INFORMAL DISPUTE RESOLUTION (IDR) PROCESS FOR MEDICARE-CERTIFIED HOME HEALTH AGENCIES (HHA) and HOSPICES

Division of Quality Assurance
P-00842 (01/2024)

Introduction

The final rule on alternative sanctions for HHAs and Hospices with Condition-level deficiencies was published in 2012 and is available at http://www.gpo.gov/fdsys/pkg/FR-2012-11-08/pdf/2012-26904.pdf and https://public-inspection.federalregister.gov/2023-14044.pdf respectively. These rules allows for the imposition of civil money penalties (CMP), directed in-service training, directed plan of correction, suspension of payment, and temporary management, and offers HHAs the option to request an informal opportunity to dispute Condition-level survey findings warranting a sanction.

The Division of Quality Assurance (DQA) has contracted with iMPROve Health to conduct independent review of IDR requests. iMPROve Health uses a systematic review process and a decision algorithm to arrive at a determination. This includes reviewing the regulation, the statement of deficiency, and information provided by the home health agency and hospice. Upon completion of IDR, iMPROve Health will provide DQA with written recommendations that may include the following: withdraw citations, keep citations as written, or modify citations.

The process does not alter or delay the required timetables associated with certification termination or other adverse action. This informal process does not limit the legal appeal processes that are afforded agencies under the federal laws and regulations. Allegations concerning surveyor conduct during the survey should not be reported under this process, but rather to the Bureau of Health Services Acute Care Compliance Section, Section Manager or Bureau Director.

The IDR process begins during the survey with communication between the surveyor(s) and the agency. 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. If you think this process is not occurring during a survey, we ask that you immediately contact the appropriate Section Manager. Surveyors also meet with the provider at the exit conference to present a preliminary summary of the survey findings.

We encourage agencies 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. Agencies may also provide additional information to the surveyor between the date of the exit conference and the date any deficiencies are served.

Once the Statement of Deficiencies (SOD) is received, agencies that disagree with Condition-level deficiencies may request that differences be resolved through IDR. It is to everyone's benefit that the process for reviewing disputed deficiencies occurs as quickly as possible. The agency must follow the time frames below when requesting IDR:

(1) Timeframes and Procedures for Requesting IDR

(a) An agency that wishes to request a telephone or desk review must:

- Request IDR on or before the 10th calendar day following receipt of the SOD. The day the agency receives the SOD is Day 0.
- Provide supporting documentation to iMPROve Health on or before the 10th calendar day following receipt of the SOD.

Materials received after Day 10 will not be considered during the IDR review.

(b) The request for IDR must be made on a fully completed DQA form F-01328, *Informal Dispute Resolution (IDR) Request for Medicare-certified Home Health Agency (HHA) and Hospice.*

(c) The request for IDR form should be emailed to DHSDQAIDRIntake@dhs.wisconsin.gov. If you are unable to email this form, fax the form to DQA Central Office, Attention: IDR Intake. (Phone and fax numbers are

listed at the end of this publication. The request for IDR should also be included in the IDR review packet received by iMPROve Health on or before Day10.

(d) The agency may:

- Electronically submit the IDR review packet through iMPROve Health's Secure IDR Portal. Instructions are provided at www.improve.health/idr
- Submission of the IDR review packet is only accepted by electronic submission through iMPROve Health's Secure IDR Portal.

(e) Upon receipt of the request for IDR, iMPROve Health will note the type of review requested (desk or telephone review) and assign an IDR reviewer.

NOTE: The State Operations Manual allows agencies 10 calendar days from receipt of the SOD to submit a written request for IDR, and to document why specific federal deficiencies are being disputed.

(2) Submitting Documentation to iMPROve Health

(a) The IDR review packet must include:

- A fully completed DQA form F-01328, *Informal Dispute Resolution (IDR) Request for Medicare-certified Home Health Agency (HHA) and Hospice* available as an attachment to the SOD transmittal letter.
- One copy of the SOD without a Plan of Correction.
- One copy of the patient and staff identifier lists, and
- One complete copy of your supporting documentation for IDR.

Tips for submitting supporting documentation:

- Number all pages --- for example: Narrative, page 1 of 6; Exhibit 1, Resident #3, page 1 of 4; page 2 of 4, etc. Also check for ability to read and clarity.
- Highlight or circle areas you are calling attention to in your review packet.

(b) When submitting supporting documentation to iMPROve Health, the agency must include the following information:

- The specific reason *each* federal Condition tag is being disputed, e.g., disagreement with the tag that was chosen, 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 Condition, e.g., withdraw the citation, withdraw specific examples, or change the federal tag. 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 agency should explain, when applicable, why the material was not shown to the survey team during the discussion of survey findings.

(3) The IDR Session

(a) An agency may request IDR by a reviewer with expertise related to specific concerns that are identified in the SOD, such as a physician, pharmacist, psychologist, etc.

(b) After receiving a timely request for a telephonic IDR, the iMPROve Health IDR reviewer will schedule the call as soon as practicable. The call will be held on a mutually-agreed-upon date**.**

(c) The IDR call will be limited to one hour, unless the iMPROve Health 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, agencies are encouraged to prioritize their concerns and present new information succinctly.

(d) 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 agency to provide a brief overview of the material it has submitted, and to answer any questions that iMPROve Health may have about the material. This is an informal telephone conference. The iMPROve Health 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 SOD with which he/she disagrees. The disagreement may be with either statement of fact or surveyor conclusions.

(e) DQA Section Manager (or their designees) and/or attorneys representing the agency may participate in the IDR. In some cases, a representative from CMS or the Wisconsin Department of Health Services or a iMPROve Health project manager may request to attend an IDR. The iMPROve Health reviewer will inform agencies prior to, or upon convening the IDR, that a federal representative or iMPROve Health 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) iMPROve Health will submit their IDR recommendations to the DQA Central 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, iMPROve Health's IDR recommendation(s). DQA will review the recommendation(s) and will communicate the final IDR decision, including iMPROve Health 's recommendation(s) to the agency no later than 24 calendar days following receipt of the SOD. A copy of the iMPROve Health Independent Review Recommendation will be sent to the agency upon completion of the IDR process.

(c) Amending the Statement of Deficiency: When changes are made to the SOD, the iMPROve Health IDR reviewer will ask whether the agency 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 home health agency 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.

In these cases, or where a request is not made by the agency 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.

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 agency must file a new request for

hearing if the "clean" SOD is subject to appeal and the agency wishes to appeal it.

(5) Availability of IDR

- Applies to all Condition-level deficiencies issued by DQA. It does not apply to a re-cited citation where the previous citation has already gone through IDR. Upon receipt of an IDR request for a citation for which IDR is not applicable, DQA will notify iMPROve Health**.**
- Applies to any new citation issued as a result of IDR. A "new" citation means a deficiency that was not known before the IDR or substantial changes were made as a result of IDR. A deficiency is substantially changed when facts are materially altered, and the information is cited under a different federal regulation.
- A deficiency is substantially changed when facts are materially altered, and the information is cited under a different federal regulation.
- Does not exempt an agency from submitting an acceptable Plan of Correction for each Condition on or before the 10th calendar day following receipt of the SOD. The day the agency receives the SOD is Day 0.
- No IDR Documents from any licensed/certified provider may malign an individual.

For all questions related to IDR, survey and enforcement process, contact the DQA Central Office Section Manager at (608) 266-0269.

If you wish to request IDR, email the IDR request form to DHSDQAIDRIntake@dhs.wisconsin.gov.

If you are unable to email the IDR request form, fax the form to: DQA, Central Office
ATTN: IDR Intake Coordinator
Fax: (608) 267-0352