

**INFORMAL DISPUTE
RESOLUTION
AND INDEPENDENT IDR**

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Enforcement of Federal Regulations

Generally state surveyors enforce substantive regulations: 42 C.F.R. §§483 et seq. ("F Tags")

Resources for enforcement of regulations

- Interpretive Guidelines for Surveyors (revised version or new)
- State Operations Manual (SOM)

State Agency recommends enforcement action to the Regional Office (RO) of the Centers for Medicare and Medicaid Services (CMS)

- generally RO accepts recommendations

Types of Federal Surveys

1. Standard Certification Survey

A periodic resident-centered inspection which gathers information about the quality of service furnished in a facility to determine compliance with the federal participation requirements for nursing home participating in the Medicare and/or Medicaid programs. (42 C.F.R. § 488.301)

- Record Review
- Resident Interviews
- Staff Interviews

2. Extended Survey

a survey that evaluates additional participation requirements subsequent to a finding of substandard quality of care during a standard survey. (42 C.F.R. § 488.301)

3. Abbreviated Standard Survey

A survey other than a standard survey that gathers information primarily through resident-centered techniques on facility compliance with the requirements for participation. An abbreviated standard survey may be premised on complaints received; a change of ownership, management, or director of nursing; or other indicators of specific concern. (42 C.F.R. § 488.301)

4. Partial Extended Survey

a survey that evaluates additional participation requirements subsequent to a finding of substandard quality of care during an abbreviated standard survey. (42 C.F.R. § 488.301)

5. Revisit (Follow-up survey)
Generally, only two revisits after a standard survey.

6. Complaint Survey

FEDERAL DEFICIENCIES
Statement of Deficiencies
(CMS Form 2567)

1. Quotes federal regulation, F Tags
2. Assigns scope and severity (per the "Grid", last page)
3. Description of Deficiency
4. Space for Plan of Correction (PoC)

The Grid

LEVEL 3	Actual Harm That Is Not Immediate Jeopardy	G	H	I
LEVEL 2	No Actual Harm With Potential For More Than Minimal Harm That Is Not Immediate Jeopardy	D	E	F
LEVEL 1	No Actual Harm With Potential For Minimal Harm	A	B	C

<http://hfcis.cdph.ca.gov/faq/longtermcare.aspx>

The Grid

- A. Scope (vertical): isolated (A, D, G, J), pattern (B, E, H, K), widespread (C, F, I, L)
- B. Severity (horizontal): potential for minimal harm (A, B, C); potential for more than minimal harm (D, E, F); actual harm (G, H, I); immediate jeopardy to resident health and safety (J, K, L)

C. Categories of Violation

- 1. Substantial compliance: A-C

A level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm. (Deficiency levels A, B and C.)

- 2. Out of substantial compliance that is not substandard quality of care: D-I

- 3. Substandard quality of care:

Deficiencies which constitute either immediate jeopardy to resident health or safety; a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm. (Deficiency levels F, H, I, J, K, and L) and violation of:

- a. §483.10; Resident Rights: (F550, 558, 559, 565, 584), e.g., reasonable accommodations, roommate change
- b. §483.12 Free from Abuse, Neglect (F600-610), e.g., abuse, neglect, restraints

- b. §483.24; Quality of Life (F 675-680) e.g., ADLs, meeting needs
- c. §483.25; Quality of Care (F 684-700) e.g., pressure sores, accidents, incontinence

- 4. Immediate Jeopardy: J, K and L
 - Does not require actual harm

Notice of Right to IDR

Receive Letter from California Department of Public Health (DPH)

- Letter provides information re right to Informal Dispute Resolution
- IDR due same time as Plan of Correction
 - After survey Informal Dispute

Example of Language in CDPH Letter

In accordance with §488.331, you have one opportunity to question cited deficiencies through an informal dispute resolution process. To be given such an opportunity, you are required to send your written request, along with the specific deficiencies being disputed, and relevant information (evidence) as to why you are disputing those deficiencies, to California Department of Public Health, Licensing and Certification Program for your District.

This request must be sent during the same ten (10) days you have for submitting a POC for the cited deficiencies. An informal dispute resolution for the cited deficiencies will not delay the imposition of the recommended enforcement actions. A change in the seriousness of the noncompliance may result in a change in the remedy selected. When this occurs, you will be advised of any change in remedy.

Informal Dispute Resolution

- A. Informal Dispute Resolution (IDR)
 - 1. Letters to State Agency (SA)
 - a. 10 days after issuance of 2567 (can ask for more time)
 - b. Must state all grounds, submit supporting documents
 - c. Cannot challenge: scope and severity assessment unless substandard quality of care or immediate jeopardy; inadequacy of survey process or failure to comply with it
 - As practical matters scope and severity are regularly reduced
 - 2. Usually just record review and decision by letter
 - Exception: Face to face meeting when immediate jeopardy is present
 - Can always ask for face-to-face meeting

Independent IDR

When CMS imposes civil monetary penalty the facility has a right to an IDR.

- IDR due 10 days after receipt of CMS Letter

Generally, must choose between IDR or IDR

- At times, if prompt ruling on IDR, you can also do IDR

Example Language in CMS Letter

Because a civil money penalty was imposed for the August 22, 2017 survey, the civil money penalty will be subject to the combined civil money penalty collection and escrow provisions and Independent IDR process set forth in 42 C.F.R. § 488.431. We are authorized pursuant to 42 C.F.R. § 488.431 (b) to collect your CMP and place it in an escrow account on the earlier of the following dates: 1) the date on which the Independent IDR process is complete or 2) 90 days from the date of this notice. During the Independent IDR process a facility may dispute the factual basis of the cited deficiencies for which it requested Independent IDR. You may also contest scope and severity assessments for deficiencies which resulted in a finding of substandard quality of care (SQC) or immediate jeopardy.

Language in CMS Letter continued

You are required to send your written request for an Independent IDR, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies (or why you are disputing the scope and severity assessments of deficiencies which been found to constitute SQC or immediate jeopardy) to:

District Manager for the _____ District Office
 California Department of Public Health
 Address
 Phone Number

Language in CMS Letter continued

Please include a copy of this CMS notice with your written request for an Independent IDR. This request must be sent within 10 calendar days of receipt of this CMS notice. A request for an Independent IDR process will not delay the effective date of any enforcement remedy imposed on your facility, and it will not delay our collection of your facility's CMP for more than ninety (90) days.

Please note further that an incomplete IDR or Independent IDR process will not delay any deadline listed above under "Appeal Rights" for requesting a hearing or under "Details Regarding the Civil Money Penalty for requesting waiver of hearing rights".

Effective Techniques for Informal Dispute Resolution

1. Review all medical records
2. Interview witnesses
3. Prepare self contained document
 - List the alleged federal regulations violated
 - List the alleged findings that support alleged regulatory violation
 - Brief explanation why Findings of Fact are incorrect (attach supportive medical records and physician opinion, if possible)
4. Address most serious deficiencies first

5. Practical aspects
 - attempt to identify the person who will review the IDR
 - attempt to develop a rapport with that person and offer to meet and discuss IDR (follow-up on a regular basis)
 - offer to address any concerns DHS may have and supplement IDR
 - discuss reduction of scope and severity
 - always request face to face meeting with immediate jeopardy
 - define goals for IDR

CMS Data Operations Manual Grid for Enforcement Remedies

Deficiency	F (Substantial quality of care is any deficiency in Q, CFR 485.11, Resident Behavior and Facility Practices, Q, CFR 485.15 Quality of Life, or Q2 CFR 485.25, Quality of Care, that could cause immediate jeopardy to resident health or safety; or a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.	K (Substantial quality of care is any deficiency in Q, CFR 485.11, Resident Behavior and Facility Practices, Q, CFR 485.15 Quality of Life, or Q2 CFR 485.25, Quality of Care, that could cause immediate jeopardy to resident health or safety; or a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.	L (Substantial quality of care is any deficiency in Q, CFR 485.11, Resident Behavior and Facility Practices, Q, CFR 485.15 Quality of Life, or Q2 CFR 485.25, Quality of Care, that could cause immediate jeopardy to resident health or safety; or a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.
Deficiency is resolved immediately upon inspection	Requirement: Q2.3 Option: Cx. 1 Option: Cx. 3	Requirement: Q2.3 Option: Cx. 1 Option: Cx. 2	Requirement: Q2.3 Option: Cx. 1 Option: Cx. 2
Deficiency is resolved within 10 business days	G (PAC) Requirement: Q2.2 Option: Cx. 1	H (PAC) Requirement: Q2.2 Option: Cx. 1	E (PAC) Requirement: Q2.2 Option: Cx. 1 Option: Cx. 2 Option: Cx. 3 Option: Cx. 4 Option: Cx. 5 Option: Cx. 6 Option: Cx. 7 Option: Cx. 8 Option: Cx. 9 Option: Cx. 10 Option: Cx. 11 Option: Cx. 12 Option: Cx. 13 Option: Cx. 14 Option: Cx. 15 Option: Cx. 16 Option: Cx. 17 Option: Cx. 18 Option: Cx. 19 Option: Cx. 20 Option: Cx. 21 Option: Cx. 22 Option: Cx. 23 Option: Cx. 24 Option: Cx. 25 Option: Cx. 26 Option: Cx. 27 Option: Cx. 28 Option: Cx. 29 Option: Cx. 30 Option: Cx. 31 Option: Cx. 32 Option: Cx. 33 Option: Cx. 34 Option: Cx. 35 Option: Cx. 36 Option: Cx. 37 Option: Cx. 38 Option: Cx. 39 Option: Cx. 40 Option: Cx. 41 Option: Cx. 42 Option: Cx. 43 Option: Cx. 44 Option: Cx. 45 Option: Cx. 46 Option: Cx. 47 Option: Cx. 48 Option: Cx. 49 Option: Cx. 50 Option: Cx. 51 Option: Cx. 52 Option: Cx. 53 Option: Cx. 54 Option: Cx. 55 Option: Cx. 56 Option: Cx. 57 Option: Cx. 58 Option: Cx. 59 Option: Cx. 60 Option: Cx. 61 Option: Cx. 62 Option: Cx. 63 Option: Cx. 64 Option: Cx. 65 Option: Cx. 66 Option: Cx. 67 Option: Cx. 68 Option: Cx. 69 Option: Cx. 70 Option: Cx. 71 Option: Cx. 72 Option: Cx. 73 Option: Cx. 74 Option: Cx. 75 Option: Cx. 76 Option: Cx. 77 Option: Cx. 78 Option: Cx. 79 Option: Cx. 80 Option: Cx. 81 Option: Cx. 82 Option: Cx. 83 Option: Cx. 84 Option: Cx. 85 Option: Cx. 86 Option: Cx. 87 Option: Cx. 88 Option: Cx. 89 Option: Cx. 90 Option: Cx. 91 Option: Cx. 92 Option: Cx. 93 Option: Cx. 94 Option: Cx. 95 Option: Cx. 96 Option: Cx. 97 Option: Cx. 98 Option: Cx. 99 Option: Cx. 100
Deficiency is resolved within 30 business days with potential for minimal harm	I (PAC) Requirement: Q2.1 Option: Cx. 2	J (PAC) Requirement: Q2.1 Option: Cx. 2	F (PAC) Requirement: Q2.1 Option: Cx. 1

Legend:
□ Substantial quality of care is any deficiency in Q, CFR 485.11, Resident Behavior and Facility Practices, Q, CFR 485.15 Quality of Life, or Q2 CFR 485.25, Quality of Care, that could cause immediate jeopardy to resident health or safety; or a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.
■ Substantial compliance
