

# **Informal Dispute Resolution Process for Federally Certified Home Health Agencies (HHAs)**

## **FREQUENTLY ASKED QUESTIONS (FAQs)**

### **What is the purpose of the IDR process?**

The purpose of this policy is to outline the Informal Dispute Resolution (IDR) process for certified Home Health Agencies (HHAs) should the agency administrator request an opportunity to dispute deficiencies before a three-person independent panel.

### **What guidance does CMS offer for an IDR process?**

The Kansas Department of Health and Environment (KDHE) has developed an IDR process consistent with the Centers for Medicare and Medicaid Services (CMS) State Operations Manual (SOM) Chapter 10, Section 10009 for federally certified home health agencies.

### **When can a federally certified agency request the IDR process?**

Upon receipt of the official Form, CMS-2567 the home health agency has the option to request an informal opportunity to dispute federal condition-level findings issued as a result of a federal or state survey, a complaint investigation or a follow-up (re-visit) survey.

### **Is the IDR process a formal evidentiary hearing?**

An IDR, including any face-to-face meetings constitutes an informal administrative process that is in no way to be construed as a formal evidentiary hearing.

### **Are there situations in which an IDR process would be inappropriate?**

Yes, the IDR process is only for condition-level deficiencies and may not be used to delay the formal imposition of sanctions or to challenge any other aspect of the survey process including,

- Sanctions imposed by an enforcing agency (i.e. CMS);
- Alleged failure of the survey team to comply with a requirement of the survey process;
- Alleged inconsistency of the survey team in citing deficiencies among agencies;
- Alleged inadequacy or inaccuracy of the IDR process.

### **Where do I mail my request for an IDR?**

Home Health Agencies must request an IDR in writing to:

Home Health Informal Dispute Process  
Kansas Department of Health and Environment  
Bureau of Community Health Systems-Health Facilities Program  
1000 SW Jackson Street, Suite 330  
Topeka, KS. 66612

### **What are the specifics about the written request for an IDR process?**

1. The written request must include an explanation of the specific condition level deficiencies that are being disputed, a detailed explanation of why the deficiency is considered to be invalid with supporting documentation, and why this information was not available at the time of survey or investigation. *A sole statement of disagreement is not sufficient to remove a deficiency.*
2. The administrator must provide KDHE with **five copies** of the documentation.

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### **Home Health Agencies (HHAs)**

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##### **What is the time frame for the written request for an IDR process?**

The written request must be made within the same 10- calendar day period the HHA has for submitting an acceptable plan of correction to the surveying entity.

##### **Is the IDR process meeting always in person?**

The process can be conducted in writing, by telephone, or in person. The request should indicate the agency's preferred method.

##### **Can the agency bring their attorney to the IDR meeting?**

Yes, but when making the IDR request the agency must advise KDHE that it is their intent to include their attorney in the face-to-face meeting or telephone conference call. An attorney is allowed at the hearing only if the agency has communicated their intent to include an attorney so that KDHE counsel can be arranged to participate in the face-to-face meeting or telephone conference call.

##### **Does the written request delay the submission of a plan of correction?**

No, the HHA must still submit an acceptable plan of correction within 10 calendar days despite the request for an IDR.

##### **When will my agency be advised about our right to an IDR process?**

The KDHE Health Facilities' Program will inform the HHA in writing of the IDR opportunity at the time the official Form CMS-2567 is issued and the notice will include the name and address to be contacted to request an IDR.

##### **Will the HHA receive confirmation of the receipt of the request for an IDR process meeting?**

The KDHE Health Facilities' Program will send a letter confirming receipt of the IDR request and provide the name and telephone number of the person who has been assigned primary responsibility for organizing the IDR.

##### **What is the makeup of the panel involved in the process?**

After receipt of the facility's request for an IDR, KDHE will arrange a three-person panel to review the deficiency(ies). One member of the panel shall be from the survey unit, but shall not have served on the survey in dispute and two members shall be from outside the survey unit and may be KDHE employees, health care professionals or consumers.

##### **What is the timeline for the meeting or telephone conference and how are we notified of the meeting date, place and time?**

The KDHE Program shall notify the HHA if the panel cannot be convened within 30 days of the receipt of the request for IDR.

Once the membership of the three-person panel is finalized, the administrator is notified of the date for the IDR and confirms who he/she wishes to dispute the deficiency(ies). Options include face-to-face, telephone conference or a desk review. KDHE staff will also reconfirm the meeting date with the facility in writing.

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### **What will the meeting agenda look like?**

- The panel welcomes the administrator and any other facility staff present or on the telephone.
- The panel will ask the facility to explain why the deficiency should not have been cited. The facility will be given an opportunity to present their remarks.
- Based upon the number of reviews that could be conducted by the panel, the panel may limit the time allowed for presentations.
- Following the facility's remarks, the panel may ask questions.
- Survey staff responsible for the statement of deficiencies will either be in the room or on a telephone conference call to present information to the panel members.
- No new documents may be presented at this time.
- Both the facility and the survey staff representative will be given the opportunity to provide relevant information to the panel.
- Immediately after the hearing is concluded, the panel reviews all materials and makes their recommendation to the KDHE Secretary.

### **What are options for the panels' recommendation?**

The panel has the following options:

- They may uphold the deficiency;
- They may delete the deficiency; or,
- They can change the severity if the deficiency was cited as an Immediate Jeopardy.

### **Who has the final decision on the outcome?**

Following the meeting or telephone conference, the panel will provide the KDHE Secretary with written recommendations, which shall be based on applicable statutes, regulations and supporting documentation. Upon receipt of the Secretary's decision, the agency will be notified, in writing. Decisions of the KDHE Secretary are final and no consideration for further appeal is afforded to the agency.

### **How will an agency know the final determination?**

Upon receipt of the Secretary's decision, will notify the HHA in writing of the outcome of the IDR.

### **What happens if the IDR process is successful?**

If the HHA is successful in the IDR process, the Program will mark the deficiency as "deleted," or "revised" as appropriate, sign and date the survey report form and recommend to CMS that they rescind any enforcement action(s) imposed solely because of that deficiency. A revised statement of deficiency will be reissued.

### **Who can I contact if I have more questions?**

If you need more information you may contact us by email at [kdhe.idrprocess@ks.gov](mailto:kdhe.idrprocess@ks.gov)