



COMMISSIONER
Jon Weizenbaum

November 28, 2016

To: Home and Community Support Services Agencies (HCSSAs)

Subject: Provider Letter 16-42 – Informal Dispute Resolution (IDR)
(Replaces PL 11-15)

New rules in the Texas Administrative Code (TAC), Part 1, Title 40, Chapter 97, [§97.527](#) replaced Informal Review of Deficiencies (IRoD) with the name Informal Dispute Resolution (IDR), and became effective on October 6, 2016. IDR is the process that allows a HCSSA to refute a deficiency or violation cited during a survey.

Beginning on October 6, 2016, the Texas Department of Aging and Disability Services (DADS) will not grant a HCSSA's request for an IDR if: 1) DADS cited the same violation or deficiency at the HCSSA's preceding survey, and 2) DADS cited the violation or deficiency again, with no new findings [40 TAC [§97.527\(j\)\(1\)](#)]. An IDR is available to all HCSSAs for other condition-level deficiencies, violations or both.

The information below describes how a HCSSA may request an IDR (formerly IRoD).

Post Survey Process

After DADS completes a survey, DADS sends the official, written notification of the survey findings to the HCSSA, including a statement of deficiencies and/or violations, a statement regarding the HCSSA's opportunity for an IDR, and instructions for requesting an IDR.

A HCSSA **must submit** a plan of correction in response to an official written notification of survey findings that declares a deficiency or violation, even if the agency disagrees with the survey findings.

If a HCSSA disagrees with the survey findings, the agency may request an IDR and submit additional written information to refute a deficiency or violation to demonstrate compliance in an informal setting. A HCSSA may contact the regional HCSSA program manager prior to submitting a request for an IDR, if needed, to discuss the official written statement of deficiencies or violations received.

IDR Request Process

An IDR is available for any violation or condition-level deficiency cited during a survey. Except, DADS will not grant a HCSSA's request for an IDR if: 1) DADS cited the same violation or deficiency at the HCSSA's preceding survey, and 2) DADS cited the violation or

deficiency again, with no new findings [40 TAC §[97.527\(j\)\(1\)](#)]. To request an IDR, a HCSSA is required to do all of the following:

- Mail or fax a complete and accurate [IDR request form \(Form 2407\)](#) to the address or fax number listed on the form. This form must be postmarked or faxed within **10 calendar days** after the date of receipt of the official written notification of the survey findings. If the 10th calendar day falls on a Saturday, Sunday or state holiday, the request is due the following working day.
- Mail or fax a rebuttal letter and supporting documentation to the address or fax number listed on the IDR request form and ensure receipt by the Survey and Certification Enforcement unit within **seven calendar days** after the postmark or fax date of the IDR request form (or the following working day if the **seventh calendar day** falls on a Saturday, Sunday, or legal holiday).
- Mail or fax a copy of the IDR request form, rebuttal letter and supporting documentation to the designated survey office.

A HCSSA **waives** its right to an IDR request if the agency fails to submit the required information to the Survey and Certification Enforcement unit within the required time frames.

A HCSSA must ensure the rebuttal letter and supporting documentation include:

- the disputed deficiencies or violations;
- the reason the deficiencies or violations are disputed;
- the desired outcome for each disputed deficiency or violation; and
- attachments from client records, applicable policies and procedures, or other supporting documentation or information that directly demonstrates that the deficiencies or violations should not have been cited.

The rebuttal letter and supporting documentation is the HCSSA's opportunity to present convincing evidence that the deficiency or violation is not warranted. The rebuttal letter should address each deficiency or violation in the same order cited on the official written notice of the survey findings on the statement of deficiencies or violations. Each attachment from a client record should include the name and identifier of the client. Other attachments, such as policies, should identify the deficiency or violation it refutes.

A HCSSA **should not** submit the following information with the rebuttal letter and supporting documentation:

- the plan of correction;
- copies of the federal or state standards;
- de-identified documents;
- information dated after the survey exit date or information on actions that took place after the survey exit date;

- legal arguments or briefs; or
- complaints about the surveyor or survey process.

Only those deficiencies or violations listed on the IDR request form and addressed in the rebuttal letter and supporting documentation will be reviewed. An IDR **will not** be granted when the IDR request form is incomplete or inaccurate.

A HCSSA must present sufficient information to the Survey and Certification Enforcement unit to support the agency's desired IDR outcome. The HCSSA is responsible for sending this information directly to the Survey and Certification Enforcement unit (at the address listed on the form) and to the agency's designated survey office.

NOTE: A HCSSA's request for an IDR will not delay the Centers for Medicare & Medicaid Services' (CMS) mandated time frames for DADS to conduct a follow-up visit during a CMS termination action.

IDR Review Process

The Survey and Certification Enforcement unit will conduct an objective review of the statement of deficiencies or violations, rebuttal letter, and supporting documentation. Survey and Certification Enforcement clinical consultants may request additional information or clarification from either party (the agency or the surveyor). The HCSSA's response to a DADS request for additional information must be received **within three working days** after the request is made. DADS does not provide a HCSSA an opportunity to refuse or dispute DADS request for additional information.

The following are possible outcomes of the IDR review process.

- The deficiency or violation is deleted.
- A portion of the deficiency or violation is deleted.
- The evidence in the deficiency or violation cited is moved from one tag or TAC reference or both to another.
- The deficiency or violation is sustained.

IDR Decision and Completion Process

The Survey and Certification Enforcement unit will complete the review and issue a written IDR decision no later than **30 calendar days** after receipt of the completed IDR request and mail the decision to the HCSSA. If the 30th calendar day falls on a Saturday, Sunday or legal holiday, the IDR decision will be issued the following working day. The written decision issued by DADS after completion of its IDR review is **final**.

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If the IDR decision results in any changes to the official written notification of the statement of deficiencies or violations, the designated survey office will make the necessary changes and send a new official written notification of the survey findings to the HCSSA and to CMS, if applicable. In addition, the designated survey office will place a copy of the IDR decision in the HCSSA's official file.

NOTE: If a HCSSA's attorney is listed on the IDR request form, the IDR decision will be mailed to the attorney only. The HCSSA's attorney should **not be listed** on the IDR request form unless the attorney is submitting the IDR request.

If you have questions regarding this letter, please contact the Policy, Rules and Curriculum section at 512-438-3161.

Sincerely,

[signature on file]

Mary T. Henderson
Associate Commissioner
Regulatory Services

MTH:cg