393 INFORMAL DISPUTE RESOLUTION AND INFORMAL RECONSIDERATION

§393.1. Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID).

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for nursing facilities and intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID) (hereinafter referred to collectively as "facility") through which a facility may dispute deficiencies/violations cited against that facility by the State survey agency, or its designee.

(b) The HHSC IDR Department must receive a facility's written request for an IDR no later than the tenth calendar day after the facility's receipt of the official statement of deficiencies/violations from the State survey agency, or its designee. The facility must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website.

(c) Within three business days of its receipt of the facility's written request for an IDR, HHSC will notify the facility and the State survey agency's regional office under which the facility operates of its receipt of the request.

(d) Within five calendar days of HHSC's receipt of the facility's request for an IDR, HHSC must receive from the facility the facility's rebuttal letter and attached supporting documentation. The rebuttal letter must contain:

(1) a list of the deficiencies/violations disputed (only those deficiencies/violations listed on the IDR request form and addressed in the rebuttal letter and supporting documentation will be reviewed);

(2) the reason or reasons each deficiency/violation is disputed; and

(3) the outcome desired by the facility for each disputed deficiency/violation.

(e) The facility submits its supporting documentation or information in the following format.

(1) Organize the attachments by deficiency/violation and cross-reference to the disputed deficiency/violation in the rebuttal letter.

(2) Ensure all information is labeled and legible.

(3) Highlight information relevant to the disputed deficiency/violation, such as a particular portion of a narrative.

(4) Describe the relevance of the documentation or information to the disputed deficiency/violation.

(5) Do not de-identify documents that name residents referenced in disputed deficiencies/violations.

(f) If the facility substantially complies with the procedures set out in subsections (d) and (e) of this section, HHSC will proceed with its review of the facility's IDR request.

(g) It is the facility's responsibility to present sufficient credible information to HHSC to support the outcome requested by the facility.

(h) Possible outcomes of an IDR for nursing facilities and ICF/IID are:

(1) a determination that there is insufficient evidence to sustain a deficiency/violation;

(2) a determination that there is insufficient evidence to sustain a portion or a finding of a deficiency/violation;

(3) a determination that there is sufficient evidence to sustain a deficiency/violation; or

(4) a determination that there is insufficient evidence to sustain the deficiency/violation as cited but that there is sufficient evidence to sustain a different citation.

(5) a determination that there is insufficient evidence to sustain the severity and scope assessment but that there is sufficient evidence to sustain a reduced severity and scope assessment (for Immediate Jeopardy or Substandard Quality of Care only); or

(6) a determination that there is sufficient evidence to sustain the severity and scope assessment as cited.

(i) HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State survey agency failure to comply with survey protocol, complaints about existing federal or State standards, or attempts to clear previously corrected deficiencies/violations.

(j) Upon receipt of the facility's IDR request, the State survey agency must submit to HHSC the following supporting documentation :

(1) resident identifier list;

(2) report of contact; and

(3) Automated Survey Processing Environment (ASPEN) event ID number.

(k) Any information related to an IDR request that is received by HHSC from either the facility or the State survey agency will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

(l) HHSC may request additional information from the facility and/or the State survey agency. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

(m) All responses to shared information as described in subsections (j) and (k) of this section must be received no later than the tenth calendar day after the facility’s rebuttal letter and supporting documentation are submitted.

(n) Ex parte communications by the facility or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(o) An eligible facility may participate in an IDR conference provided that the facility requested an IDR conference on the IDR request form.

(p) Any IDR conference will be scheduled by HHSC, or its designee on or before the 22nd calendar day after HHSC received the IDR request. If the facility is unable to participate on the scheduled date, the IDR conference will be cancelled, and the IDR will continue as though no conference had been requested.

(q) The IDR conference is an informal opportunity for an eligible facility to present important information previously submitted in the facility's rebuttal letter or responses to shared information. The facility and the State survey agency may attend any IDR conference, but neither party may present information that was not previously included in the Statement of Deficiencies/Licensing Violations, submitted in the provider’s rebuttal letter, or responses to shared information. While the facility may ask clarifying questions related to the information in the Statement of Deficiencies/Licensing Violations, the questions are strictly limited to the review in question.

(r) HHSC will complete the IDR no later than the 30th calendar day after its receipt of the facility's written request. The IDR recommendation shall be in writing, address all the issues raised by the facility, and explain the rationale for the recommendation.

(s) The time frames designated in the IDR process shall be computed in accordance with Texas Government Code §311.014 .

(t) HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating procedures.

(u) The State survey agency may revise an IDR recommendation as a result of a review and subsequent determination that the IDR recommendation may violate a federal law, regulation, or the CMS State Operations Manual.

(v) HHSC may contract with an appropriate disinterested organization to adjudicate disputes between a facility and the State survey agency. Texas Government Code §2009.053 does not apply to the selection of an appropriate disinterested organization. For purposes of this section, a reference to HHSC with respect to HHSC's role in the IDR process includes an organization with which HHSC has contracted for the purpose of performing IDR, and a contracted organization is bound by the same requirements to which HHSC is bound for the purposes of conducting an IDR. The results of an IDR conducted by a contracted organization serve only as a recommendation to the State survey Agency. The State survey Agency maintains responsibility for and makes final IDR decisions.

§393.2. Informal Dispute Resolution for Assisted Living Facilities.

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for assisted living facilities (ALFs) through which an ALF may dispute violations cited against that ALF by the State survey agency .

(b) The HHSC IDR Department must receive the ALF's written request for an IDR no later than the tenth calendar day after the ALF's receipt of the official statement of violations . The ALF must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website.

(c) Within three business days of its receipt of the ALF's written request for an IDR, HHSC will notify the ALF and the State survey agency's regional office under which the ALF operates of its receipt of the request.

(d) Within 15 calendar days of HHSC's receipt of the ALF's request for an IDR, HHSC must receive from the ALF the ALF's rebuttal letter and attached supporting documentation. The rebuttal letter must contain:

(1) a list of the violations disputed (only those violations listed on the IDR request form and addressed in the rebuttal letter and supporting documentation will be reviewed);

(2) the reason or reasons each violation is disputed; and

(3) the outcome desired by the ALF for each disputed violation.

(e) The ALF submits its supporting documentation or information in the following format:

(1) organize the attachments by violation and cross-reference to the disputed violation in the rebuttal letter;

(2) ensure all information is labeled and legible;

(3) highlight information relevant to the disputed violation, such as a particular portion of a narrative;

(4) describe the relevance of the documentation or information to the disputed violation; and

(5) do not de-identify documents that name residents referenced in disputed deficiencies/violations.

(f) If the ALF substantially complies with the procedures set out in subsections (d) and (e) of this section, HHSC will proceed with its review of the ALF's IDR request.

(g) HHSC will give full consideration to all factual arguments raised during the IDR process.

(h) Full consideration will be given during the IDR process to the information provided by the ALF and the State survey agency.

(i) Both parties will be given a reasonable opportunity to submit arguments and information supporting the position of the ALF or the State survey agency, and to respond to arguments and information presented against them, provided that the ALF submits it arguments and supporting information in accordance with the timeframes specified by Texas Health and Safety Code Chapter 247.

(j) The State survey agency bears the burden of proving the violation of a standard or standards.

(k) Assuming a violation has been established, it is then the ALF's responsibility to present sufficient credible information to HHSC to support the outcome requested by the ALF.

(l)Possible outcomes of an IDR are:

(1) a determination that there is insufficient evidence to sustain a violation;

(2) a determination that there is insufficient evidence to sustain a portion or a finding of a violation;

(3) a determination that there is sufficient evidence to sustain a violation;

(4) a determination that there is insufficient evidence to sustain the violation as cited but that there is sufficient evidence to sustain a different citation;

(5) a determination that there is insufficient evidence to sustain the severity and scope assessment but that there is sufficient evidence to sustain a reduced severity and scope assessment (for Immediate Threat only); or

(6) a determination that there is sufficient evidence to sustain the severity and scope assessment as cited.

(m) HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State survey agency failure to comply with survey protocol, complaints about existing State standards, or attempts to clear previously corrected violations.

(n) Upon receipt of the ALF's IDR request, the State survey agency must submit to HHSC the following supporting documentation :

(1) resident identifier list;

(2) report of contact; and

(3) Automated Survey Processing Environment (ASPEN) event ID number.

(o) Any information related to an IDR request that is received by HHSC from either the ALF or the State survey agency will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

(p) HHSC may request additional information from either party in the dispute. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

(q) All responses to shared information as described in (o) and (p) above must be received no later than the tenth calendar day after the facility’s rebuttal letter and supporting documentation are submitted.

(r) Ex parte communications by the ALF or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(s) An eligible ALF may participate in an IDR conference provided that the ALF requested an IDR conference on the IDR request form.

(t) Any IDR conference will be scheduled by HHSC, or its designee on or before the 30th calendar day after HHSC received the IDR request. If the ALF is unable to participate on the scheduled date, the IDR conference will be cancelled and the IDR will continue as though no conference had been requested.

(u) The IDR conference is an informal opportunity for an eligible ALF to present important information previously submitted in the ALF's rebuttal letter or responses to shared information. The ALF and the State survey agency may attend any IDR conference but neither party may present informationthat was not previously included in the Statement of Licensing Violations, submitted in the provider’s rebuttal letter, or responses to shared information. While the facility may ask clarifying questions related to the information in the Statement of Licensing Violations, the questions are strictly limited to the review in question.

(v) HHSC will complete the IDR no later than the 90th calendar day after its receipt of the ALF's written request. The IDR recommendation shall be in writing, address all the issues raised by the ALF, and explain the rationale for the recommendation.

(w) The time frames designated in the IDR process shall be computed in accordance with Texas Government Code §311.014 .

(x) HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating procedures.

(y) HHSC may contract with an appropriate disinterested organization to adjudicate disputes between an ALF and the State survey agency. Texas Government Code §2009.053 does not apply to the selection of an appropriate disinterested organization. For purposes of this section, a reference to HHSC with respect to HHSC's role in the IDR process includes an organization with which HHSC has contracted for the purpose of performing IDR, and a contracted organization is bound by the same requirements to which HHSC is bound for the purposes of conducting an IDR. The results of an IDR conducted by a contracted organization serve only as a recommendation to the State survey Agency. The State survey Agency maintains responsibility for and makes final IDR decisions.

§393.3. Informal Dispute Resolution for Texas Home Living and Home and Community-Based Service Providers.

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for Texas Home Living (TxHmL) and Home and Community-based Service (HCS) providers (hereinafter referred to collectively as “provider”) through which a provider may dispute citations cited against that provider by the State survey agency.

(b) The HHSC IDR Department must receive a provider’s written request for an IDR no later than the tenth calendar day after the provider’s receipt of the final report from the State survey agency, or its designee. The provider must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website. The provider must also submit the final report containing the citations the provider wishes to dispute.

(c) Within three business days of its receipt of the provider’s written request for an IDR, HHSC will notify the provider and the State survey agency of its receipt of the request.

(d) Within five calendar days of HHSC's receipt of the provider’s request for an IDR, HHSC must receive from the provider, the provider’s rebuttal letter and attached supporting documentation. The rebuttal letter must contain:

(1) a list of the citations disputed (only those citations listed on the IDR request form and addressed in the rebuttal letter and supporting documentation will be reviewed);

(2) the reason or reasons each citation is disputed; and

(3) the outcome desired by the provider for each disputed citation.

(e) The provider submits its supporting documentation or information in the following format:

(1) organize the attachments by citation and cross-reference to the disputed citation in the rebuttal letter;

(2) ensure all information is labeled and legible;

(3) highlight information relevant to the disputed citation, such as a particular portion of a narrative;

(4) describe the relevance of the documentation or information to the disputed citation; and

(5) do not de-identify documents that name individuals referenced in disputed citations.

(f) If the provider substantially complies with the procedures set out in subsections (d) and (e) of this section, HHSC will proceed with its review of the provider’s IDR request.

(g) It is the provider’s responsibility to present sufficient credible information to HHSC to support the outcome requested by the provider. Possible outcomes of an IDR for TxHmL and HCS are:

(1) a determination that there is insufficient evidence to sustain a citation;

(2) a determination that there is insufficient evidence to sustain a portion or a finding of a citation;

(3) a determination that there is sufficient evidence to sustain a citation;

(4) a determination that there is insufficient evidence to sustain the citation as cited but that there is sufficient evidence to sustain a different citation;

(5) a determination that there is insufficient evidence to sustain the severity and scope assessment but that there is sufficient evidence to sustain a reduced severity and scope assessment (for Immediate Threat only); or

(6) a determination that there is sufficient evidence to sustain the severity and scope assessment as cited.

(h) HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State survey agency failure to comply with survey protocol, complaints about existing federal or State standards, or attempts to clear previously corrected citations.

(i) Upon receipt of the provider’s IDR request, the State survey agency must submit the following to HHSC:

(1) report Log ID;

(2) contract number; and

(3) component code.

(j) Any information related to an IDR request that is received by HHSC from either the provider or the State survey agency will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

(k) HHSC may request additional information from the provider and/or the State survey agency. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

(l) All responses to shared information as described in subsections (j) and (k) above must be received no later than the tenth calendar day after the provider’s rebuttal letter and supporting documentation are submitted.

(m) Ex parte communications by the provider or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(n) A provider may participate in an IDR conference provided that the provider requested an IDR conference on the IDR request form.

(o) Any IDR conference will be scheduled by HHSC, or its designee on or before the 22nd calendar day after HHSC received the IDR request. If the provider is unable to participate on the scheduled date, the IDR conference will be cancelled, and the IDR will continue as though no conference had been requested.

(p) The IDR conference is an opportunity for an eligible provider to present important information previously submitted in the provider’s rebuttal letter or responses to shared information. The provider and the State survey agency may attend any IDR conference, but neither party may present information that was not previously included in the final report, submitted in the provider’s rebuttal letter, or responses to shared information.

(q) HHSC will complete the IDR no later than the 30th calendar day after its receipt of the provider’s written request. The IDR recommendation shall be in writing, address all the issues raised by the provider, and explain the rationale for the recommendation.

(r) The time frames designated in the IDR process shall be computed in accordance with Texas Government Code §311.014.

(s) HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating procedures.

(t) The State survey agency may revise an IDR recommendation as a result of a review and subsequent determination that the IDR recommendation may violate a federal law, regulation, or State of Texas rule.

(u) HHSC may contract with an appropriate disinterested organization to adjudicate disputes between a provider and the State survey agency. Texas Government Code §2009.053 does not apply to the selection of an appropriate disinterested organization. For purposes of this section, a reference to HHSC with respect to HHSC's role in the IDR process includes an organization with which HHSC has contracted for the purpose of performing IDR, and a contracted organization is bound by the same requirements to which HHSC is bound for the purposes of conducting an IDR. The results of an IDR conducted by a contracted organization serve only as a recommendation to the State survey Agency. The State survey Agency maintains responsibility for and makes final IDR decisions.