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DIVISION OF QUALITY ASSURANCE

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Date: April 3, 2012

DQA Memo 12-003

To: [Federally Certified Nursing Homes](#)

NH 03

From: Juan Flores, Director
Bureau of Nursing Home Resident Care

Via: Otis Woods, Administrator
Division of Quality Assurance

Independent Informal Dispute Resolution (Independent IDR)

Overview

On March 23, 2010 new regulations were added at 42 CFR, Sections 488.331 and 488.431, effective January 1, 2012, resulting in the development of an Independent Informal Dispute Resolution (Independent IDR) process for certified nursing homes. The Independent IDR process *is in addition* to the current Informal Dispute Resolution (IDR) process. The traditional and current IDR process is virtually unaffected by the implementation of the additional Independent IDR.

This memorandum describes the procedure under which federally certified nursing homes may dispute certain deficiencies using the Independent IDR process. Independent IDR will only apply to standard and/or complaint surveys that initiate an enforcement action for which a civil money penalty (CMP) is imposed and subject to being placed in escrow. In order to phase in the new CMP collection and escrow provisions, CMS initially intends to collect and escrow only those CMP which are imposed as a result of the most serious deficiencies. CMP which are imposed for surveys in which a deficiency or deficiencies were cited at a scope and severity level of G or above will be subject to the combined CMP collection and escrow provisions and be eligible for Independent IDR. For surveys in which all of the deficiencies were cited at a scope and severity level that are less than G, any CMP imposed for those deficiencies will continue to be collected under the current IDR process without a requirement for Independent IDR.

The Centers for Medicare & Medicaid Services (CMS) will notify nursing homes in the Notice of Imposition of CMP letter of their opportunity for Independent IDR. In Wisconsin, Independent IDR is conducted by MPRO at no cost to the nursing home.

The Independent IDR process is separate from the Informal Dispute Resolution (IDR) process that occurs immediately after the Statement of Deficiency (SOD) is issued. If the IDR process is completed before the facility receives the Notice of Imposition of CMP letter from CMS, the facility will have an opportunity to request Independent IDR for the same deficiency citations. If the facility receives the Notice of Imposition of CMP letter prior to the completion of the IDR, the facility will be asked to choose either the IDR process or the Independent IDR process. The IDR process is complete when the facility is notified in writing of the results of the IDR by the Division of Quality Assurance (DQA).

The Independent IDR process is very similar to the IDR process. A comparison of some of the differences between IDR and Independent IDR is attached to the memorandum.

Timeframes and Procedures for Requesting Independent IDR

The CMS Notice of Imposition of CMP letter will inform the facility that they may send a written request for Independent IDR to MPRO. The letter will include information on when the request must be received by MPRO.

The written request will be expected to include:

- The type of Independent IDR requested, either telephone review or desk review,
- Each federal tag being disputed,
- The name of the facility contact person and the person's telephone number including area code,
- A copy of the SOD *without* the Plan of Correction, and
- Supporting documentation for Independent IDR review. The supporting documentation should include:
 - The reason each federal tag is being disputed.
 - The desired outcomes for each disputed federal tag, for example, withdraw the citation, withdraw specific examples, or change the scope/severity of the tag.
 - The relevance of the documentation to the dispute. Material that does not 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.

This information must be sent to MPRO at:

MPRO

Attention: WI Independent IDR Review Specialist

22670 Haggerty Road, Suite 100

Farmington Hills MI 48335-2611

In addition, a copy of the written request must be faxed to Gail Hansen, Wisconsin Division of Quality Assurance, Independent IDR Intake, at FAX # (608) 267-7119 within 10 calendar days of receipt of the CMS Notice of Imposition of CMP letter. Do not fax a copy of the SOD or the supporting documentation to DQA.

Questions regarding the Independent IDR process conducted by MPRO should be directed to:

Charlene Kawchak-Belitsky, RN, BSN, NHA
MPRO, Independent IDR Project Manager
Phone: (248) 465-1038
Fax: (248) 305-7093
ckbelitsky@mpro.org

Independent IDR Session

Upon timely receipt by MPRO of a request for Independent IDR, MPRO will schedule the telephone review or complete the desk review. The purpose of the call is to allow the facility to provide a brief overview of the material it has submitted and to answer any questions MPRO may have about the material. The provider may explain how and why it disagrees with the Statement of Deficiency. The call is generally limited to one hour.

DQA Regional Field Operation Directors (or their designees) and/or attorneys representing the facility may participate in the Independent IDR. In some cases, the Ombudsman, a representative from CMS or DQA, or an MPRO project manager may attend an Independent IDR review. The MPRO reviewer will inform the facility upon convening the call if additional persons are present.

The Independent IDR session may be taped by any party. All participants will be notified at the start of the Independent 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.

Involved Resident/Resident Representative/Ombudsman Comments

In accordance with 42 CFR 448.431 (a) (3), DQA will notify any involved resident or the resident's representative and the Ombudsman of the facility's request for Independent IDR and their opportunity to submit written comments to MPRO for review. CMS defines an involved resident as a resident who was the subject of a complaint or who filed a complaint that led to a deficiency that is the subject of Independent IDR. The resident representative is defined as either the resident's legal representative or the individual filing a complaint involving or on behalf of a resident. The involved resident or the resident's representative will receive that portion of the Statement of Deficiency that addresses the care the resident received at the facility.

Post-Independent IDR Session

MPRO will submit their Independent IDR recommendations to DQA no later than 40 calendar days following receipt of the request for Independent IDR from the facility. As directed by

CMS, DQA will review the recommendations from MPRO. If DQA agrees with the recommendations, DQA will send written notification of the final decision to the facility within 5 calendar days of receipt of the Independent IDR recommendation from MPRO. If DQA disagrees with one or more of the recommendations, final determination will be made by the CMS Regional Office. DQA will send written notification of the final decision to the facility within 5 calendar days of receiving the final decision from CMS but no later than 60 calendar days following receipt of the facility's request for Independent IDR.

When changes are made to the SOD, the facility will be sent a "clean copy" of the original SOD. The facility is responsible for ensuring its Plan of Correction is transferred to the "clean" SOD and returned to the Division of Quality Assurance Regional Office.

Questions regarding this information should be directed to 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

[Comparison of some of the differences between IDR and Independent IDR](#)