



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Jerry Sandlin, Acting Regional Administrator
Centers for Medicare and Medicaid Services, Region II

FROM: Jacqueline Pappalardi Director, Division of Residential Services,
Office of Health Systems Management, New York State Department of Health

DATE: December 7, 2011

SUBJECT: Independent Informal Dispute Resolution (revised)

This memo is in response to Survey and Certification Memo No. 12-02-NH requiring that State Agencies submit a proposal meeting the requirements for an Independent Informal Dispute Resolution (IIDR) process initiated in accordance with 42 CFR Part 488. The information below details New York's proposal to manage the IIDR process for all eligible New York State nursing home providers.

Consistent with the provisions of the Affordable Care Act, and the regulations at 42 CFR Part 488, the IIDR process for New York State nursing home providers will be managed by the New York State Department of Health (NYSDOH) and conducted by the New Jersey State Department of Health and Senior Services State Agency (NJDOH). The NYSDOH will conduct the IIDR process for New Jersey's nursing home providers.

To effectuate this proposal, the NYSDOH and NJDOH will enter into an agreement for purposes of administering the IIDR process as outlined in this proposal. The IIDR process would be effective beginning January 1, 2012.

Applicability

IIDR will be offered to nursing homes for deficiencies of scope and severity constituting actual harm and/or immediate jeopardy to resident health or safety, that leads to the imposition of a civil money penalty (CMP) and for which notice has been provided by CMS to the nursing home that the CMP will be collected and placed in escrow. IIDR will not be permitted for deficiencies that have already been the subject of IDR conducted pursuant to the provisions of 42 C.F.R. §331, unless the IDR was conducted prior to the imposition of Civil Money Penalties.

IIDR Panel Expertise and Training

The NYSDOH proposal meets the federal requirements for ensuring expertise, training, independence and documentation as set forth in S&C 12-02-NH. Members of the NYSDOH IIDR panel who will be conducting NJDOH IIDRs, include three (3) individuals: one (1) NYSDOH employee who meets the

requirements set forth in 42 CFR Part 488.431(a)(4) and two (2) licensed NYS nursing home administrators, who currently serve as members on New York's Board of Examiners of Nursing Home Administrators (BENHA). While the NYSDOH representative on the panel will generally be a member of the nursing home surveillance program, NYSDOH may at times use other qualified employees with expertise not residing directly in the surveillance program. These may include physicians, pharmacists, attorneys, etc. All NYS IIDR panelists will recuse themselves in the event of a conflict of interest. Training of the NYS IIDR panel members will be provided by an SMQT-qualified NYSDOH RN, who also meets the requirements of 42 CFR Part 488.431(a)(4), and will include all applicable IIDR components.

All IIDR panel members have documented experience in health care, are knowledgeable of the survey process, have an understanding of Medicare and Medicaid program requirements, are able to provide an objective and reliable review, and will ensure the quality of review recommendations determined by the IIDR panel.

Members of the NJDOH IIDR three-member Panel, who will be conducting NYSDOH IIDRs, include: two (2) regulatory officers, employed by the NJDOH, and one (1) RN, employed by NJDOH, who meets the requirements in accordance 42 CFR Part 488.431 (a)(4). All NJ panel members meet the necessary requirements as noted in S&C Memorandum 12-02-NH. The NJDOH will assume responsibility to conduct similar training for their panel members.

IIDR Independence

The proposal set forth in the paragraphs above ensures that the IIDR process is administered absent any financial or other conflict of interest and is organizationally separate from the nursing home provider's State Survey Agency. Requests for IIDRs by NYS Nursing Home providers will be managed by the NYSDOH, Bureau of Quality Assurance (BQA) and the IIDR panel process will be conducted by NJDOH and Senior Services.

IIDR Documentation

Both the NYSDOH and the NJDOH will maintain responsibility to ensure that the IIDR Panel produces a complete written record which includes all required information described in S&C 12-02-NH, as follows:

- Each deficiency or survey finding that was disputed;
- A summary of the Independent IDR recommendation for each deficiency or finding and the rationale for that result;
- Documents submitted by the facility to dispute a deficiency, to demonstrate that a deficiency should not have been cited, or to demonstrate a deficient practice should not have been cited as immediate jeopardy or as substandard quality of care; and,
- Any comments submitted by the Ombudsman and/or residents or resident representatives.

That record will then be transmitted by secured electronic transfer to the survey agency upon completion. The NYSDOH BQA will manage the IIDR process for NYS Nursing Home Providers and will ensure completion and transmittal of the written record by the NJDOH IIDR Panel.

Opportunity for Comments

To allow for the submission of written comments, NYSDOH BQA will notify the resident or resident representative by mail of their opportunity to comment. Concurrently, the NYSDOH BQA will notify the Executive Director of the NYS Long Term Care Ombudsman Program of an opportunity for comment in response to the IIDR request via email. Comments received in response to these requests will be forwarded through a secure electronic mail system along with the entire package of supporting information to the NJDOH's lead contact person for the IIDR process.

State Contact Information

The NYSDOH State Agency contact is David A. Bruso, Acting Director, NYSDOH, Office of Health Systems Management, BQA. Email address: dab11@health.state.ny.us and phone number (518) 408-1282.

The individual responsible to handle all requests for an IIDR is Linda Milano, RN, NYSDOH, Office of Health Systems Management, BQA. Email address: lm15@health.state.ny.us and phone number (518) 408-1282.

Estimated State Budget Impact

NYS is not submitting a FY2012 estimated budget plan of IIDR costs. At this time, the use of volunteers and redeployment of NYSDOH staff from traditional IDRs is not expected to result in increased costs. NYSDOH will evaluate the cost of conducting IIDRs over the remainder of FFY 2012 and may request future funding if additional costs are incurred.