



# Informal Dispute Resolution (IDR)

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# Informal Dispute Resolution Mission

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To perform unbiased professional reviews of disputed regulatory matters, as provided by Federal and State statute, based on the information presented by providers and the regulatory agency, and to provide a written recommendation for decision.

# Informal Dispute Resolution Program Functions

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- Informal Dispute Resolution (IDR)
  - Nursing facilities (NF)
  - Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID)
    - Includes SSLCs
  - Assisted Living Facilities (ALF)
- Independent Informal Dispute Resolution (IIDR)
  - NF only

## IDR Process

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- IDR was established by CMS and assigned to the State Survey Agency (DADS Regulatory Services) by the “1864 Agreement”
- Affords providers an informal opportunity to dispute findings cited by the State survey agency
- Initially performed by DADS
- Transferred to HHSC effective January 1, 2002, under provisions of Senate Bill (S.B.) 1839, 77<sup>th</sup> Legislature, 2000
  - HHSC is considered a subcontractor of the State Survey Agency

## Scope of IDR

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**IDR results are recommendations of compliance or non-compliance to the State survey agency**

**Ch. 7 SOM §7212 says...**

# Review process

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- Types of reviews for IDRs
  - Desk
  - Informal conference (Phone or Face-to-Face)
- Conferences provide opportunity for facility representative to emphasize information provided in rebuttal and for reviewers to ask questions/clarification
- No new information may be presented
  - New = information did not exist at the time of the survey

# Review process

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- Facilities can dispute:
  - Information exists that reflects the deficiency/violation should not have been cited or the facility was in compliance
  - Rule interpretation error
  - Incorrect rule cited
  - Statement of deficiencies erroneously displays information
  - Nursing facilities only: Severity and scope of deficiencies cited at Substandard Quality of Care (SQC) or Immediate Jeopardy (IJ)
- Facilities cannot dispute:
  - Surveyor procedures/protocol
  - Alleged surveyor misconduct
  - Penalties imposed
  - Complaints regarding federal/state standards
  - Previously cited deficiencies/violations

## Timeframes - IDR

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IDR Requests are due no later than 10 days from date the 2567/3724 was received (Federal timeframe)

- NF and ICF
  - Supporting documentation is due 5 days from the date the IDR request is received
  - Conferences must be held by the 22<sup>nd</sup> calendar day
  - 30 days to complete
- ALF
  - Supporting documentation is due 15 days from the date the IDR request is received
  - Conference must be held by the 30<sup>th</sup> calendar day
  - 90 days to complete

## IIDR Process

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- Established by the Affordable Care Act in 2011
  - Per CMS -- Process must be performed by an entity organizationally separate of the State survey agency (DADS Regulatory Services)
    - CMS must approve any changes to organization/policy
  - HHSC was selected to perform the process, effective January 1, 2012
- Primary differences between IIDR and IDR
  - Timeframe – 60 days (IIDR) to complete vs 30 (IDR)
  - The Long-term care Ombudsman and the involved resident/resident representative have the opportunity to provide written comments in the IIDR process
  - DADS reviews HHSCs recommendation and distributes the final decision in the IIDR process whereas HHSC distributes a recommendation to both parties in the IDR process

## Timeframes - IIDR

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The offer for the IIDR process is provided to the facility by CMS

- The facility must request the IIDR process within 10 calendar days from receipt of the offer
- 10 days from date of IIDR request to submit supporting documentation
- Phone conference must be held by the 30<sup>th</sup> calendar day
- 60 days to complete

All Federal timeframes

## Relevant Authorities

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- Title 42 Code of Federal Regulations (CFR) Part 488, Subpart E (Survey and Certification of Long-Term Care Facilities) 488.331 - Informal Dispute Resolution and 488.431 - Independent Informal Dispute Resolution
- The Centers for Medicare & Medicaid Services (CMS) State Operations Manual (SOM) Chapter 7 – Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities, 7212 – Informal Dispute Resolution, Rev. 118, 6-12-14.
- Texas Government Code (Tex Gov't Code) Title 4, Executive Branch Subtitle I. Health and Human Services, Chapter 531. Health and Human Services Commission, Subchapter A. General Provisions; Organization of Commission, Sec. 531.058. Informal Dispute Resolution for Certain Long-Term Care Facilities.

## Relevant Authorities

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- Texas Administrative Code (TAC) Title 1. Administration, Part 15. Texas Health and Human Services Commission, Chapter 393 Informal Dispute Resolution and Informal Reconsideration, Rule §393.1 Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) and Rule §393.2 Informal Dispute Resolution for Assisted Living Facilities
- Chapter 242 Texas Health and Safety Code Title 4, Subtitle B, Chapter 242 (Convalescent and Nursing Homes and Related Institutions), Subchapter C.
- Chapter 247 Texas Health and Safety Code Title 4, Subtitle B, Chapter 247 (Assisted Living Facilities), Subchapter C.
- Chapter 252 Texas Health and Safety Code Title 4, Subtitle B, Chapter 252 (Intermediate Care Facilities for Individuals with an Intellectual Disability), Subchapter C.

## Legislative updates

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- S.B. 914
  - Council formed and meetings started
- S.B. 304
  - Procurement in process

# Informal Dispute Resolution

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