906 KAR 1:120. Informal dispute resolution.

RELATES TO: 42 C.F.R. 488.301, 488.331
STATUTORY AUTHORITY: KRS 194A.050(1), 42 C.F.R. 488.331
NECESSITY, FUNCTION, AND CONFORMITY: 42 C.F.R. 488.331 requires the cabinet to establish an informal dispute resolution process to be used by a provider to informally dispute a finding of deficiency at a nursing facility or skilled nursing facility. This administrative regulation establishes the informal dispute resolution process and expands the process to all long-term care facilities.

Section 1. Definitions. (1) "CMS" means the Centers for Medicare and Medicaid Services.
(2) "Deficiency" means a failure to meet either a state licensure requirement or a federal requirement for participation in the Medicare or Medicaid Program.
(3) "Enforcement action" means a remedy applied to effect prompt compliance by a provider with program requirements.
(4) "IDR" means informal dispute resolution.
(5) "IDR coordinator" means a CMS-certified surveyor employed by the Office of Inspector General, Division of Long-term Care, designated by the Director of the Division of Long-term Care to serve as the IDR coordinator.
(6) "Immediate jeopardy" is defined in 42 C.F.R. 488.301.
(7) "Inspector general" means the inspector general or his designee.
(8) "Plan of correction" means a description of actions by a provider to correct a deficiency.
(9) "Provider" means a "long-term care facility" as defined in KRS 216.510.
(10) "Scope and severity assessment" means the letter designation assigned to a federal deficiency to represent the level of:
(a) Actual or potential impact to resident outcome; and
(b) Number of residents affected.
(11) "Statement of deficiencies" means the written notification to the provider describing how the provider fails to meet regulatory requirements.
(12) "Substandard quality of care" is defined in 42 C.F.R. 488.301.

Section 2. Request for Informal Dispute Resolution. (1) A provider shall have one (1) opportunity to informally dispute a cited deficiency or scope and severity assessment that constitutes substandard quality of care or immediate jeopardy.
(2) The provider requesting an informal dispute resolution shall select one (1) of the following appropriate formats:
(a) A desk review which shall be available for a cited deficiency;
(b) A telephone conference review which shall be available for a cited deficiency; or
(c) A panel review which shall be available for:
1. A cited deficiency with a scope and severity assessment of G, H, I, J, K, or L;
2. A cited deficiency with a scope and severity assessment that constitutes a substandard quality of care;
3. A cited deficiency that results in an enforcement action by the Cabinet for Health Services;
4. A federal deficiency cited at the condition level; or
5. A disputed deficiency cited in conjunction with a deficiency qualifying for a panel review.
(3) A provider may request IDR upon receipt of the statement of deficiencies.
(4) A request shall be in writing and shall:
(a) Specify the deficiency in dispute;
(b) Explain and provide a detailed basis for the dispute; and

(c) Specify the format desired.

(5) Unless the provider requests a five (5) calendar day extension pursuant to paragraph (c) of this subsection, documentation in support of the provider's position shall be attached to the request.

(a) A provider requesting a panel review IDR shall submit five (5) copies of the required documentation and shall:

1. Highlight or otherwise mark specific information pertinent to the disputed deficiency; and
2. Annotate with the specific state licensure deficiency or federal deficiency in dispute.

(b) A provider requesting a desk or telephone conference review shall submit two (2) copies of the required documentation and shall:

1. Highlight or otherwise mark specific information pertinent to the disputed deficiency; and
2. Annotate with the specific state licensure deficiency or federal deficiency in dispute.

(c) A provider may request an additional five (5) calendar days to provide documentation in support of their position by attaching a statement requesting the five (5) calendar day extension to the request for IDR.

(d) Documentation not submitted at the time of the request for IDR, or within a requested five (5) calendar day extension, shall not be reviewed.

(6) The request and attachments shall be delivered, on or before the mandated return date for the plan of correction, to the IDR coordinator at the Office of Inspector General, Division of Long-term Care, CHR Building, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621.

(7) A request for IDR shall not delay an enforcement action.

Section 3. Review Process. (1) The IDR coordinator shall receive and review each request for an IDR, and:

(a) Conduct a desk review, if requested by the provider;

(b) Schedule a telephone conference review, if appropriate and requested by the provider; or

(c) Schedule a panel review, if appropriate and if requested by the provider.

(2) If a desk review is conducted the IDR coordinator shall:

(a) Review documentation submitted by the provider; and

(b) Make a recommendation to the inspector general to:

1. Uphold the cited deficiency;
2. Modify the cited deficiency by deleting a finding;
3. Modify the cited deficiency by lowering the scope and severity determination;
4. Modify the cited deficiency by changing the tag number; or
5. Delete the cited deficiency.

(3) If a telephone conference review is conducted, the IDR coordinator shall:

(a) Review documentation submitted by the provider;

(b) Conduct a telephone conference call with the provider to:

1. Receive verbal comments relating to the disputed deficiency; and
2. Seek answers to questions relating to the disputed deficiency; and

(c) Make a recommendation to the inspector general to:

1. Uphold the cited deficiency;
2. Modify the cited deficiency by deleting a finding;
3. Modify the cited deficiency by lowering the scope and severity determination;
4. Modify the cited deficiency by changing the tag number; or
5. Delete the cited deficiency.

(4) If a panel review is conducted:

(a) The panel shall consist of:

1. The IDR coordinator serving as a nonvoting panel moderator;

2. Two (2) CMS certified surveyors who:

a. Are employed by the Office of Inspector General; and

b. Were not responsible for citing the deficiency in dispute; and

3. A person currently engaged in the provision of long-term care services who has no affiliation with the provider disputing a deficiency.

(b) The members of the panel shall review documentation submitted by the provider prior to the panel review meeting;

(c) Unless the provider requests and the IDR coordinator agree to an expanded time period, the panel review meeting shall not exceed one (1) hour. The decision to expand the time period for the IDR shall be based on the number and complexity of the deficiencies to be disputed;

(d) The provider may present additional oral information relating to the disputed deficiency;

(e) A member of the survey team responsible for citing the disputed deficiency may respond to the information presented by the provider;

(f) A panel member may ask questions of either the provider or the survey team member;

(g) A person presenting information to the panel or answering questions of the panel may refer to relevant reference materials

(h) The provider may present an oral summary of its response to a disputed deficiency;

(i) After the panel review meeting has concluded, the panel shall review all of the information presented relating to the disputed deficiency;

(j) The voting members of the panel shall make a recommendation to the inspector general to:

1. Uphold the cited deficiency;

2. Modify the cited deficiency by deleting the finding;

3. Modify the cited deficiency by lowering the scope and severity assessment;

4. Modify the cited deficiency by changing the tag number; or

5. Delete the cited deficiency.

(5) The inspector general shall make the final determination to:

(a) Uphold the cited deficiency;

(b) Modify the cited deficiency by deleting the finding;

(c) Modify the cited deficiency by lowering the scope and severity assessment;

(d) Modify the cited deficiency by changing the tag number; or

(e) Delete the cited deficiency.

(6) A determination and the reasons supporting the determination made by the inspector general as a result of the desk review, telephone conference, or panel review IDR shall be mailed to the provider within thirty-five (35) working days of receipt of a request for IDR.

(7) If the Inspector General makes a determination that is different from the recommendation of the IDR coordinator or the IDR panel:

(a) The notification required by subsection (6) of this section shall also include the specific reasons for the difference; and

(b) The provider shall be given an opportunity for an in-person meeting with the Inspector General to present documentation originally submitted to the IDR Coordinator or the IDR panel and seek a reconsideration of the determination. The meeting shall be conducted to allow sufficient time to ensure that a reconsidered determination can be mailed to the provider within thirty-five (35) working days of the receipt of the request for IDR.

(8) If a cited deficiency was modified as a result of the informal dispute resolution process the provider may request the Office of Inspector General, Division of Long-term Care to provide:

(a) A copy of the statement of deficiencies indicating each modification by:

1. Striking through deleted language; and

2. Underlining new language; or

(b) A new statement of deficiencies containing the modified deficiency. If a new statement of de-

ficiencies is issued the provider will be required to complete a new plan of correction.

(9) If a cited deficiency was deleted the provider may request the Office of Inspector General, Division of Long-term Care to provide:

(a) A copy of the statement of deficiencies indicating each deletion; or

(b) A new statement of deficiencies absent the deleted deficiency. If the new statement of deficiencies contains other cited deficiencies that were not deleted the provider shall be required to complete a new plan of correction. (24 Ky.R. 1196; 1687; eff. 2-17-1998; 28 Ky.R. 2101; 2351; eff. 4-30-2002; 30 Ky.R. 723; 1309; 1768; eff. 1-23-2004; Crt eff. 1-11-2019.)