COLORADO
Department of Public Health & Environment

Assisted Living Residence Providers

INSTRUCTIONS FOR COMPLETION OF AN ACCEPTABLE PLAN OF CORRECTION (PoC)

The enclosed form titled "Statement of Deficiencies" lists the deficiencies identified by the surveyor(s) during the recent visit to your residence/facility. A PoC for each deficiency must be entered in the Colorado Health Facilities Interactive system (COHFI) in the column titled "POCD Text." PoCs must be specific and realistic, stating exactly how the deficiency was, or will be, corrected.

PLEASE NOTE - THE PoC WILL NOT BE ACCEPTED IF ANY OF THE THREE REQUIRED ELEMENTS LISTED BELOW ARE MISSING:

#1 – A description of how the licensee will correct each identified deficiency.

If the deficient practice was cited for a specific resident(s) or staff, the description shall include the measures that will be put in place or systemic changes made to ensure the deficient practice will not reoccur for the affected resident(s)/staff and/or other residents/staff having the potential to be affected.

#2 – A description of how the licensee will monitor the corrective action to ensure each deficiency is remedied and will not reoccur.

The monitoring plan must identify all of the following:
(a) Exactly how and what will be reviewed as part of the monitoring;
(b) The sample, representative of the facility census, included in the monitoring;
(c) How often the monitoring will occur;
(d) How the monitoring will be documented;
(e) The total minimum length of time the monitoring will continue (a minimum of 3 months is required); and
(f) How the monitoring will be included in the QAPI process.

#3 – A completion date that shall be no longer than thirty (30) calendar days from the issuance of the deficiency list, unless otherwise required or approved by the Department.

The completion date is the date the entity deems it can achieve compliance. When ongoing monitoring or other activity is part of the plan, the completion date would be when the first cycle is completed, and the corrective action has been applied to all active residents/participants having the potential to be affected by the deficient practice.

Updated 04/06/20

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
Health Facilities and Emergency Medical Services Division

INSTRUCTIONS FOR INFORMAL DISPUTE RESOLUTION FOR ASSISTED LIVING FACILITIES (ALR)

The purpose of Informal Dispute Resolution (IDR) is to provide assisted living residence (ALR) providers **one informal opportunity** to dispute deficiencies citing noncompliance with pertinent state regulations, with or without imposed intermediate conditions. Through IDR, the Department makes a determination whether a deficiency is sustained, moved, amended, or removed from a Statement of Deficiencies and/or an intermediate condition is sustained, amended, or removed.

The entire IDR policy from which the below procedures are drawn is available on the Division's website at https://cdphe.colorado.gov/health-facilities Contact the IDR Coordinator/Reviewer, Elaine Sabyan, at elaine.sabyan@state.co.us if you have any questions.

I. HOW TO REQUEST AN IDR

1. The Division shall notify the provider of the opportunity to request IDR at the same time the provider receives the Statement of Deficiencies. IDR requests may be submitted as PDFs by e-mail or fax to the Division. The requests for IDR must be received within **10 calendar days** from the provider's receipt of the Statement of Deficiencies.

The provider may request an extension to submit an IDR request; however, the extension must be timely (prior to or on the date the POC is due as set forth in the letter that accompanies the Statement of Deficiencies) and will be granted for no more than 7 calendar days from the original POC due date. The Department is not responsible for late or mis-delivery of an IDR request.

IDR requests may be submitted as PDFs by email or fax to Elaine.Sabyan@state.co.us, Fax 303-753-6214.

2. The IDR request must identify whether the provider is disputing **deficiencies under state licensure regulations, state certification regulations or both sets of regulations**, and must identify which **factual statement(s)** in the deficiency the provider believes to be incorrect. Explain why the factual statement is believed to be incorrect, describe which documents, if any, the provider is enclosing to support its position, and state whether the documents were provided to the surveyors at the time of the survey. The provider should clearly identify the documents and label and cross-reference the documents to the disputed deficiency.

3. The facility must submit one complete copy of the request edited/redacted to remove the name of the facility, resident names, and any other identifying and/or protected information. **Resident names should be replaced with the resident sample number used in the Statement of Deficiencies**. The copy of the request should include: (1) **A cover letter, identifying the facility and name and number of an individual the Division may contact concerning the IDR request;** (2) **the information in 2 above**; and (3) **a copy of the deficiencies being disputed.**

If the facility is disputing findings under state licensure and certification regulations that are supported by the same documentation, the facility need not duplicate the information in 2 above, but must clearly reference how the information submitted applies to the licensure and certification disputed findings and/or deficiency.

4. The IDR processes shall **not** be used to challenge the survey process or the professional judgment of the survey team, including:

- The level, extent, scope and severity of deficiencies except in situations where a successful challenge would not change scope or severity.

- The remedy sought to be imposed except when the remedy involves an intermediate condition imposed pursuant to Section 25-27-105 C.R.S.;
- The failure of the survey team to comply with a requirement of the survey process;
- The inconsistency of the survey team in citing deficiencies among providers; or
- The inadequacy or inaccuracy of the IDR process.

IDR requests that do not meet the above requirements may be returned to the provider for revision or the prohibited commentary, argument or documentation may be removed by the Division. This action may delay review.

II. IDR - DEFICIENCIES CITED WITHOUT INTERMEDIATE CONDITIONS OR RESTRICTIONS
Five-Member Informal Review, No Oral Presentation, Open to the Public,
Neither Public nor Party Comment Allowed During Review
Exception to Five-Member Informal Review

IDR requests for deficiencies cited that do not include intermediate conditions or restrictions are reviewed monthly by a five-member committee composed of two providers, one state surveyor (not involved in the deficiency at issue), one representative from Health Care Policy and Financing (HCPF) and one ombudsman. The committee members meet the fourth Thursday of every month (except on holidays) at 10:00 a.m. at the Colorado Department of Public Health and Environment if requests have been timely received. The meetings are open to the public, however, neither public nor party oral comment is allowed. The committee reviews the IDR documents submitted by the provider, the pertinent Statement of Deficiencies, and the surveyor's written response to the provider's IDR request. The docket for IDR requests closes one week before the next scheduled committee meeting.

Exception to Five-Member Informal Review: Focused surveys for compliance with 6 CCR 1011-1, Chapter 2, Part 12. See below.

III. DEFICIENCIES CITED WITH INTERMEDIATE CONDITIONS OR RESTRICTIONS

A. Administrative Procedures Act (APA) Hearing/Appeal
Administrative Law Judge, Office of Administrative Courts, Formal Hearing, Oral Questioning and Oral Presentation by Parties, Open to the Public, Public Comment not Allowed at Hearing/Appeal

Section 25-27-106(2)(b)(III)(A), C.R.S. allows providers to first appeal intermediate conditions or restrictions through an IDR. Concurrent deficiencies that are unrelated to the intermediate condition(s) or restriction(s)may be reviewed during the IDR. Section 25-27-106(2)(b)(III)(C), C.R.S. allows providers to bypass IDR and request an APA hearing/appeal. This hearing/appeal is conducted before an Administrative Law Judge and parties may be required to be represented by an attorney.

1. Requests for a hearing/appeal under the APA that **bypass** IDR must be made in writing within 30 days from the date of receipt of the letter concerning the imposition of the intermediate conditions or restrictions.

2. Requests for a hearing/appeal under the APA **following an IDR** must be made in writing within 30 days from the date of receipt of the letter concerning the findings and conclusions from the IDR.

3. Either hearing/appeal request, 1. or 2., must be in writing and sent to the following email address: hfemsd_enforcement@state.co.us To start the process, the provider only needs to send a short written statement requesting an APA hearing/appeal. Further instruction on a hearing/appeal date and other required document submission will be provided later. Neither the Division, nor the Office of Administrative Courts will provide legal advice to the provider. Therefore, the provider is solely responsible for compliance with the court procedure, process and due dates. Non-compliance may result in case dismissal.

B. IDR - Intermediate Condition or Restriction
Five-Member Informal Review, No Oral Presentation, Open to the Public,

Neither Public nor Party Comment Allowed During Review
Exception to Five-Member Informal Review

Section 25-27-106(2)(b)(III)(A), C.R.S. allows providers to first appeal intermediate conditions or restrictions through an IDR or, as noted above, Section 25-27-106(2)(b)(III)(C), C.R.S. allows providers to bypass IDR and request an APA hearing/appeal. Concurrent deficiencies that are unrelated to the intermediate condition(s) or restrictions may be reviewed during the IDR.

If choosing IDR rather than an APA hearing/appeal, this IDR will be conducted by the five-member committee as described above after the provider has submitted an **acceptable POC.**

The provider may submit the IDR request for deficient practice and the intermediate conditions or restrictions as one document, but must clearly differentiate whether the provider is seeking review of the deficiencies, the intermediate conditions or both, and must clearly delineate the arguments pertaining to the deficiencies and/or intermediate condition(s) or restriction(s).

Exception to Five-Member Informal Review: Focused surveys for compliance with 6 CCR 1011-1, Chapter 2, Part 12. See below.

C. IDR - Intermediate Condition or Restriction with Civil Fine
Five-Member Informal Review with Optional Oral Party Presentation, Open to the Public,
Party Comment Allowed, Public Comment not Allowed During Review
Exception to Five-Member Informal Review

Section 25-27-106(2)(b)(III)(A), C.R.S. allows providers to first appeal intermediate conditions or restrictions through an IDR or, as noted above, Section 25-27-106(2)(b)(III)(C), C.R.S. allows licensees to bypass IDR and request an APA hearing/appeal. Concurrent deficiencies that are unrelated to the intermediate condition(s) or restrictions may be reviewed during the IDR.

If choosing IDR rather than an APA hearing/appeal, the IDR will be conducted by the five-member committee as described above.

When the Department imposes a civil fine as the intermediate condition or restriction, the provider may request that the IDR be conducted in-person before the five-member committee.

The provider may submit the IDR request for deficient practice and the intermediate condition(s) or restriction(s) as one document, but must clearly differentiate whether the provider is seeking review of the deficiencies, the intermediate conditions or both, and must clearly delineate the arguments pertaining to the deficiencies and/or intermediate condition(s) or restriction(s).

The provider will have 30 minutes to present its argument in-person to the five-member committee. The deficiency author will also be allowed 30 minutes to present rebuttal arguments to the committee. Following oral presentations, both parties shall have the opportunity to respond to questions posed by the committee. **Legal counsel shall not represent either party at the in-person IDR**. The testimony shall be directly relevant to the issues. **The provider may not introduce information that was not submitted with its IDR request and discussion is limited to information submitted with the IDR request.**

Exception to Five-Member Informal Review: Focused surveys for compliance with 6 CCR 1011-1, Chapter 2, Part 12. See below.

IV. DEFICIENCIES CITED FOR FAILURE TO REPORT PURSUANT TO 6 CCR 1011-1, CHAPTER 2, PART 12.

Informal dispute resolution (IDR) of focused surveys conducted pursuant to CCR 1011-1, CHAPTER 2, Part 12 will be conducted as follows:

A. HOW TO REQUEST AN IDR

The requirements under "HOW TO REQUEST AN IDR" remain the same as set forth in the IDR Instructions above.

B. IDR – DEFICIENCIES CITED WITHOUT INTERMEDIATE CONDITION (CIVIL FINE)

Deficiencies cited without an intermediate condition (civil fine) will be reviewed by the Division staff in the Health Facilities Quality Branch.

C. DEFICIENCIES CITED WITH INTERMEDIATE CONDITION (CIVIL FINE)

Deficiencies cited with an intermediate condition (civil fine) may be appealed under the Administrative Procedure Act (APA) as set forth in the Instructions for IDR that accompanied the deficiency list and/or reviewed informally through IDR.

1. Requests for IDR

The provider may submit a written request for informal review of the imposition of an intermediate condition to elaine.sabyan@state.co.us

The request will be reviewed by Division staff in the Health Facilities Quality Branch. The provider may request in writing, at the time the IDR request is submitted, that the informal review be conducted in person.

If such a request is made, the provider will orally address the Division staff. The provider will have no more than 45 minutes to present the facility/agency argument. **Legal counsel shall not represent the facility/agency. The** testimony must be directly relevant to the issues and t**he provider may not introduce information that was not submitted with its IDR request.**

2. Request for an appeal

If the provider is not satisfied with the results from IDR or if the licensee elects to bypass IDR, the provider may appeal the intermediate condition. The request must be made in writing within 30 days from the date of receipt of the letter concerning the findings and conclusions from the IDR or, if the provider bypassed IDR, then 30 days from the date of receipt of the letter concerning the imposition of the intermediate condition (fine).

The request must be sent to the following email address: hfemsd_enforcement@state.co.us

ALR Severity and Scope Matrix

3.11 The level of the deficiency shall be based upon the number of sample residents affected and the level of harm, as follows

DEFICIENCY LEVELS (SCOPE AND SEVERITY)

	Number of Sample	Level of Harm
Level **A**	Isolated	Potential harm to the resident(s)
Level **B**	Pattern	Potential harm to the resident(s)
Level **C**	Isolated	Actual harm to the resident(s)
Level **D**	Pattern	Actual harm to the resident(s)
Level **E**	Actual or Potential	Serious injury or harm to resident(s)