

<b>Colorado Department of Public Health and Environment Health Facilities and Emergency Medical Services Division Policy Manual</b>		Section:  Part:
Subject:	<b>INFORMAL DISPUTE RESOLUTION</b>	Page:
Date: Revised September 2009	<input type="checkbox"/> Replacement page(s)	of part _____
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**SUMMARY**

This Policy & Procedures document addresses the manner in which the Health Facilities and Emergency Medical Services Division (the “Division”) provides for Informal Dispute Resolution (“IDR”) of health and life safety deficiencies for long-term care (“LTC”) facilities<sup>1</sup> that are certified to receive payment under Medicare or Medicaid programs, and non-long term care (“Non-LTC”) providers, including assisted living residences (“ALRs”).

Title 42 CFR Section 488.331 and State Operations Manual (SOM) Section 7212 and Section 2728 provide authority for IDR for LTC facilities and Federally-certified non-LTC facilities and agencies, but do not specify how the IDR process is to be implemented. There is no legal authority requiring the Division to provide an IDR process for other non-LTC providers and ALRs.<sup>2</sup> Regardless of the absence of any other legal authority or requirement, the Division recognizes the importance of providing a mechanism by which all non-LTC providers and ALRs may petition for review of cited deficient practice as a result of survey and complaint investigations.<sup>3</sup>

This policy addresses IDR for providers as follows:

**ATTACHMENT I** - IDR procedures for LTC/ALRs.

Except as set forth in ATTACHMENT I, a committee shall conduct the initial review and issue recommendations regarding IDR requests. See **ATTACHMENT I** for the procedural and substantive provisions for these facilities.

**ATTACHMENT II** – IDR procedures for Programs other than LTC/ALR.

The Section Chief, Program Manager or designee, following initial review by the author of the deficiency, shall review the IDR request. See **ATTACHMENT II** for the procedural and substantive provisions for these programs.

**ATTACHMENT III** - IDR procedures for Life Safety Code (LSC) violations

One impartial inspector from the LSC program shall conduct the review and issue recommendations regarding IDR requests. Recommendations may be forwarded to the Program Manager. See **ATTACHMENT III** for the procedural and substantive provisions.

<sup>1</sup> LTC facilities that are state-licensed addressed only to a limited extent in this policy.

<sup>2</sup> There is a limited exception to this provided in Section 25-27-106, C.R.S. (2002). This is addressed in Attachment **I Part B**.

<sup>3</sup> The exception to this is IDR for hospitals; the Division does not provide IDR for citations resulting from federal hospital surveys. The regional office of the Centers for Medicare and Medicaid Services provides IDR following such surveys.

## **PURPOSE**

The purpose of IDR is to provide facilities and/or agencies an informal opportunity to challenge the **facts and evidence** surrounding the disputed deficiencies. **This IDR process constitutes an informal administrative process that in no way is to be construed as a formal evidentiary hearing.**

The Division does not provide for any telephone or in-person discussion between the provider and the Division regarding the merits of the deficiency after it has been issued. Regardless of the specific IDR procedures followed and set forth in **ATTACHMENTS I – III**, final determination of disputed deficiencies is vested in the Division.

Failure of the Division to meet any of the time frames identified in this Policy shall not invalidate the deficiency.

Regardless of the specific IDR procedures followed and set forth in **ATTACHMENTS I – III**, the IDR process may **not** be used to challenge any other aspect of the survey process, including: (1) the classification of deficiencies (i.e., scope and severity) except as specified; (2) the remedy sought to be imposed; (3) failure of the survey team to comply with a requirement of the survey process; (4) inconsistency of the survey team in citing deficiencies among facilities and/or agencies; or (5) inadequacy or inaccuracy of the IDR process.

### **Allowable Topics For IDR<sup>4</sup>**

1. Cited deficiencies that require a plan of correction;
2. Severity and scope assessments of deficiencies that constitute Substandard Quality of Care or Immediate Jeopardy;
3. Continuation of the same deficiency at revisit;
4. New deficiency at revisit.

### **Topics Ineligible For IDR**

1. Severity and scope assessments of deficiencies with the exception of deficiencies that constitute Substandard Quality of Care or Immediate Jeopardy.
2. Deficiencies of LTC nursing facilities that arise under state regulations. (An impartial Division Representative shall conduct the review.)

## **POST-IDR ACTION FOR ALL PROVIDERS REQUESTING IDR**

### **A. ALL LTC/ALR PROGRAMS**

All LTC and ALR programs for health and life safety surveys require an acceptable POC prior to IDR. (See **ATTACHEMENT I – IDR PROCEDURES FOR LTC/ALR PROGRAMS**)

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<sup>4</sup> Note: See **ATTACHMENT A** for informal review of immediate jeopardy citations. IDR for long term care facilities with deficiencies arising solely under state regulations shall be reviewed internally by the Division.

If the deficiency list is modified during IDR, the original CMS 2567 or statement of deficiencies will be amended to reflect the change. The amendment will be initialed and dated by the chair of the IDR Committee or the Program Manager or designee. The facility will receive a clean (new) copy of the deficiency list, reflecting the IDR amendments.

-If the facility has filed their plan of correction (POC) electronically, a clean copy will be reposted to the Internet. The facility will receive an E-mail notice providing the facility the option to amend their POC (if applicable). The amended copy of the deficiency list will be the releasable copy when the original POC is amended electronically, re-submitted to the Division, and a re-signed page 1 of the CMS 2567 is returned. If the facility elects not to amend its POC and submit a re-signed page 1 of the CMS Form 2567 within the time frame specified in the E-mail, the original deficiency list and POC, annotated to reflect the modifications, will be the releasable copy.

-If the facility did not submit their POC electronically, the facility must sign and return the clean (new) copy of the deficiency list reflecting the IDR amendments. At the same time, the facility may also elect to change the original POC to reflect the IDR changes (if applicable). The clean (new) deficiency list with facility changes to the POC must then be signed and returned to the Division. If the facility elects not to amend its POC and within the time frame specified in the facility letter that accompanied a clean copy of the deficiency list, the original deficiency list and POC, annotated to reflect the modifications, will be the releasable copy.

The clean (new) copy will be the releasable copy only when a clean (new) POC is both provided and signed by the facility. The original deficiency list can be disclosed if the facility does not elect to submit a clean (new) POC.

## **B. PROGRAMS OTHER THAN LTC/ALR**

All programs other than LTC/ALR for health and life safety surveys may record objections to cited deficiencies on the deficiency list with or without submitting a plan of correction (POC). (See **ATTACHMENT II – IDR PROCEDURES FOR PROGRAMS OTHER THAN LTC/ALR**)

If objections filed with or without a POC result in modification of the deficiency list, the original CMS 2567 or statement of deficiencies will be amended to reflect the change(s). The amendment(s) will be initialed and dated by the Section Chief, Program Manager or designee. The IDR chair will amend the deficiencies in Aspen Central Office (ACO) to reflect the change(s) and will notify Information Technology (IT) staff. IT staff will be responsible for reposting the amended deficiency list on the Internet.

The provider will receive a clean (new) copy of the deficiency list, reflecting the IDR amendments.

## **C. ALL PROGRAMS**

A letter identifying the Division's final decision will be sent to the provider via U.S. Mail, within 7 calendar days of the final review of the IDR request. For LTC/ALR programs, the letter will include instructions regarding the return of the clean (new) deficiency list and POC, if applicable. A copy of the letter will be forwarded to the State Ombudsman's program and, if appropriate, CMS and Health Care Policy and Financing (HCPF). For Programs other than LTC/ALR, a copy of the letter will be forwarded, as is appropriate, to either CMS or HCPF. All IDR letters shall be kept in ACO under the survey for which IDR was conducted.

The IDR chair will make changes to the deficiency list. The Section Chief, Program Manager or designee will make necessary changes to any complaint investigation report. The IDR chair, Program Manager or surveyor will notify the responsible support staff, including IT (via email or other written means) when the changes are completed.

Support staff that will monitor return of the clean (new) copy of the deficiency list and POC for LTC and ALR programs.

As part of the Division's quality assurance, data analysis and training activities, an explanation for each amended deficiency shall be communicated to the author of the deficiency by the IDR chair for LTC and ALR programs. The Section Chief or Program Manager will select a method to review IDR results for all programs other than LTC/ALR.

The IDR chair, with the cooperation of the Section Chief or Program Managers, will forward to administrative staff the following information on IDR requests: The date the request was received; the agency/facility name and type of survey; the survey exit date, the date of the IDR review; the tag challenged (and scope and severity if applicable); the outcome of IDR, and the date of the final letter.

Support personnel will track all IDR requests through excel and compile reports on the data from IDR review when requested.

Failure of the Division to meet any of the time frames set forth in the policy and **Attachments I – III** shall not invalidate the intermediate restriction/condition or the deficiency on which it is based.

This Policy & Procedure is subject to change by the Division at any time.

### **ATTACHMENTS**

- I. **ATTACHMENT I** - IDR Procedures for LTC/ALR
  - II. **ATTACHMENT II** - IDR Procedures for Programs other than LTC/ALR
  - III. **ATTACHMENT III** - IDR Procedures for Life Safety Code (LSC) violations
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- A. IDR Procedures for Immediate Jeopardy/Life Threatening citations
  - B. Conflict of Interest Statement
  - C. Code of Conduct Agreement

Approved: \_\_\_\_\_/Date \_\_\_\_\_

## ATTACHMENT I

### IDR PROCEDURES FOR LTC AND ALR

#### A. LTC FACILITIES AND ALR FACILITIES NOT SUBJECT TO INTERMEDIATE CONDITIONS

##### PROCEDURE

A Committee shall conduct initial review and issue recommendations on the IDR request.

##### IDR Committee

A Division staff person who will focus Committee discussion on the disputed deficiency identified in the IDR request and governing regulatory requirements, shall chair the IDR Committee (the “Committee”). This staff person (IDR Chair) will be responsible for resolving issues that may arise regarding Committee policy and procedures and for updating the Committee on directives from the Center for Medicaid and Medicare Services (CMS).

The LTC Committee will be comprised of 7 voting members and 7 alternate members, and other Division personnel as directed by the Director or designee. Except as provided below, voting members shall include two Division representatives, three facility representatives and two representatives appointed from state agencies, such as the Department of Health Care Policy and Financing, Medicaid Fraud Unit, State Ombudsman Program or relevant state licensing board. Except as provided below, alternate members shall include two Division representatives, three facility representatives and two representatives from the state agencies listed above. The Division Director or designee will resolve tie votes by the Committee.

The ALR Committee will be comprised of 5 voting members and 5 alternate members, and other Division personnel as directed by the Director or designee. Except as provided below, voting members shall include one Division representative, two facility representatives, and two representatives appointed from state agencies as set forth above. Except as provided below, alternate members shall include one Division representative, two facility representatives and two representatives from state agencies. The Division Director or designee will resolve tie votes by the Committee.

A representative from the Division, other than the voting and alternate Division members, may sit as a voting member for the Division when both the voting and alternate LTC or ALR committee members from the Division have recused themselves, due to an actual or potential conflict of interest.

Division representatives shall be selected from staff assigned to the Division’s LTC and ALR programs, and shall have at least one year of experience in the Division. LTC and ALR facility representatives shall hold the position of administrator, nursing director, or clinical consultant without broad involvement in multiple facilities, and have at least six months of experience in their position at their current facility.

All Committee members, including those from other state agencies, shall have knowledge of applicable State and/or Federal regulations.

Representatives to the Committee shall be selected by the LTC and ALR Program Managers, with the assistance of the IDR Chair. Selection shall be based on the qualifications and experience of applicants, as well as a review of facility history in the selection of provider representatives. Resumes will be requested from all individuals expressing interest in participating on the Committee. The Division shall maintain a file of applicants for future vacancies.

New Committee members shall attend one Committee meeting prior to formal appointment to the Committee unless the new member has previously observed the Committee and/or is familiar with Committee procedures.

The primary voting members of the Committee shall:

- Attend all Committee meetings
- Engage in fair and impartial review of all IDR requests based upon:
  - The CMS 2567 or Statement of Deficiencies
  - Documentation and/or information relating to the facility's position
  - Surveyor written response to the facility position and/or documentation
- Engage in pre-meeting preparation that allows for pertinent discussion and preparation for voting.
- If unable to attend a meeting or engage in Committee business due to a conflict of interest (see: Conflict of Interest Statement, **ATTACHMENT B**), notify the designated alternate and the Division in sufficient time to enable the alternate to be present and participate in Committee business.

Committee members may be removed from the Committee following three consecutive absences unless such absences are for good cause, as determined by the Division Director or designee.

#### **Alternates**

Alternate members of the Committee shall be of the same class of representation as the voting member for whom he/she was named, and will be invited to attend Committee meetings but are not required to attend unless functioning as a primary voting Committee member. Except as provided below, alternates are not allowed to participate in Committee discussion or sit at the Committee table unless the primary voting member is absent or is required (due to a conflict of interest) to abstain from deliberations. Under these circumstances, the alternate shall comply with expectations for primary voting members of the Committee.

The voting member and the alternate member may elect to share their positions, rotating their attendance or attending each meeting, but dividing the IDR requests.

#### **Requirements and Removal**

Committee members are required to sign a Conflict of Interest Statement (See **ATTACHMENT B**) and a Code of Conduct Agreement (See **ATTACHMENT C**), and are expected to follow Committee procedures. Any member may be removed from the Committee prior to term expiration for violation of the Conflict of Interest Statement, Code of Conduct Agreement or Committee procedures. The Division Director or designee shall make all decisions regarding member removal.

#### **Term**

LTC Committee members shall serve two-year terms, except that non-Division state agency representatives may serve an extended term at the Division Director or his designee's discretion. Two-year members shall serve one year as an alternate member and one year as a primary voting member, unless the voting and alternate members are sharing their positions as set forth above. ALR Committee members shall serve four-year terms, except that non-Division state agency representatives may serve an extended term at the Division Director or his designee's discretion. Members shall serve half their term as an alternate member and half their term as a primary voting member, unless the voting and alternate members are sharing their positions as set forth above.

The Division Director or designee shall address extended absences for good cause by Committee members.

Committee members must understand that a facility may appeal the imposition of remedies, and that Committee members may be called to testify at such appeal.

### **Meeting times and location.**

**IDR for LTC Facilities.** The Committee shall meet the **first Tuesday of each month at 1:30 p.m.** in a room designated by the Division at the Colorado Department of Public Health and Environment (“CDPHE”).

**IDR for ALR Facilities.** The Committee shall meet the **fourth Thursday of each month at 10:00 a.m.** in a room designated by the Division at the Colorado Department of Public Health and Environment (“CDPHE”).

A quorum consisting of three voting members plus the IDR Chair must be present in order for Committee business to commence. If the volume and nature of requests for IDR warrants, a second monthly meeting may be scheduled. Notification of these meetings will be posted online at [www.healthfacilities.info](http://www.healthfacilities.info).

Committee meetings are open to the public. However, the public shall not participate in Committee discussion or interact with Committee members regarding Committee business until after the conclusion of the meeting. All Committee members and guests shall sign in prior to commencement of Committee business.

### **Requirements For Submitting An IDR Request**

1. The IDR request must be in writing, identify the specific deficiencies that the facility is disputing and the basis for dispute. A facility cannot submit a request to review the classification of deficiencies (scope and severity), either with or without a request to review the deficiencies, unless the classification represents substandard quality of care or immediate jeopardy (LTC) or life-threatening situation or is associated with intermediate conditions (ALR). However, LTC facilities may challenge fewer than all of the residents cited in the deficiency and ALRs may challenge specific findings in the deficiency if a successful IDR would not affect the classification of the deficiency. IDR requests that do not comply with this requirement shall be returned or the prohibited argument/documentation removed by the IDR Chair to comply with this requirement.
2. The IDR request must be submitted to the Division in a separate letter within ten (10) days after the facility has received a deficiency list, and **must accompany an acceptable plan of correction**, unless otherwise specified by the Division.<sup>5</sup>
3. The request must contain: (1) an explanation addressing why the documentation was unavailable during the survey, if applicable; (2) an explanation addressing the relevance of the documentation to the disputed deficiency; and (3) a summary statement addressing the nature of the facility dispute.
4. Documentation must be legible.

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<sup>5</sup> The deadline to submit an IDR request for non-certified, state-licensed only LTC nursing homes that received deficiencies under State regulations is 30 days from the date the facility received its deficiency list. The deadline to submit an IDR request for certified LTC nursing homes that received a deficiency for past non-compliance under Federal regulations is 10 day from the date the facility received its deficiency list.

5. LTC facilities are responsible for submitting **18 copies** of the IDR request and **18 copies** of the CMS 2567 for the challenged deficiencies. ALR facilities are responsible for submitting **12 copies** of the IDR request and **12 copies** of the CMS 2567 or statement of deficiencies for the challenged deficiencies.
6. Documentation submitted for each disputed deficiency must have all textual and numerical identifiers redacted. The IDR Committee meeting is a public meeting and the facility will be solely responsible for the failure to redact all identifying information. The Division shall not review submissions to ensure the redaction of confidential information.

Identifiers include, but are not limited to: name, address, and telephone number of the facility; "Provider number," "Facility" and address appearing on each page of a deficiency list; staff, physicians, and resident(s) names; and any other information that enables identification of the facility, health care provider or resident. This requirement is applicable to each submitted document. The redaction of facility identifiers are at the facility's discretion.

A copy of the CMS 2567/statement of deficiencies must be submitted (and redacted) for each disputed deficiency.

7. Documentation submitted should be clearly identified, labeled and cross-referenced to the disputed deficiency. Notate what is relevant to the disputed deficiency. Isolate the appropriate narrative in the documentation and reference it in the summary statement addressing the nature of the facility dispute.
8. Indicate whether the documentation was provided to surveyors at the time of the survey; if not, explain whether the dates on the documentation are prior to or after the survey.
9. The organization of documentation that is submitted, including highlighting or separation of documentation with dividers, shall be the sole responsibility of the facility.
10. Provide the name and phone number of an individual at the facility whom the Division may contact concerning the IDR request.

**Items Prohibited Within An IDR Request:**

1. Gratuitous commentary, whether positive or negative, addressing the survey process, compliance with the survey process, individual surveyors, the survey team, consistency among survey members and/or survey teams or within the Division, or the authority of the Division and/or its surveyors.
2. Requests and/or argument to review the classification (scope and severity) of a deficiency, either with or without a request to review the deficiency, unless the classification represents Substandard Quality of Care or Immediate Jeopardy.

The Committee shall not consider IDR requests that the IDR Chair determines includes documentation that does not meet the requirements for submission, or includes prohibited items, as set forth in the IDR Policy, or which, in the chair's discretion, involve issues that are more appropriate for internal review.

IDR requests that do not meet requirements for submission may be returned to the facility for revision or the prohibited argument/documentation removed by the IDR Chair. This action may delay Committee review. If returned to the facility, this will be the facility's only opportunity to resubmit an IDR request for Committee review.

A determination by the Division that an IDR request is inappropriate for Committee review or that a facility has failed after revision to comply with the IDR Policy, will preclude Committee review but not IDR, which shall be conducted by an impartial Division Representative, appointed by the Division Director or designee.

The ALR IDR Committee will not review deficiencies that relate directly to the imposition of intermediate conditions. Such deficiencies will be reviewed in accordance with Section B below.

### **IDR Review**

Copies of IDR requests shall be postmarked for delivery to Committee members no later than seven days prior to the scheduled Committee meeting. IDR requests that do not meet this timeline, e.g., requests that are received but, because of processing can not be postmarked for delivery at least seven days prior to the meeting date, shall not be considered until the next meeting of the Committee. The IDR request will also be forwarded to the author of the deficiency, who shall have the opportunity to review and submit written comments.

- If the author agrees that the deficiency should not have been cited, the author, with approval of the appropriate Program Manager, will submit to the IDR Chair a written explanation in support of deletion of the deficiency.
- If the author disagrees with the facility's position regarding a deficiency that was cited, the author may elect to forward to the IDR Chair a limited factual response to the facility position and documentation, if appropriate. The surveyor response shall not include gratuitous commentary, whether positive or negative. This document will be made available to the IDR Committee as part of the review process.

Non-facility-specific issues that relate to IDR requests shall be raised and addressed at the beginning of the Committee meeting.

### **Committee Recommendations**

The Committee may recommend one or more of the following outcomes for each disputed deficiency:

- Sustain the deficiency as written;
- Delete the deficiency;
- Modify the deficiency as follows:
  - Combine finding(s) with an existing deficiency
  - Move finding(s) to a more appropriate regulatory reference
  - Reduce the severity and scope assessments
  - For ALRs only, delete specific findings in the deficiency\*
  - For LTC, delete specific residents\*

\*Deletion of specific residents and specific findings is dependent upon a determination that the deletion will not affect the classification (scope or severity) of the deficiency.

The recommendation of the Committee, and the basis for the recommendation, shall be in writing and forwarded to the Division Director or designee for final review.

## **B. ALR FACILITIES SUBJECT TO INTERMEDIATE RESTRICTIONS/CONDITIONS**

### **SUMMARY**

Section 25-27-106(2)(b) C.R.S. authorizes the imposition of intermediate restrictions or conditions (conditions) on a licensee by the Division. Section 25-27-106(2)(b)(III)(A) C.R.S. allows licensees to first appeal intermediate conditions after submission of an acceptable written plan of correction (POC) through an informal review process. Concurrent deficiencies that are unrelated to the intermediate conditions may be reviewed during the informal review.

Section 25-27-106(2)(b)(III)(C) C.R.S. provides that if the licensee is not satisfied with the result of the informal review or chooses not to seek informal review, the licensee may seek a hearing under the Administrative Procedure Act (APA) on the intermediate conditions and the deficiencies upon which the intermediate conditions are based. Concurrent deficiencies that are unrelated to the intermediate conditions/restrictions may not be appealed under the APA; however, these deficiencies may be reviewed through the informal committee review process set forth above (Section A) if the review is timely requested.

### **PURPOSE**

The purpose of IDR is to provide ALR licensees an informal opportunity to challenge the restrictions/conditions imposed by the Division, as well concurrent related and unrelated deficiencies. **IDR is an informal administrative process and should not be construed as a formal evidentiary hearing.** IDR may not be used to challenge any other aspect of the survey process, as set forth in the IDR policy.

### **PROCEDURE**

#### **Deadlines and requirements for IDR**

1. Within ten (10) working days after receiving notice of the intermediate condition, an ALR licensee shall submit documentation that includes:
  - a. An acceptable plan of correction (POC);
  - b. A request for IDR that complies with the requirements set forth in the IDR Policy and **ATTACHMENT I**, Section A. The facility may submit the IDR request for deficient practice and the intermediate condition(s) as one document, but must clearly differentiate arguments pertaining to the deficient practice and the intermediate condition;
  - c. A request for a hearing in person, if desired, when a civil fine was issued;
  - d. For those facilities where an intermediate condition was issued as a result of a non-life threatening situation, an acceptable written plan for the condition with the timelines for implementation.
2. During the ten (10) working days, an ALR licensee may request one extension of up to seven (7) calendar days. An extension is subject to **Division** approval.
3. If the facility has timely complied with the above, but the Division has determined the licensee's documentation was unacceptable, the facility shall have one opportunity for resubmission. The Division must receive the corrected documentation within ten (10) calendar days after the facility was notified that the original submission was unacceptable. **Unless otherwise determined by the Program Manager or the IDR Chair, the facility's failure to submit the required**

**information within ten (10) calendar days will result in forfeiture of the licensee's ability to seek an IDR for the intermediate condition(s) and the underlying deficiencies.**

### **Procedures for IDR**

1. The IDR request shall be forwarded to the IDR Chair, who will conduct an initial review of the request for timeliness and completeness.
2. After the initial review, the individuals from the Division who will be responsible for reviewing the IDR request shall be selected.

For all ALR requests, except those involving Life Safety Code violations, the IDR Chair shall select two individuals, not involved in the survey, to conduct the review. One individual will be a supervisor with appropriate expertise, as determined by the Chair, and the other individual will be a surveyor in the ALR program.

For Life Safety Code (LSC) violations, the LSC Program Manager or designee shall select one inspector from the LSC program, not involved in the survey, to conduct the review.

### **IDR Hearing**

If the Division has imposed a civil fine, the licensee may request that the informal review be conducted in-person (IDR hearing). If such a request is made, the following procedures shall apply:

1. The Division will notify the licensee of the time and place of the IDR hearing. The hearing date will be scheduled within 30 calendar days of the Division's receipt of an acceptable plan of correction (POC).
2. The licensee shall have the opportunity to provide a written summary of oral remarks, not to exceed three (8 ½ x 11) pages.
3. The IDR Chair or designee shall conduct the IDR hearing. The licensee and the Division shall each have an opportunity to present oral testimony to the individuals reviewing the request; legal counsel shall not represent either party at the hearing. Presentations shall be limited to 30 minutes, unless otherwise determined by the IDR Chair. The testimony shall be directly relevant to the issues and shall not address topics or items prohibited under the IDR policy and **ATTACHMENT I** Section A. Documents and information that have not been referenced in the written summary of oral remarks or in the IDR request may not be introduced. The licensee and the Division may not pose questions to one another.
4. After presentations, the licensee and the Division shall respond to questions from the individuals reviewing the request.

### **Recommendations**

Each individual reviewing an IDR request shall forward a written recommendation to the Division Director or designee for final determination.

1. The recommendation may include one or more of the following outcomes for each deficiency under dispute:
  - a. Sustain, as written;
  - b. Delete;
  - c. Modify, as follows:
    - i. Combine finding(s) with an existing deficiency;
    - ii. Move finding(s) to a more appropriate regulatory reference; or,
    - iii. Reduce the severity and scope assessments.

- iv. Delete specific findings
- 2. The recommendation may include one or more of the following outcomes for the restriction or condition under dispute:
  - a. Sustain;
  - b. Delete; or
  - c. Modify the restriction or condition.

**Post IDR Action**

See IDR Policy – Post IDR ACTION FOR ALL PROVIDERS REQUESTING IDR

The facility shall be notified of IDR results by letter following a decision by the Division Director or designee.

**Appeal of Restrictions or Conditions Pursuant to the APA**

- 1. The Division shall provide the ALR with a Notice of Duty to Answer Regarding Imposition of Intermediate Restriction/Condition, pursuant to § 24-4-105, C.R.S., if a facility:
  - a. Does not request IDR within the deadlines specified above;
  - b. Requests IDR but forfeits the opportunity because the request is not in accordance with the policy and procedure specified herein; or
  - c. Requests IDR timely but receives an unsuccessful result.
- 3. Request for a formal, evidentiary hearing under the APA must be made as follows:
  - a. Following an IDR hearing, the request must be made within 30 days from the date of receipt of the letter concerning the findings and conclusions of the informal hearing.
  - b. Request for a hearing under the APA that bypasses the IDR hearing must be made within 30 days from the date of receipt of the letter concerning the imposition of the intermediate conditions.

## **ATTACHMENT II - IDR PROCEDURES FOR PROGRAMS OTHER THAN LTC/ALR**

### **PROCEDURE**

The author of the deficiencies that are the focus of the IDR request shall conduct an initial review and forward a response to the Section Chief, Program Manager or designee for final determination.

### **TIMING OF REVIEW**

IDR requests shall be reviewed in a timely manner.

### **Requirements For Submitting An IDR Request**

1. Providers may record objections to cited deficiencies on the deficiency list (CMS 2567/State Form) without submitting a plan of correction. The provider must state the reason for the objection and submit information in support by letter to show convincing and undisputable documented evidence (dated prior to the date of survey) that the deficiencies are invalid.

Note: the option to record objections pertains only to the opportunity to refute the accuracy of findings incorporating the deficiency. Providers/suppliers may not refute the professional judgment of the surveyor regarding the level, extent, scope, or severity of the deficiency.

2. Providers may record objections to cited deficiencies, in the manner described above, on the deficiency list (CMS 2567/State Form) with the submission of a plan of correction.

3. Documentation must be legible, clearly identified, labeled and cross-referenced to the disputed deficiency. Note what is relevant to the disputed deficiency. Isolate the appropriate narrative in the documentation and reference it in the summary statement addressing the nature of the provider dispute.

4. Indicate whether the documentation was provided to surveyors at the time of the survey; if not, explain why it was not provided. Indicate whether the dates on the documentation are prior to or after the survey.

5. The organization of documentation that is submitted, including highlighting or separation of documentation with dividers, shall be the sole responsibility of the provider.

6. Provide the name and phone number of an individual at the provider whom the Program Manager may contact concerning the IDR request.

### **Items Prohibited Within An IDR Request:**

- Gratuitous commentary, whether positive or negative, addressing the survey process, compliance with the survey process, individual surveyors, the survey team, consistency among survey members and/or survey teams or within the Division, or the authority of the Division and/or its surveyors;
- Requests and/or argument to review the seriousness of a deficiency;
- Names of individuals or other agency/facility providers.

IDR requests that the Section Chief, Program Manager or designee determines includes documentation that does not meet the requirements for submission and/or includes prohibited items, as set forth in the IDR Policy shall not be considered. Such IDR requests may be returned to the provider for revision or the prohibited argument/documentation removed by the Section Chief, Program Manager or designee. This action may delay review.

### **IDR Review**

The IDR request will also be forwarded to the author of the deficiency, who shall have the opportunity to review and submit written comments.

- If the author agrees that the deficiency should not have been cited, the author will submit to Section Chief, Program Manager or designee a written explanation in support of deletion of the deficiency.
- If the author disagrees with the provider's position regarding a deficiency that was cited, the author may elect to forward to the Section Chief or Program Manager a limited factual response to the provider's position and documentation, if appropriate. The surveyor response shall not include gratuitous commentary, whether positive or negative.

### **Recommendations**

The Section Chief or Program Manager may recommend one or more of the following outcomes for each disputed deficiency:

- Sustain the deficiency as written;
- Delete the deficiency;
- Modify the deficiency as follows but not limited to:
  - Combining finding(s) with an existing deficiency
  - Moving finding(s) to a more appropriate regulatory reference
  - Reducing the severity and scope assessments

### **Post-IDR Action**

See the IDR Policy **POST-IDR ACTION FOR ALL PROVIDERS REQUESTING IDR.**

If objections filed with or without a POC result in modification of the deficiency list, the original CMS 2567 or statement of deficiencies will be amended to reflect the change(s). The amendment(s) will be initialed and dated by the Section Chief, Program Manager or designee. The IDR Chair will amend the deficiencies in Aspen Central Office (ACO) to reflect the change(s) and will notify Information Technology (IT) staff. IT staff will be responsible for reposting the amended deficiency list on the Internet.

The provider will receive a clean (new) copy of the deficiency list, reflecting the IDR amendments.

The Section Chief or Program Manager, in cooperation with the IDR Chair, will forward to administrative staff the following information on IDR requests: The date the request was received; the provider name and type of survey; the survey exit date; the date of the IDR review; the tag challenged (and scope and severity if applicable); the outcome of IDR, and the date of the final letter. The IDR Chair shall draft the final letter based on information provided by the Section Chief or Program Manager.

## **ATTACHMENT III - IDR PROCEDURES FOR LIFE SAFETY CODE (LSC)**

### **PROCEDURE**

One Inspector from the LSC program shall conduct the review, absent the LSC Program Manager's final review. Recommendations will be forwarded to the Program Manager.

#### **Inspector**

The IDR Committee chair, the LSC Program Manager or designee shall select the Inspector to conduct the IDR review. The Inspector chosen will be a staff member who did not participate in the survey being disputed. Whenever possible, the Inspector will have at least one year of experience in the Division.

The LSC inspector shall engage in fair and impartial review of the IDR request. For all LTC and ALR facilities, IDR review shall follow the provider's submission of an acceptable plan of correction (POC). For all Programs other than LTC/ALR, review may precede the provider's submission of an acceptable POC. Review shall be based upon: the CMS 2567 or Statement of Deficiencies, documentation and/or information relating to the provider's position, and the surveyor's written response to the provider's position and/or documentation.

#### **Timing of Review**

IDR requests shall be reviewed in a timely manner after the request is received, and for LTC and ALR facilities, after an approved POC.

#### **Requirements For Submitting An IDR Request**

1. The IDR request must be in writing, identify the specific deficiencies that the facility is challenging, and the basis for the dispute. A facility cannot submit a request to review the seriousness of the deficiency. IDR requests that do not comply with this requirement shall be returned or the prohibited argument/documentation removed by the Program Manager or designee to comply with this requirement.
2. The IDR must be submitted to the Division in a separate letter within ten (10) days after receiving a deficiency, and for LTC and ALR facilities, must be accompanied by an acceptable plan of correction.
3. The request must contain: (1) an explanation addressing why the documentation was unavailable during the survey, if applicable; (2) an explanation addressing the relevance of the documentation to the disputed deficiency; and (3) a summary statement addressing the nature of the facility dispute.
4. Documentation must be legible.
5. The facility is responsible for submitting one (1) redacted copy of the IDR request. The IDR request also must include one complete copy of the request that is not redacted (see below).
6. Documentation submitted for each disputed deficiency must have all textual and numerical identifiers redacted. The Division shall not review submissions to ensure the redaction of confidential information.

Identifiers include, but are not limited to: name, address, and telephone number of the facility and/or agency; "Provider number," "Agency," "Facility," and address appearing on each page of a deficiency list; staff, physicians, and resident(s) names; and any other information that enables identification of the

agency, health care provider or resident. This requirement is applicable to each submitted document. Redaction of facility and/or agency identifiers is at the facility and/or agency's discretion.

A copy of the CMS 2567/statement of deficiencies must be submitted (and redacted) for each disputed deficiency.

7. Documentation submitted should be clearly identified, labeled and cross-referenced to the disputed deficiency. Notate what is relevant to the disputed deficiency. Isolate the appropriate narrative in the documentation and reference it in the summary statement addressing the nature of the facility dispute.

8. Indicate whether the documentation was provided to surveyors at the time of the survey; if not, explain. Indicate whether the dates on the documentation are prior to or after the survey.

9. The organization of documentation that is submitted, including highlighting or separation of documentation with dividers, shall be the sole responsibility of the facility.

10. Provide the name and phone number of an individual at the facility whom the LSC Program Manager or designee may contact concerning the IDR request.

#### **Items Prohibited Within An IDR Request:**

- Gratuitous commentary, whether positive or negative, addressing the survey process, compliance with the survey process, individual surveyors, the survey team, consistency among survey members and/or survey teams or within the Division, or the authority of the Division and/or its surveyors.
- Requests and/or argument to review the seriousness of a deficiency, either with or without a request to review the deficiency.

The Inspector shall not consider an IDR request that the IDR Chair, LSC Program Manager, or designee determines includes documentation that does not meet the requirements for submission and/or includes prohibited items, as set forth in the IDR Policy. Such IDR requests may be returned to the facility for revision or the prohibited argument/documentation removed by the IDR chair, LSC Program Manager, or designee. This action may delay Inspector review and may preclude a facility's use of the IDR process for that given deficiency.

#### **IDR Review**

A copy of the IDR request shall be distributed to the Inspector as soon as possible to meet the requirements for timely review. The IDR request will also be forwarded to the author of the deficiency, who shall have the opportunity to review and submit written comments.

- o If the author agrees that the deficiency should not have been cited, the author will submit to the Program Manager or designee a written explanation in support of deletion of the deficiency.
- o If the author disagrees with the facility's position regarding a deficiency that was cited, the author may elect to forward to the Program Manager or designee a limited factual response to the facility's position and documentation, if appropriate. The surveyor response shall not include gratuitous commentary, whether positive or negative. This document will be made available to the Inspector reviewing the IDR request, as part of the review process.

#### **Inspector Recommendations**

The Inspector may, but is not limited to, recommendations that include one or more of the following outcomes for each disputed deficiency:

- Sustain the deficiency as written;

- Delete the deficiency;
- Modify the deficiency as follows but not limited to:
  - Deleting findings
  - Combining finding(s) with an existing deficiency
  - Moving finding(s) to a more appropriate regulatory reference
  - Reducing the severity and scope assessments

The recommendation of the Inspector and the basis for the recommendation shall be the final, absent the LSC Program Manager's final review.

**POST-IDR ACTION**

See IDR Policy – Post-IDR ACTION FOR ALL PROVIDERS REQUESTING IDR

## **ATTACHMENT A**

### **PROCEDURES FOR INFORMAL DISPUTE RESOLUTION FOR IMMEDIATE JEOPARDY AND LIFE THREATENING CITATIONS**

The following outlines the procedures to be used for the review of IDR requests of Immediate Jeopardy (IJ) and Life Threatening citations.

1. An IDR request for such citations must be made in the same manner and at the same time as is required for IDR requests of other citations (see ATTACHMENTS I - III).
2. The request will be forwarded to the IDR Chair, who will do an initial review of the request for timeliness and completeness, as is done with all IDR requests received.
3. After the initial review, copies of the request will be forwarded to a surveyor and to a supervisor with appropriate expertise who were not involved in the survey, who will individually review the request and provide a recommendation. For IDR requests related to Life Safety Code IJ citations, one Life Safety Code Inspector who was not involved in the survey will conduct the review.
4. The recommendations will be forwarded to either the Division Director or designee for final determination.

The letter identifying the Division's final decision will be written by either the Division Director or designee. The letter will be transmitted via U.S. Mail. The Division will make every attempt to provide this review within the same time frame as would be required for review of a non-IJ IDR submission.

**ATTACHMENT B  
CONFLICT OF INTEREST STATEMENT**

Conflicts of interest may arise when an IDR Committee member engages in behaviors or activities that are determined by the Health Facilities and Emergency Medical Services Division to be incompatible with an expectation of fair, impartial review and discussion of matters addressed as a part of committee activities. Such conflict(s) may occur under circumstances in which a committee member has personal knowledge or was directly or indirectly involved in a survey or complaint investigation that formed the basis for the IDR request. Additional circumstances include, but are not limited to, the following:

- Knowledge of circumstances or facts pertinent to an IDR request that might influence the discussion or vote on the disputed deficiency;
- The committee member is employed or affiliated with the facility requesting IDR;
- The committee member authored the deficiency that is the subject of an IDR request;
- The committee member was a member of the survey team that authored the deficiency that is the subject of an IDR request;
- The committee member has a family member or close acquaintance with a personal or financial relationship to the facility that is the subject of an IDR request;
- The committee member has served within the last two years as a consultant or agent for the facility that is the subject of an IDR request;
- Any other circumstances that might be construed as incompatible with maintaining public confidence in the integrity of the IDR process

In recognition of the above information, I, understand that it is my obligation to update this form at least annually and I further understand that I must notify the IDR Chair immediately upon the discovery that a conflict or potential conflict of interest may arise with respect to a particular IDR activity or deficiency review. I further understand that my failure to do so impairs the integrity of the committee process and that I may be subject to immediate termination as a member of the IDR Committee for failure to comply with the intent and procedures stated in this Conflict of Interest Agreement.

The following is intended to provide information addressing potential conflicts of interest in matters that may be the subject of an IDR request:

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I certify that the information entered on this Agreement is true and correct to the best of my knowledge.

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Name (Please print) Date

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IDR Chair Signature Date

**ATTACHMENT C**

**CODE OF CONDUCT AGREEMENT**

As a member of the IDR Committee I acknowledge the following expectations pertaining to rules of conduct:

- Discussion will be focused on issues raised as part of the Deficiency List, documentation submitted by the requesting facility and the surveyor written response to the facility position and/or documentation.
- Comments will reflect only information pertinent to the Deficiency List, documentation submitted by the requesting facility and the surveyor written response to the facility position and/or documentation.
- The facilitator/chair, in cooperation with Committee members, shares responsibility for focusing committee activities on relevant factual and regulatory issues.
- Discussion and comments shall not address the survey process, compliance with the survey process, individual surveyors, the survey team, consistency among survey members and/or teams or the Division.
- Committee voting is expected to reflect consideration of the Deficiency List, documentation submitted by the requesting facility and surveyor response to the facility and/or documentation.
- Committee members shall not seek comment from, or communicate commentary to, representatives of the requesting facility prior to or during formal committee meetings.
- Committee members shall ensure the confidentiality of documentation submitted by the requesting facility while the documentation is in the member's possession. The Department is not responsible for ensuring confidentiality once the documents are mailed to committee members.

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date