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DATE: April 9, 2008

DQA Memo 08-008
Supersedes Memos
DDES-BQA 06-005
DDES-BQA 05-005
DDES-BQA 04-020

TO: Nursing Homes
Facilities for the Developmentally Disabled

NH 06
FDD 05

FROM: Paul Peshek, Director
Bureau of Nursing Home Resident Care

VIA: Otis Woods, Administrator
Division of Quality Assurance

Informal Dispute Resolution (IDR) Update

OVERVIEW This memo describes the revised procedure under which health care facilities may work to informally resolve differences they have with citations issued by the Division of Quality Assurance. Substantive revisions are bolded. The procedure takes effect Monday, April 14, 2008. Significant changes include:

1. A new contract was awarded to the Michigan Peer Review Organization (MPRO) on February 1, 2008 to conduct independent review of all requests for IDR.
2. Due to the small number of requests for in-person IDR and the cost and scheduling difficulties associated with in-person meetings, DQA no longer offers in-person IDR.
3. The charge for IDR has been modified.
 - * Desk review DQA will pay 100%.
 - * Telephone review Provider pays \$100.00, DQA pays the remainder.
 - * Expert reviewer Provider pays \$105.00 per hour, DQA pays \$145.00 per hour.
4. The charge for telephone review is sent directly to DQA. Fee for additional expert reviewer time is sent to MPRO.

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). Since then, we have refined this process. This memo reflects the **MOST RECENT** changes to the process.

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 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 to resolve differences:

- Outside of formal litigation, thereby avoiding the costs of protracted litigation (however, 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.

With the approval of the Centers for Medicare and Medicaid Services (CMS), the DQA contracted with the Michigan Peer Review Organization (MPRO, Farmington Hills, MI) to conduct independent review of all IDR requests, effective August 16, 2004. MPRO uses a systematic review process and a decision algorithm to arrive at a determination. This includes reviewing the regulatory standard, the statement of deficiency, and information provided by the health care facility. If an expert opinion is requested, MPRO can draw on a cadre of consultant reviewers to provide advice and judgments on specific aspects of a cited deficiency. Upon completion of IDR reviews, MPRO 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), 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 on 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.

It is to everyone's benefit that the process for reviewing disputed citations occurs as quickly as possible. The facility must follow the time frames below if the provider is requesting IDR:

(1) **Timeframes and Procedures for Requesting IDR**

- (a) A facility that wishes to request a telephonic or desk review must:
- Request IDR by the tenth calendar day following receipt of the SOD (or the next working day if the due date is on a weekend or holiday). The day the facility receives the SOD is Day 0; and
 - Provide supporting documentation to MPRO by the tenth calendar day following receipt of the SOD (or the next working day if the due date is on a weekend or holiday). 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 made by FAX and directed to DQA Central Office, Attention: IDR Intake. (Phone and FAX numbers are listed at the end of this memo. The fax line is available 24 hours/day). The request for IDR should also be included in the IDR review packet received by MPRO on or before Day 10.
- (c) The request for IDR must be on a fully completed IDR Request Form (OQA-2514 Rev. 04/08), available as an appendix to the SOD transmittal letter.
- (d) Upon receipt of the request for IDR, MPRO will note the type of review requested (desk or telephonic) and assign an IDR reviewer.
- (e) The facility will mail the IDR review packet (including a copy of the original IDR Request Form) to MPRO at 22670 Haggerty Road, Suite 100, Farmington Hills, MI, 48335-2611, Attention: IDR Review.

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 short time frame means that requests for IDR and supporting documentation received by MPRO after Day 10 will not be considered for IDR.

(2) **Submitting Documentation to MPRO**

(a) The IDR review packet must include:

- A fully completed IDR Request Form (OQA-2514 Rev. 04/08), available as an appendix to the SOD transmittal letter;
- Two copies of the SOD without a Plan of Correction; and
- Two complete copies of your supporting documentation for IDR review.
- **For facilities requesting expert review by a physician, pharmacist, psychologist, etc.; an original signed Facility Service Agreement with MPRO for Wisconsin IDR form.**

(b) When submitting supporting documentation to MPRO, the 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 why the material was not shown to the survey team during the discussion of survey findings.

Note: If requested, MPRO will sign and return a Business Associate Agreement received from a facility requesting a telephonic review. Please mail the Business Associate Agreement directly to MPRO, 22670 Haggerty Road, Suite 100, Farmington Hills, MI, 48335, and Attention: IDR Review.

(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, MPRO will conduct **only desk reviews** for federal citations at a scope and severity level of A, B, and C - Grid Level 1 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 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. MPRO will provide these **reviewers** and bill the facility for their services at a rate of \$105.00 per hour, with a ½ hour minimum of review time. **Please refer to the [Facility Service Agreement with MPRO for Wisconsin IDR form](#) attached to this memo.**
- (d) After receiving a timely request for a telephonic IDR, the MPRO 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 MPRO 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 telephone 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 MPRO may have about the material. This is an informal telephone conference. The MPRO 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 Directors (or their designees) 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 WDHFS, or a MPRO project manager may request to attend an IDR. The MPRO reviewer will inform facilities prior to, or upon convening the

IDR if an Ombudsman, federal representative or MPRO manager will be present. The IDR session can be taped by any party wishing to do so. In this case, a copy should be made available to the other parties. All participants will be notified at the start of the IDR that a tape is being made, and that a copy of the tape will be made available to those wishing a copy. A copy of the tape and its transcription, if transcribed, will be made a part of the permanent record.

(4) Post-IDR Session

- (a) MPRO will submit their IDR recommendations to the appropriate DQA Regional Office no later than 21 calendar days following receipt of the SOD.
- (b) As directed by CMS, DQA will retain the responsibility to review, and the authority to overturn, MPRO's IDR recommendation(s). DQA will review the recommendation(s) and will communicate the final IDR decision, including MPRO's recommendation(s) to the facility no later than 24 calendar days following receipt of the SOD. A copy of the MPRO Independent Review Recommendation 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, the MPRO 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."

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.

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 it.

(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 MPRO.
- Applies to any new citation issued as a result 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 as a result 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 MPRO.
- Does not prevent providers licensed under ch. HFS 132 or ch. HFS 134 from filing a formal state appeal under section 50.04(4) (e), Wis. Stats. Appeals must be made within ten 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) (b) and (c) 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 within ten calendar days from receipt of the SOD.
- An acceptable Plan of Correction must explain how deficient practices will be corrected vis-à-vis residents identified on the SOD, how other residents who are at risk will be identified, what measures will be put into place to ensure that the deficient practice will not recur, and how the facility will monitor its

corrective actions to ensure that the deficient practice is being corrected and will not recur.

- No Plan of Correction from any licensed provider may malign an individual.
 - Failure to submit an acceptable Plan of Correction for each federal tag and state code will prompt the Division to initiate a recommendation for termination of the provider agreement, revocation of state license, or both. For federally certified nursing homes, failure to submit an acceptable Plan of Correction for a federal deficiency may also lead to the imposition of alternative enforcement remedies.
- (b) For federally certified nursing homes, the IDR process cannot, in general, 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 as a result 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 will lower the category of a Civil Money Penalty.

(6) Charge for IDR

DESCRIPTION	AMOUNT	PAID BY	PAID TO
Type of Review			
Desk	\$0 No charge to provider	DQA	MPRO
Telephone	\$100 per IDR	Provider	DQA
Type of Reviewer			
Professional	\$195 per hour	DQA	MPRO
Expert*	\$145 per hour	DQA	MPRO
	\$105 per hour	Provider	MPRO

***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 directly responsible to the contractor for \$105 per hour.**

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

IDR REQUESTS:

If you wish to request IDR, please fax the IDR intake form to:

DQA, Central Office
Bureau of Technology, Licensing and Education
IDR Intake, Attention: Gail Hansen
Ph: 608-266-2966
Fax: 608-267-7119

Attachments:

- **Attachment A** – IDR Process Flow Chart
- **Attachment B** - Informal Dispute Resolution Request Form OQA-2514 (Rev. 04/08)
- **Attachment C** – Facility Service Agreement with MPRO for Wisconsin IDR

This memo with attachments can be accessed on the Internet at:
http://dhfs.wisconsin.gov/rl_DSL/Publications/BQAnodMems.htm