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INFORMAL DISPUTE RESOLUTION FOR NURSING FACILITIES

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EXECUTIVE SUMMARY

OBJECTIVES

To determine if all States have written informal dispute resolution (IDR) policies as required by Federal regulations and to describe policy content.

To determine if 14 selected States comply with Federal requirements for State IDR notification and closure letters and if nursing facilities in these States comply with the Federal requirements for IDR requests.

To determine the length of time taken by States to complete IDR reviews and to identify IDR outcomes for disputed survey deficiencies.

BACKGROUND

This inspection of the IDR process is part of the Office of Inspector General's (OIG) ongoing evaluation of the quality of care provided to nursing facility residents, particularly as measured by survey deficiencies and by how States and the Centers for Medicare & Medicaid Services (CMS) manage them. The IDR process is important because it provides nursing facilities the opportunity for avoiding costly formal appeals and for communicating better with State survey agencies about certification standards that facilities must meet. State procedures and outcomes of the IDR process have not previously been studied by OIG.

CMS contracts with State agencies to conduct standard surveys of nursing facilities for compliance with the Federal standards no less than once every 15 months. Any deficiency in quality of care, safety, or patient rights, as determined through the surveys, may trigger CMS enforcement action(s). The enforcement regulations for nursing facility certification standards issued after passage of the Omnibus Budget Reconciliation Act of 1987 require all States to provide Medicare- and Medicaid-certified nursing facilities an opportunity for an IDR review to dispute cited deficiencies in patient care and safety.

Before proceeding with a formal appeal, which can be costly and lengthy, the IDR process permits the nursing facility to submit documentation supporting its dispute to the State agency for a review that could potentially delete or lower the severity of the cited deficiencies. CMS, which has oversight responsibility for the IDR process, requires in its "State Operations Manual" that States have written IDR policies, although the policy content is not specified. The

manual also includes instructions States should provide to nursing facilities to request an IDR review, specific details about the IDR process, and circumstances under which a State must inform a nursing facility of an IDR outcome.

We analyzed 48 States' written IDR policies and case documentation for a random sample of 415 IDR reviews done by 14 selected States in calendar year 2002. We determined if States have written IDR policies and the extent to which the States and nursing facilities met the Federal requirements in their actual conduct of IDR reviews. We also used the case documentation provided by the 14 States to determine outcomes for disputed deficiencies and to determine the length of time for States to complete IDR reviews.

FINDINGS

Forty-eight of fifty States have written IDR policies that are available upon request, as required; however, the content of their written policies varies. Of the 50 States, Alaska and Connecticut did not provide us copies of their own written policies. However, both indicated they provide a copy of the IDR portion of the "State Operations Manual" upon a request for information.

Most States' written IDR policies address the requirements of providing instructions to facilities for an IDR request, including specific details about the IDR, and information on how States will inform nursing facilities of IDRs' outcomes. Other useful information, although not required, is often omitted. For example, the written policies do not always address inappropriate reasons for an IDR request or that nursing facilities must be notified an IDR review is available to them. Finally, 38 of the 48 States' policies do not specify time limits for completion of the IDR process.

All 14 of the States, for which we reviewed case documentation, are performing IDR reviews and generally comply with the IDR requirements; yet, most notification letters omit some required technical information. State IDR Notification Letters. All notification letters to nursing facilities stated that the nursing facility IDR request must be submitted in writing and must include an explanation of disputed deficiencies. However, few notifications included two required details: only 37 percent of notifications indicated how the IDR review would be conducted and only 6 percent indicated by whom.

State IDR Closure Letters. The 14 States exceed Federal requirements by routinely sending closure letters to facilities to inform them of all IDR outcomes. Federal requirements specify that States must send closure letters only if the facilities are unsuccessful at demonstrating that deficiencies should not have been cited.

Nursing facility IDR requests typically met the requirements.
Ninety-nine percent of requests for IDR review were in writing, as required. Eighty-six percent included an explanation of the specific deficiencies being disputed, and 91 percent provided appropriate reasons for the IDR requests.

Eighty percent of IDR cases were completed within 60 days, and 45 percent of the disputed deficiencies resulted in citation changes.
There is no requirement for IDRs to be completed within 60 days, but it is beneficial if they are done within this timeframe. This is due to the fact that a nursing facility has only 60 days from its receipt of the formal notice of the imposition of any enforcement remedies to formally appeal deficiency citations, whether or not the IDR process is completed. The nursing facility's decision to pursue a formal appeal could be affected by the outcome of the IDR. On the other hand, deficiency citations are not supposed to be posted on CMS's Nursing Home Compare Web site, which is available for public reference, until the IDR is completed. Finally, the fact that 45 percent of the disputed deficiencies were changed through the IDR process indicates that IDRs do affect the citation outcomes.

RECOMMENDATIONS

We recommended that CMS require that the two States without the required written IDR polices, Alaska and Connecticut, prepare them since they are technically noncompliant. Alternatively, CMS should determine if these States' practice of providing, instead, the IDR portion of CMS's "State Operations Manual" to nursing facilities satisfies the requirement of written IDR policies. We also recommended that CMS ensure that all required information is included in all States' IDR notification letters to the nursing facilities. Although not required by law, regulation, or CMS policy, we also identified opportunities for improvement.

Agency Comments

CMS concurred with our recommendations and suggested opportunities for improvement.

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OBJECTIVES

To determine if all States have written informal dispute resolution (IDR) policies as required by Federal regulations and to describe policy content.

To determine if 14 selected States comply with requirements for State IDR notification and closure letters and if nursing facilities within these States comply with the requirements for IDR requests.

To determine the length of time taken by States to complete IDR reviews and to identify IDR outcomes for disputed survey deficiencies.

BACKGROUND

The Omnibus Budget Reconciliation Act of 1987 (OBRA) amended sections 1819 and 1919 of the Social Security Act by requiring all nursing facilities participating in the Medicare and Medicaid programs to meet a common set of certification standards, many of which focus on patient care and safety. The Centers for Medicare & Medicaid Services (CMS) contracts with State agencies to conduct standard surveys of nursing facilities for compliance with the Federal standards no less than once every 15 months. Any deficiency in quality of care, safety, or patient rights, as determined through the surveys, may trigger CMS enforcement action(s).

The Administrative Dispute Resolution Act of 1990 required State agencies to develop and implement policies addressing alternative dispute resolution methods. However, it was not until July 1, 1995,[1] the effective date of the OBRA enforcement regulations, that alternative dispute resolution became a process requirement for nursing facilities certified for Medicare and Medicaid. For nursing facilities, this process is called IDR.

This inspection of the IDR process is part of the Office of Inspector General's (OIG) ongoing evaluation of the quality of care provided to nursing facility residents, particularly as measured by survey deficiencies and how States and CMS manage them. The IDR process is important because it provides nursing facilities the opportunity for avoiding costly formal appeals and for communicating better with State survey agencies about certification standards that facilities must meet. State procedures and outcomes of the IDR process have not previously been studied by OIG.

Informal Dispute Resolution

Nursing facilities have both a formal and an informal process for disputing cited deficiencies resulting from standard surveys. The nursing facility may file a formal appeal request within 60 days of the facility's receipt of the formal notice of the imposition of any enforcement remedies resulting from the cited survey deficiencies. The purpose of the formal appeal is to provide the nursing facility a structured review of disputed deficiencies by the Departmental Appeals Board of the Department of Health and Human Services.

Effective July 1, 1995, as part of the nursing facility enforcement regulations, CMS required States to provide nursing facilities the opportunity for IDR reviews in order to avoid the potentially prolonged resolution process associated with more formal appeals. The IDR process does not prevent a nursing facility from pursuing a formal appeal of the disputed deficiency concurrently or at a later date. CMS incorporated IDR procedural requirements into their final written enforcement policies located in the "State Operations Manual," section 7212.

The IDR process provides a nursing facility with an opportunity to dispute cited survey deficiencies at the State level. After a nursing facility has been cited for a survey deficiency, the State agency is required to notify the facility in writing of the IDR opportunity. If the State agency receives a written request from a nursing facility within the required timeframe (10 calendar days), the IDR process then commences. The State reviews documentation submitted by the nursing facility to dispute deficiency citations. Additional steps may include an in-person interview or telephone conference between nursing facility representatives and State agency staff. As a final step, the State may send the nursing facility a closure letter indicating the outcome of the review.[2] Some States have posted information about their IDR process on their health departments' Web sites,[3] and 27 States have incorporated an IDR process into their State laws or regulations.[4]

Federal regulations and policy[5] further specify that an IDR-disputed deficiency should not be entered into CMS's Online Survey, Certification, and Reporting (OSCAR) system. Additionally, the disputed deficiency is not supposed to be posted to CMS's Nursing Home Compare Web site, which is available for public reference, while the IDR case is pending. At the conclusion of an IDR, upheld deficiencies are input into OSCAR and subsequently made available on the Nursing Home Compare Web site.

IDR Requirements. IDR requirements appear in Federal regulations at 42 CFR § 488.331 and in CMS's "State Operations Manual." section 7212.

Federal Regulations. The Federal regulations require:

1. States to provide nursing facilities the opportunity for an IDR review;
2. States to provide written notification of the IDR process to nursing facilities;
3. any enforcement actions initiated as a result of the survey to proceed, regardless of an IDR request; and
4. in the event that the nursing facility's dispute is upheld, State removal of the deficiency from the statement of deficiencies and rescission of any enforcement actions imposed solely as a result of the disputed deficiency.

Centers for Medicare & Medicaid Services Policy. The "State Operations Manual" provides CMS's policy statement of specific requirements for the IDR process following the citation of survey deficiencies, including that each State is required to have a written policy available upon request. The requirements for State IDR notifications, nursing facility IDR requests, and State closure letters are shown in Table 1 on the next page.

Recent Federal Initiatives

Centers for Medicare & Medicaid Services. CMS is currently requiring that States input IDR information into a new component of its Automated Survey Processing Environment software. This software, the IDR Manager, tracks and collects data on disputed surveys. However, the functionalities of the IDR Manager have been used to varying degrees, depending on the needs of the States. CMS has both an extramural pilot study and a contracted grant underway to evaluate the effectiveness of the current IDR process. Reports from these studies are anticipated in early 2005, but are intended to serve as internal documents for CMS's useage.[6,7,8]

Table 1: Requirements for State IDR Notification Letters, Nursing Facility IDR Requests, and State Closure Letters

State IDR Notification and Closure Letters	Nursing Facility IDR Requests
1) Each State must notify the nursing facilities of the availability of an IDR in the letter from the State transmitting the official Form CMS-2567, the Statement of Deficiencies. 2) State notification of the IDR process should inform the nursing facility that the nursing facility's IDR request: a. must be in writing, b. must be submitted within the same 10-calendar day period as for submitting an acceptable plan of correction to the State surveying entity, and c. must include an explanation of the specific deficiencies being disputed. 3) State notification of the IDR process should also inform the nursing facility of some basic information about the State's IDR, specifically: a. how the IDR may be accomplished (e.g., by telephone, in writing, or in a face-to-face meeting); b. the name, address, and telephone number of the contact person for requesting the IDR; and c. the name and/or position title of the person who will conduct the IDR, if known. 4) The State survey entity must notify the nursing facility in writing if the nursing facility is unsuccessful at demonstrating, during the IDR, that a deficiency should not have been cited.	The nursing facility IDR request: 1) must be in writing, 2) must be submitted within the same 10-calendar day period as for submitting an acceptable plan of correction to the State surveying entity, 3) must <u>not</u> be used to: a. delay the formal imposition of remedies and b. challenge other aspects of the survey process, including: - scope and severity of cited deficiencies, except in those instances when the cited deficiency constitutes substandard quality of care or immediate jeopardy; - remedies imposed by the enforcing agency for cited deficiencies; - allegation of failure of the survey team to comply with the survey process requirements; - allegation of inconsistency of the survey team citing deficiencies among facilities; and - allegation of inadequacy or inaccuracy of the IDR process; and 4) must include an explanation of the specific deficiencies being disputed.

Source: CMS's "State Operations Manual," section 7212.

METHODOLOGY

We contacted 50 States for information about their IDR processes. We also selected a random sample of 415 IDR reviews done by 14 selected States in calendar year 2002. These 14 States represent 50 percent of the nursing facilities nationwide and 62 percent of the total number of deficiencies cited at scope (number of affected residents) and severity (degree of harm) levels E or above. These are the more serious deficiencies.

We used the following sources of information for this inspection:

- telephone interviews with all 50 State representatives having responsibility for their respective IDR processes,
- written State IDR policies from 48 of 50 States,
- written case documentation for the sample of 415 IDR reviews from the 14 selected States, and
- onsite visits with 6 of the 14 selected States.

We analyzed this information to determine: (1) if States have the required written IDR policy, available on request, and what information it contains; (2) if States and nursing facilities actually perform the Federally required key steps in each IDR case; (3) the extent to which the IDR documentation itself, such as State notices to facilities, incorporated the IDR requirements of the "State Operations Manual," section 7212; and (4) the total processing time and outcomes of cited deficiencies for the documented IDR cases. Complete information regarding the inspection methodology is provided in Appendix A

Inspection Limitations

This inspection has the following limitations:

- We only examined the IDR process for standard surveys; we did not include extended surveys, follow-up surveys, or complaint surveys in our review. We used standard surveys because CMS requires States to conduct a standard survey on all certified nursing facilities at least once every 15 months. Other types of surveys occur as needed.
- We only examined the more serious deficiency citations of scope (number of affected residents) and severity (degree of harm) levels E or above.
- We did not independently verify all of the information reported to us by State IDR representatives during telephone discussions and onsite visits, or reported to us from the State agencies through the mail.

Inspection Conduct

We conducted this inspection in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

Forty-eight of fifty States have written IDR policies that are available upon request, as required; however, the content of their written policies varies.

Compliance. Section 7212 of the "State Operations Manual" requires that all States have their IDR processes in writing so that they can be made available upon request. Forty-eight States provided us with copies of their written IDR policies as documentation of availability.

Alaska and Connecticut did not provide us copies of their own written policies. Both States indicated that when facilities request written policy, each State provides a copy of the IDR portion of the "State Operations Manual." State staff reported that IDR requests in Alaska are rare (3 in 15 years), whereas Connecticut processed approximately 88 IDR cases in 2003.

Written State Policy Content for 48 States. Federal regulations and policy specify key steps of the IDR process, but they do not require inclusion of these steps in each State's written IDR policy. Nevertheless, we compared, for informational purposes, the 48 States' written policies with the "State Operations Manual" requirements to determine the extent to which they cover the whole IDR process. (See Appendix E.) Most States' policies specify that the State will inform nursing facilities that IDR requests should:

- be in writing (44 States),
- be submitted within a 10-calendar day period (43 States),
- include an explanation of deficiencies (41 States), and
- identify who will conduct the IDR review (42 States).

States' written policies less often cover other requirements included in the "State Operations Manual," such as:

- what the nursing facility IDR request cannot be used for, such as to challenge the scope and severity of cited deficiencies, except in those instances when the cited deficiency constitutes substandard quality of care or immediate jeopardy (33 States); and
- how the nursing facilities should be notified of the availability of an IDR process (28 States).

Additionally, only four States (Arizona, Hawaii, Ohio, and Oklahoma) provide examples of their standard IDR notification letters in their written policies. These examples of letters have potential value for providing clear guidance regarding that State's IDR process.

We also compared the States' written policies against the Federal requirements to determine how accurately they reflect these requirements. We found no inaccurate statements in States' written IDR policies in this comparison.

States' written IDR policies show some differences between States' IDR processes. Some examples (see Appendix F for all of them) include:

- whether a desk review will be performed (48 States),
- the time limitation for an in-person or telephone conference (13 States), and
- the attendance limitations at an in-person conference (12 States).

Additionally, 48 States' written policies indicate an opportunity for participation in the IDR process by individuals not directly involved in the survey that resulted in the disputed deficiency.[9] At the same time, 40 States, including Alaska, reported that they routinely include the original surveyors or survey representatives in the IDR process to provide additional information or explanation, as needed, to questions which may arise during the IDR review (25 States), to attend the IDR review as nonparticipants (20 States), and to conduct the initial review (4 States).

Thirty-eight of forty-eight States' written IDR policies do not specify time limits for completion of the IDR process. There are no Federal regulations or policy requiring and defining "timeliness" from receipt of a nursing facility's IDR request to the completion of the IDR review. Ten States' policies specify time limits ranging from 10 to 40 days for their IDR processes.

All 14 of the States, for which we reviewed case documentation, are performing the IDRs and generally comply with the IDR requirements; yet, most notification letters omit some required technical information.

Based on documentary evidence, interviews with State agency staff, and onsite State visits, we confirmed that all 14 selected States are performing the Federally required IDR steps of sending notification letters, receiving requests from facilities, and informing facilities of IDR outcomes in closure letters. For our sample of 415 IDR cases, we either obtained copies of, or could infer the existence of, 99 percent of notification letters, 99 percent of nursing facility IDR requests, and 96 percent of closure letters. Follow-up discussions with State staff suggested that cases

without all three letters were due to missing documents rather than the basic IDR steps not being performed.

For the second part of this analysis, we reviewed case documentation for the State notice and closure letters to determine the extent to which the "State Operations Manual" requirements are included in both types of correspondence between the State and nursing facilities.

State IDR Notification Letters

States' IDR notification letters include most, but not all, of the required information. Case documentation shows that each of the 14 selected States uses a standard form letter that notifies nursing facilities of their opportunity for requesting an IDR review but tailors the letter to each nursing facility's particular circumstances. Modifications include specifying cited deficiencies and possible enforcement actions. All State IDR notification letters provided information about IDR availability, notified the nursing facility that the IDR request must be submitted in writing within 10 calendar days, and indicated that the written IDR request must include an explanation of specific deficiencies being disputed. Other requirements concerning the details of the IDR process, such as the method for conducting an IDR review, e.g., telephone, in writing, or who will be conducting the IDR, often did not appear in the notification letters. (See Table 2.)

Table 2: Required Information Included in 14 Selected States' IDR Notification Letters*

Required Information for Notification Letters	Letters Including Required Information (n = 367)	Number of States' Standard Letters With Required Information*
Notification of this process should inform the facility of some basic information about the State's IDR process, specifically:		
a. how the IDR review may be accomplished (e.g., by telephone, in writing, or in a face-to-face meeting);	37%	3
b. the name, address, and telephone number of the contact person for the IDR request; and	93%	12
c. the name and/or position title of the person who will conduct the IDR review, if known.	6%	1
* Because we received at least 1 notification form letter from each of the 14 States, we could determine how many of the States included the required information in their notification letters.		

Source: OIG analysis of State IDR notification letters (weighted).

Current CMS policy also requires that nursing facilities' requests not be used for certain purposes but does not prescribe that the State

notification letters contain this information. Nevertheless, we reviewed the State notification letters for inclusion as a point of information. With the exception of the notification letters specifying that requesting an IDR review to delay the formal imposition of remedies is not permissible, most letters did not include other required reasons for not requesting an IDR review. (See Table 3.)

Table 3: Inappropriate Reasons for an IDR Request Included In 14 Selected States Notification Letters

Inappropriate Reasons for Requests	Letters Including Inappropriate Reason (n = 367)	Number of States' Standard Letters Including Inappropriate Reason*
Notification includes that the facility request must not be used to:		
a. delay the formal imposition of remedies;	72%	11
b. challenge the scope and severity of cited deficiencies, except in those instances when the cited deficiency constitutes substandard quality of care or immediate jeopardy;	50%	5
c. challenge the remedies imposed by the enforcing agency for cited deficiencies;	18%	2
d. allege failure of the survey team to comply with the survey process requirements;	36%	3
e. allege inconsistency of the survey team citing deficiencies among facilities; and	36%	3
f. allege inadequacy or inaccuracy of the IDR process.	18%	2
* Because we received at least one notification form letter from each of the 14 States, we could determine how many of the States included the required information in their notification letters.		

Source: OIG analysis of State IDR notification letters (weighted).

State IDR Closure Letters

All closure letters to nursing facilities requesting IDR reviews met the one applicable requirement to notify nursing facilities in writing when they have been *unsuccessful* at demonstrating that a deficiency should not have been cited. However, all 14 selected States routinely provide closure letters to nursing facilities, regardless of outcomes. Further, 9 of the 14 selected States consistently provided information in their closure letters concerning all disputed deficiencies, rather than outcomes of only deficiencies changed as a result of the IDR review.

Nursing facility IDR requests typically met the Federal requirements.

We reviewed case documentation to determine the extent to which the nursing facility IDR requests met "State Operations Manual" requirements. (See Table 4.) All requests, except one by telephone, were submitted in writing. Eighty-six percent included an explanation of specific deficiencies being disputed. Of the IDR cases with sufficient documentation to analyze, 91 percent cited appropriate reasons for the IDR requests.

Table 4: Requirements Met in Nursing Facility IDR Requests for 13 Selected States*

Requirement for IDR Requests	IDR Requests Meeting Requirements (n = 371)
Submitted in writing	99%
Included an explanation for specific disputed deficiencies	86%
Provided correct reasons for the IDR request	91%
Submitted timely**	86%

* Massachusetts was excluded from this review.

** We defined "timely" as the request being submitted within 15 days (a few days for the State's notification letter to reach the facility by mail, 10 days to respond, and a few days for the State to receive the IDR request).

Source: OIG analysis of nursing facility IDR requests.

The 9 percent of facilities using an incorrect reason for an IDR request, namely, challenging the scope and severity of cited deficiencies, were significantly[10] more likely to be in States that did not provide this information in their State notification letters. Further, none of the nursing facilities comprising the 9 percent was refused an IDR review by the States.

Nursing facilities largely adhere to the 10-calendar day request requirement, when additional days are allowed for mail receipt and return. The "State Operations Manual" requires nursing facilities to submit their IDR requests within the same 10-calendar day period for submission of an approved plan of correction, i.e., it is required within 10 days of the nursing facility's receipt of the official Statement of Deficiencies, form CMS-2567. The CMS-2567 usually accompanies the State IDR notification letter.

Allowing a few days for the State's notification letter to reach the facility by mail, 10 days to respond, and a few days for the State to receive the

IDR request (we allowed 15 days total), 86 percent of the IDR requests fell within the required timeframe. Late submission of an IDR request does not appear to impact whether an IDR review is performed by a State; only one Texas nursing facility was refused an IDR review for not meeting a timeframe requirement.

Ten of the fourteen selected States define the 10-calendar day period for requesting an IDR review in their written policies. Seven of the ten use the same definition as the "State Operations Manual" requirement for the plan of correction, with no mention of days allowed for mailing. Two of the ten use a more restrictive definition[11] and one specifies an actual due date in the State IDR notification letters.

Eighty percent of the IDR cases were completed within 60 days, and 45 percent of the disputed deficiencies resulted in citation changes.

Timeliness. We paired each nursing facility IDR request letter with its corresponding State closure letter. Eighty percent of the pairs showed completion of IDR cases within 60 days, 13 percent took 61 to 90 days, and 7 percent took more than 90 days. Overall, time for completion of cases in our selected States (excluding Massachusetts) ranged from 2 to 312 days.

Federal regulations and policy do not define "timely" completion of an IDR case review, although the failure to complete an IDR review will not delay the effective date of any enforcement action. However, Federal regulations and policy allow nursing facilities to file a formal appeal and an IDR request concurrently. The nursing facility may file a formal appeal request within 60 days of the facility's receipt of the formal notice of the imposition of any enforcement remedies, resulting from the cited survey deficiencies. If the outcome of an IDR review is in the nursing facility's favor, e.g., deletion or lowering of scope and severity level for the cited deficiency, even though not requested by the nursing facility, the nursing facility may choose not to file a request for a formal appeal, assuming that the outcome is known before 60 days have elapsed, or the nursing facility can withdraw the concurrent request for a formal appeal made early in the process.

Outcomes. Of the initially disputed 1,211 deficiencies from 347 cases, 45 percent had a change in citation, almost always in the nursing facility's favor. (See Table 5.) An IDR outcome may be considered in the facility's favor if the disputed deficiency is deleted, "lessened" in impact by a modification to how the disputed citation is written, e.g., one or more examples are deleted from the citation, or lowered in scope and severity level, even though not requested by the nursing facility.

Of the deficiency citations that were changed, 19 percent had modifications to the way the deficiency was written, and 19 percent had the citation deleted. An increase in the scope and severity level of the disputed deficiency for the nursing facility, a negative outcome of an IDR review, appears to happen rarely. Insufficient outcome information was documented for 3 percent of the reviewed cases.

Table 5: IDR Outcomes for Disputed Deficiencies

IDR Outcomes	Percent of 1,211 Disputed Deficiencies (n = 347 cases)
No change in citation	**52%**
Changes in citation	**45%**
- Modification to the way the deficiency was written	19%
- Deletion of cited deficiency	19%
- Decrease in scope and severity level	6%
- Increase in scope and severity level	<1%
Insufficient information provided in the letter	**3%**

Source: OIG analysis of 347 paired nursing facility IDR requests and State IDR closure letters.

RECOMMENDATIONS

We found substantial State and nursing facility compliance with requirements for the IDR process. We also identified a few technical compliance issues as well as opportunities for improvements to the IDR process under CMS's leadership. We recognize that our findings about IDR performance are statistically projectable only to the 14 selected States and their IDR cases. However, these findings would likely be useful for improving IDR processes in all States. The following recommendations and opportunities for improvement are offered to CMS as possible ways to help all States to strengthen their IDR policies and practices.

RECOMMENDATIONS

CMS should secure compliance of States' IDR policies and practices with requirements by:

Ensuring that all States have written IDR policies. Alaska and Connecticut do not technically comply with the requirement for having their own written IDR policies. Instead, these two States provide copies of the IDR portion of CMS's "State Operations Manual" to nursing facilities requesting information. CMS should require the two States without the required written IDR policies to prepare them. Alternatively, CMS should review the two States' practice to determine if it meets the requirement for a State to have a written IDR policy and if the "State Operations Manual" IDR section alone is sufficient to fully inform nursing facilities about the IDR process.

Ensuring that States include all required information in their IDR notification letters to the nursing facilities. We found that the specific information required by the "State Operations Manual" regarding how and by whom the IDR review would be conducted is missing from State notification letters to varying degrees. To correct this, CMS could remind States, in writing, of the requirement for including this information, e.g., develop a template or standard notification letter for adaptation by the States, and periodically review States' letters for inclusion of these requirements.

OPPORTUNITIES FOR IMPROVEMENT

We also noticed two areas for improvement of the IDR notification, request, and closure processes which are not compliance issues, but could improve the IDR process.

Written IDR Policies. CMS may wish to consider emphasizing to all States the benefit of including all IDR requirements contained in regulation and the "State Operations Manual" in their own written policies, along with discussion of their individual State practices. While the actual content of States' written policies is at the State's discretion, the written policies are likely used by State staff in administering their IDR processes, as well as informing interested parties, such as nursing facilities. We found that at least 14 of 48 States' written policies do not address what an IDR review cannot be used for. (See Appendix E.) Further, the "State Operations Manual" policy is unclear if States are required to include this information in their IDR notification letters to the nursing facilities. Twenty of forty-eight States' written IDR policies do not include information indicating how facilities should be notified about the availability of the IDR process.

We offer several options for CMS's encouraging completeness of States' written IDR policies: (1) share this report with States, emphasizing findings about written State policy; (2) suggest, in writing, that each State's policy could benefit from incorporating the "State Operations Manual" IDR sections into their written policy; and (3) suggest, in writing, that States incorporate a sample State IDR notification letter into the written policy, which currently only four States (Arizona, Hawaii, Ohio, and Oklahoma) provide.

Timeframe for States' Completion of IDR Reviews. The IDR process can potentially save Federal, State, and facility dollars through the avoidance of a lengthy, formal appeal process. The nursing facility may file a formal appeal request within 60 days of the facility's receipt of the formal notice of the imposition of any enforcement remedies resulting from the cited survey deficiencies, and we found that 80 percent of the IDR cases were completed within 60 days. To enhance the possibility that nursing facilities can avoid formal appeals by using the IDR process, CMS's defining an explicit timeframe of something less than 60 days for IDR completion appears feasible and useful. Federal regulations and policy do not define "timely" completion of an IDR case, although the failure to complete an IDR review will not delay the effective date of any enforcement action against the nursing facility. At the same time, only 10 of 48 States' IDR written policies identify self-imposed timeframe limitations for completing an IDR case. Another benefit of setting a time limit for IDR case completion is that until the case is completed, any deficiency citation under dispute is not placed on CMS's Nursing Home Compare Web site. Lack of timeliness also compromises the integrity of the OSCAR system data.

AGENCY COMMENTS

CMS concurred with our recommendations and opportunities for improvement. The agency further commented they have already begun work to ensure that all States maintain written policies and that States review their policies for consistency with the minimum requirements listed in Federal regulations and the State Operations Manual. Furthermore, while CMS believes no immediate action is needed to specify a timeframe in which the IDR process must be completed, the agency has established it as a topic at the 2005 annual meeting with the State agencies.

CMS also provided technical comments for which we made revisions where appropriate. The full text of CMS's comments is presented in Appendix G.

APPENDIX ~ A

Inspection Methodology

We used four sources of information in this inspection:

- telephone interviews with all 50 State representatives having responsibility for their respective IDR processes,
- written State IDR policies from 48 of 50 States,
- cases with written documentation from a stratified random sample of IDR cases within 14 selected States, and
- onsite visits with 6 of the 14 selected States.

Telephone Interviews. We first interviewed the State representative for each of the 50 States. We used a standardized questionnaire to ask each about available written IDR policy and process. We also conducted subsequent follow-up discussions with IDR representatives from the 14 selected States. We gathered information regarding how each State notifies nursing facilities of the availability of the IDR process and how it conducts the IDR review.

Written State IDR Policies. We asked all 50 States to provide written documentation of their IDR processes; 48 of the 50 States provided the information. This documentation: (1) validated whether each State has the required written IDR policy and its availability upon request, and (2) provided the content of the written policies for review. As previously noted, Federal regulations and policy do not specify any requirements for the content of States' written IDR policies. Nevertheless, for informational purposes, we reviewed the extent to which States' written policies included IDR procedural requirements from the "State Operations Manual." (See Table 1 on page 4.)

Random Sample of IDR Cases within 14 Selected States

There is no national listing of IDR cases from which to sample. Therefore, we used a two-step process to identify a group of States from which to sample the IDR cases:

- identification of States having the highest number of deficiencies cited at E or above during calendar year (CY) 2002 standard surveys of nursing facilities[12] and
- determination of the number of nursing facilities in each of those States.

CMS classifies deficiencies cited by standard surveys of nursing facilities on a scale of A through L according to their scope and severity.[13] The "severity" of the deficiency refers to the degree of harm, while the "scope" of the deficiency refers to the number of affected residents.

We used CMS's OSCAR system to identify for each State the total number of deficiencies cited during standard surveys of nursing facilities at scope and severity levels greater than or equal to E during CY 2002. We ranked this listing by State from highest to lowest number of deficiencies. We then identified the number of certified nursing facilities in each State. We selected States from highest to lowest number of deficiencies until we had selected States representing at least 50 percent of the nursing facilities nationwide. This resulted in our selection of 14 States, representing 62 percent of the total number of deficiencies cited at E or above, and 50 percent of the nursing facilities. These selected 14 States were California, Florida, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Missouri, New York, Ohio, Oklahoma, Tennessee, Texas, and Washington.[14] (See Appendix B.)

To generalize to the 14 States, we treated each State as a separate stratum. The number of IDR cases sampled within each State was determined by the State's population of IDR cases. If a State had 35 or fewer IDR cases, we sampled all of them. If a State had more than 35 IDR cases, we randomly selected a sample of 35 cases. From our population of 893 IDR cases from the 14 selected States, we randomly chose a total of 415 cases for analysis. (For further details of the sample selection process, see Appendix C.)

Data Collection. For each of the 415 sampled IDR cases, we requested case documentation from the States comprised of:

- the State IDR notification letter to the nursing facility,
- the nursing facility IDR request, and
- the closure letter resulting from the completed IDR sent by the State to the nursing facility.

We did not receive the same number of each of these three documents from the sampled cases. Only 4 of the14 selected States provided all the requested documentation. Across all 415 cases, we actually received documentation for 367 State notification letters to nursing facilities, 371 nursing facility IDR requests, and 400 closure letters. Massachusetts provided no nursing facility IDR requests, only one of the requested notification letters, and all requested closure letters. While missing

documentation limited our data analysis in some instances, we were able to make assumptions about the process, which we discuss below. (For details, see Appendix C.)

Data Analysis. We examined documentation from the sampled IDR cases to determine State practice from three perspectives: (1) actual performance of the Federally required key steps in each IDR case, (2) the extent to which the IDR documentation incorporated the IDR requirements of the "State Operations Manual," Section 7212, and (3) the total processing time and outcomes of cited deficiencies for the documented IDR cases.

(1) Performance of the IDR steps for notification, request, and closure.

We considered documentation for each of the IDR cases as confirmation that the IDR process steps of notification, request, and closure had occurred. In some cases documentation was missing for the IDR notification and subsequent request. We did receive documentation for 400 closure letters. Using the documentation received, we were able to infer that a certain step in the IDR process had probably occurred. For example, since a closure letter would not be generated unless an IDR had been requested, we assumed for the analysis that the notification and request had occurred. We concluded that of the 415 cases, there was a State notification letter for 413 cases and nursing facility requests for 412 cases, although we did not always see all of the documents. This was the only analysis for which we used inferred data.

(2) Extent to which IDR case documentation incorporated the requirements of the "State Operations Manual," section 7212.

We compared the language of each of the three types of documents received for each IDR case to the "State Operations Manual" requirements. For this analysis, we used the documents we actually received, which consisted of 367 State notification letters to nursing facilities, 371 nursing facility IDR requests, and 400 State closure letters.

We also compared the dates on the notification letters and nursing facility requests. This identified whether the nursing facility IDR requests were received within the same 10-calendar day period required for submitting an acceptable plan of correction to the State survey entity. Although the "State Operations Manual" requires 10 days to respond, in our analysis, we used a conservative approach,

allowing 15 days total from the time a State notification letter was sent to the time the State received the IDR request.

(3) Total IDR processing time for documented sample IDR cases and documented outcomes of cited/disputed deficiencies through the IDR process.

Processing Time. Available documentation allowed us to match 347 cases where we had both the IDR facility request and the State outcome letter. This subset of cases allowed us to calculate the number of days for completing the IDRs.

IDR Outcomes. We compared the documented 400 IDR closure letters to their corresponding nursing facility IDR request letters to create a subset of 347 paired IDR cases documenting 1,211 initially disputed deficiencies for which we could identify outcomes.

Since our sampling frame did not include all 50 States, reported statistical estimates apply only to the 14 selected States. However, we believe the inspection's findings will be informative to all States. These estimates and their confidence intervals were computed using SAS and SUDAAN statistical software packages. (See Appendix D for confidence intervals.)

Onsite State Visits. We conducted on-site visits with 6 of the 14 selected States to better understand their IDR processes. We met with managers and staff who provided us with a "walk through" of their IDR processes. In some instances, we attended actual in-person and telephone conferences, which followed the initial desk reviews.

APPENDIX - B

Calendar Year 2002 State Nursing Facility IDR Requests

According to the 14 selected States, 5,042 standard surveys for nursing facilities were conducted in CY 2002. Of these, the States initially identified that 934 resulted in an IDR request from the nursing facilties. From this 934, we drew an initial sample of 437 for review. Subsequently, the 14 States conducted a second review of the 437 and identified that 22 of these, from 8 of the 14 States, were incorrectly reported as resulting in an IDR request, therefore resulting in a usable sample of 415 cases.

To estimate the reduced population of IDR cases in the 14 selected States, we used the sample proportion of actual IDR cases within the 8 States where the State incorrectly reported the number of cases. Therefore, we assumed that in each of the eight States, the original population would be reduced by the same proportion as the sample. This resulted in 893 CY 2002 IDR requests for the 14 selected States as shown in Appendix C.

Nursing Facility IDR Requests by State for CY 2002 Surveys Citing Deficiencies at Scope and Severity Levels of E or Higher

States	Number of CY 2002 Surveys	IDRs Initially Identified as Requested (unadjusted)	Adjusted Number of IDRs Requested	Adjusted Percent of Surveys Resulting in IDR Requests
California	656	20	15	2%
Florida	557	60	55	10%
Indiana	276	53	53	19%
Kansas	217	59	54	25%
Louisiana	235	26	26	11%
Massachusetts	225	33	33	15%
Michigan	300	66	64	21%
Missouri	342	13	12	4%
New York	436	137	125	29%
Ohio	546	192	187	34%
Oklahoma	205	30	30	15%
Tennessee	226	40	34	15%
Texas	627	153	153	24%
Washington	194	52	52	27%
TOTAL	5,042	934	893	18%

Source: OIG OSCAR extract for CY 2002.

APPENDIX ~ C

Calculated Weights for Selected States' IDR Cases*

States	Adjusted Number of IDRs Requested for CY 2002 Surveys (A)	Sampled IDR Cases (B)	Calculated Weights (A/B)
California*	15	15	1.00
Florida*	55	32	1.72
Indiana	53	35	1.51
Kansas*	54	32	1.69
Louisiana	26	26	1.00
Massachusetts	33	33	1.00
Michigan*	64	34	1.88
Missouri*	12	12	1.00
New York*	125	32	3.91
Ohio*	187	34	5.44
Oklahoma	30	30	1.00
Tennessee*	34	30	1.13
Texas	153	35	4.37
Washington	52	35	1.49
TOTAL	893	415	2.15

* The 14 selected States initially identified 934 surveys resulting in IDR requests. A second review of the requested sample of 437 IDRs by these 8 States showed they had incorrectly reported 22 surveys that resulted in an IDR request. This lowered the number of surveys, from which the 415 sampled IDR cases were drawn, from 934 to 893 (weighted).

Source: OIG analysis of State-provided documentation for requested IDR cases.

Point Estimates and Confidence Intervals for IDR Requirements

"State Operations Manual"-Requirements	Percent Affirmative Response Point Estimate (weighted)*	Percent (+/-) Confidence Interval
State IDR Notice State notifies nursing facilities of IDR availability in the letter from the State transmitting the official Form CMS-2567, Statement of Deficiencies.	100 (n = 367)	N/A
Notice informs facility that the request must: a. be in writing, b. be submitted within the same 10-calendar day period as plan of correction, and c. include an explanation of the specific deficiencies disputed.	 100 (n = 367) 100 (n = 367) 100 (n = 367)	 N/A N/A N/A
Notice informs facility of : a. how the IDR may be accomplished; b. the name, address, and telephone number of contact person for requesting the IDR; and c. the name and/or position title of the person who will conduct the IDR, if known.	 37 (n = 331) 93 (n = 365) 6 (n = 364)	 1.3 0.5 0.7
State agency will notify the nursing facility in writing if the IDR outcome is not in the facility's favor.	22 (n = 361)	1.4
Notice includes that the request must not be used to: a. delay the formal imposition of remedies, b. challenge the scope and severity of cited deficiencies, c. challenge the imposed remedies for cited deficiencies, d. allege failure of survey team to comply with survey requirements, e. allege inconsistency of survey team citing deficiencies among facilities, and f. allege inadequacy or inaccuracy of the IDR process.	 72 (n = 367) 50 (n = 367) 18 (n = 367) 36 (n = 367) 36 (n = 367) 18 (n = 367)	 0.9 0.9 0.7 0.9 0.9 0.7
Nursing Facility IDR Request Request was submitted in writing.	99.8 (n = 371)	0.2
Request was submitted within the same 10-calendar day period as plan of correction.*	86 (n = 343)	3.3
Request included an explanation of the disputed deficiencies.	86 (n = 349)	1.8
Request provided correct reasons for requesting the IDR. (Of 9 percent not requesting correctly, attempted to challenge deficiency scope and severity.)	91 (n = 284) (100 [n = 33])	2.7 (N/A)
State Closure Letter Closure letter was provided to facility, regardless of IDR outcome.	99.9 (n = 400)	0.1
1,211 Deficiencies Disputed No change in deficiency citation.	52.2 (n = 1,211)	0.04
Changes in deficiency citation: a. modification to how deficiency was written, b. increase in scope and severity level, and c. decrease in scope and severity level.	25.7 (n = 1,211) (74.3) (1.5) (24.2)	0.03
Deletion of cited deficiency.	18.9 (n = 1,211)	0.03
Insufficient information on disputed deficiency IDR outcome.	3.1 (n = 1,211)	.008

* Weighted responses for affirmative responses are for received documentation and do not include in the calculation any missing documentation.

Source: OIG analysis of State-provided documentation for requested IDR case documentation.

APPENDIX ~ E

Requirements Included in States' Written IDR Policies

"State Operations Manual"-Requirements	Number of States
The State will notify the facilities of the availability of an IDR in the letter from the State transmitting the official Form CMS-2567, Statement of Deficiencies.	28
Notification should inform the facility that the request must: a. be in writing, b. be submitted within the same 10-calendar-day period as for submitting an acceptable plan of correction to the State surveying entity, and c. include an explanation of the specific deficiencies being disputed.	 44 43 41
Notification should also a. inform the facility how the IDR may be accomplished (e.g., by telephone, in writing, or in a face-to-face meeting); b. inform the facility of the name, address, and telephone number of the contact person for requesting the IDR; and c. include the name and/or position title of the person who will conduct the IDR, if known.	 39 35 42
State survey entity must notify the nursing facility in writing if the facility is unsuccessful at demonstrating during the IDR that a deficiency should not have been cited.	41
The facility request must not be used to: - delay the formal imposition of remedies; - challenge the scope and severity of cited deficiencies, except in those instances when the cited deficiency constitutes substandard quality of care or immediate jeopardy; - challenge the remedies imposed by the enforcing agency for cited deficiencies; - allege failure of the survey team to comply with the survey process requirements; - allege inconsistency of the survey team citing deficiencies among facilities; and - allege inadequacy or inaccuracy of the IDR process.	 34 33 31 30 32 29

Source: OIG analysis of 48 States' written IDR policies describing procedures.

APPENDIX ~ F

Additional Information in Written State IDR Policies

Additional State IDR Practices in Written Policies	Number of States (n = 48)
Indicates conducting desk reviews of submitted documentation concerning disputed deficiencies.	48
Specifies a maximum amount of time permitted for the in-person or telephone conferences.	13
Limits attendance at in-person conferences.	12
Defines the amount of time in which a decision must be made from the date of the request.	10
Prohibits attorney presence at IDRs.	7
In-person conferences will be held based on the scope and severity levels of deficiencies under dispute.	7
Provides conditions for overturning or deleting deficiencies.	6
Limits IDRs to record reviews with no subsequent conferences.	5
Telephone conferences will be held based on the scope and severity levels of deficiencies under dispute.	5
Requires prior approval for attendees to in-person conferences.	3
No IDR conference will be held for any deficiencies cited at scope and severity levels of C or below.	2
In-person conferences will be the only means by which an IDR will be held.	2

Source: OIG analysis of State written IDR processes.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

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DATE: JAN 26 2005

TO: Daniel R. Levinson
Acting Inspector General
Office of Inspector General

FROM: Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare & Medicaid Services

SUBJECT: Office of Inspector General (OIG) Draft Report: "Informal Dispute Resolution for Nursing Facilities" (OEI-06-02-00750)

Thank you for the opportunity to review and comment on the above OIG draft report. This report evaluated whether state survey agencies (SAs) adhere to the Federal provisions for the informal dispute resolution (IDR) process for nursing homes, found in the Federal regulations at 42 C.F.R. § section 488.331 and section 7212 of the Medicare State Operations Manual (SOM). We appreciate the thoroughness of your work in examining the policies and procedures of 50 SAs and are pleased to find that almost all of the SAs are meeting the minimum Federal requirements for the IDR process.

The IDR process provides nursing homes with one opportunity to dispute cited deficiencies following a survey. Prior to the implementation of the long-term care enforcement regulations in 1995, many SAs already had some type of dispute resolution process. Instead of introducing a specific IDR process that all SAs must follow, the Federal regulations and SOM set forth a few conditions that SAs must meet, so that SAs have flexibility in the manner that they carry out their operations with assurance that the survey and enforcement process is not compromised. We appreciate your assistance in evaluating whether the SAs meet the core requirements for the IDR process.

Your report offers some recommendations and opportunities for improvement to help all states strengthen their IDR policies and practices. Our responses are below:

OIG Recommendation

The Centers for Medicare & Medicaid Services (CMS) should secure compliance of states' IDR policies and practices with requirements by ensuring all states have written IDR policies. Alaska and Connecticut do not technically comply with the requirement for having written IDR policies. Instead, these two states provide copies of the IDR

DP-4-11

portion of CMS' SOM to nursing facilities requesting information. CMS should require the two States without the required written IDR policies to prepare them. Alternatively, CMS should review the two States' practice to determine if it meets the requirement for a state to have a written IDR policy and if the SOM IDR section alone is sufficient to fully inform nursing facilities about the IDR process.

CMS Response

The CMS commends the SAs for complying with the requirement to have a written IDR policy, which helps communicate to nursing homes and the general public what occurs during the nursing home survey process. The OIG report notes that Alaska and Connecticut do not have their own written IDR policies. CMS contacted these two States and they were both able to supply copies of their written IDR policies. CMS reviewed the documents and determined that Alaska and Connecticut do meet the requirement for having written IDR policies and no further action is necessary.

In addition, CMS will be requesting that all states review their policies to assure that they are consistent with the minimum requirements listed in Federal regulations and the SOM.

OIG Recommendation

CMS should secure compliance of states' IDR policies and practices with requirements by ensuring states include all required information in their IDR notification letters to the nursing facilities. The OIG found that the specific information required by the SOM regarding how and by whom the IDR review would be conducted is missing from state notification letters to varying degrees. To correct this, CMS could remind states, in writing, of the requirement for including this information, e.g., develop a template or standard notification letter for adaptation by the states, and periodically review states' letters for inclusion of these requirements.

CMS Response

Through a Survey & Certification memorandum to SA directors, CMS will reiterate all of its policies relating to the IDR process, including what should be contained in the notice to providers that transmits the Form CMS-2567. The CMS has already developed model letters that states can use as templates. These letters are found in Exhibits 139, 141, and 143 of the SOM.

OIG Opportunity for Improvement

Written IDR Policies. The OIG found that between 14 and 19 of 48 states' written policies do not address for what an IDR review cannot be used (see Appendix D),

and the SOM policy is unclear if states are required to include this information in their IDR notification letters to the nursing facilities. Twenty of 48 states' written IDR policies do not include how facilities should be notified about the availability of the IDR process. The OIG offers several options to CMS to encourage completeness of states' written IDR policies: 1) share this report with states, emphasizing findings about written state policy; 2) suggest, in writing, that each state's policy could benefit from incorporating the SOM IDR sections into their written policy; and 3) suggest, in writing, that states incorporate a sample state IDR notification letter into the written policy, which currently only 4 States (Arizona, Hawaii, Ohio, and Oklahoma) provide.

CMS Response

The CMS appreciates the OIG's suggestion. As stated above, CMS is issuing a Survey & Certification memorandum to SA directors, requesting that SAs review their IDR policies.

OIG Opportunity for Improvement

Timeframe for states' Completion of IDR Reviews. The IDR process can potentially save Federal, state, and facility dollars through the avoidance of a lengthy, formal appeal process. Nursing facilities have 60 days within which to file a formal appeal of disputed deficiencies, and we found that 80 percent of the IDR cases were completed within 60 days. To enhance the possibility that nursing facilities can avoid formal appeals by using the IDR process, CMS' defining an explicit timeframe of something less than 60 days for IDR completion appears feasible and useful. Federal regulations and policy do not define "timely" completion of an IDR case, although the failure to complete an IDR review will not delay the effective date of any enforcement action against the nursing facility. At the same time, only 10 of 48 states' IDR written policies identify self-imposed timeframe limitations for completing an IDR case. Another benefit of setting a time limit for IDR case completion is that until the case is completed, any deficiency citation under dispute is not placed on the CMS' Nursing Home Compare Web site. Lack of timeliness also compromises the integrity of the Online Survey Certification & Reporting System data.

CMS Response

We agree with your suggestion. However, we do not believe immediate action is necessary to specify a timeframe in which the IDR process must be completed, since it appears that most SAs are completing their IDR cases within 60 days. Also, regardless of when the IDR process is completed, neither the nursing home nor the SA can use the IDR process to delay any enforcement actions.

The CMS does plan to discuss this issue further at the annual meeting of SAs. We agree that there are benefits to setting a timeframe—it would improve responsiveness to nursing home providers, as well as assure that survey results are posted on the Nursing

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Home Compare Web site more expeditiously. Prior to implementing a new policy, we do need to examine the advantages and disadvantages of reallocating SA resources, in light of other Federal obligations that the SAs may have.

Thank you again for your continued commitment to assisting CMS in improving the nursing home survey and certification process.

Attachment

ACKNOWLEDGMENTS

This report was prepared under the direction of Judith V. Tyler, Regional Inspector General for Evaluation and Inspections in the Dallas regional office, and Kevin Golladay, Assistant Regional Inspector General. Other principal Office of Evaluation and Inspections staff who contributed include:

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Barbara Tedesco, *Mathematical Statistician*

END NOTES

[1] 42 CFR Part 488, Subpart F, Enforcement of Compliance for Long-Term Care Facilities with Deficiencies, and "State Operations Manual" Chapter 7, Survey and Enforcement Process.

[2] The State agency is required to provide written outcome information to the nursing facility only when the provider has been unsuccessful in its dispute of the deficiency.

[3] Within each State's Internet site, we conducted a search for information regarding the State IDR processes. As of February 2004, only 14 of 50 States have specific IDR process information available to the public: Idaho, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Montana, North Carolina, New Jersey, Pennsylvania, Texas, Washington, West Virginia, and Wisconsin. Twenty-seven of fifty States have incorporated an IDR process into their written State law or regulation.

[4] Thompson Publishing Group, *Nursing Home Regulations Manual*, Tab 900, State Licensing and Enforcement; pp. 41-62, May 2001.

[5] 42 CFR § 488, Enforcement of Compliance for Long-Term Care Facilities with Deficiencies, and "State Operations Manual" Chapter 7.

[6] "The Active Projects Report, 2002 Edition" (number 00-175), "Evaluation of Independent Informal Dispute Resolution Process (IDR)," and ongoing conversations with CMS Project Officer.

[7] Texas Assisted Living Association, *TALA Update*, March/April 2002.

[8] American Association of Facilities and Services for the Aging, Health Policy Bulletin (Web article), *CMS Selects States to Participate in IDR Project*, September 24, 2001.

[9] As encouraged by "State Operations Manual," section 7212 C(9).

[10] We used a chi-square statistic to determine whether the responses to the question asking if the State notification letter includes the required reasons for not requesting an IDR was significantly related to

the responses to the question asking if the nursing facility appropriately (or inappropriately) requested an IDR. The probability of error threshold is less than or equal to 0.05; thus, the distribution is significant.

[11] The more restrictive definition of the 10-calendar day period starts from the date on the notice letter or from the survey exit conference.

[12] While there is not a one-to-one relationship between the number of IDRs and the number of nursing facility standard surveys in each State, we believe this represents a good approximation of which States may have a high volume of IDRs. We also believed that nursing facilities with higher levels of scope and severity ratings for their deficiencies may be more apt to request an IDR; 70 percent of the State respondents subsequently concurred.

[13] The following table was developed by CMS to provide clarity regarding severity and scope levels for cited nursing facility surveys.

Severity and Scope of Nursing Facility Survey Deficiencies

Severity Category*	Deficiency Scope		
	Isolated	Pattern	Widespread
Actual or potential for death or serious injury (immediate jeopardy)	J	K	L
Actual harm that is not immediate jeopardy	G	H	I
Potential for more than minimal harm	D	E	F
Potential for minimal harm, substantial compliance exists	A	B	C

* A fifth severity category, "substandard quality of care," includes deficiencies in the areas of patient behavior and facility practices, quality of life, and quality of care. These fall into the shaded categories above.

Source: Centers for Medicare & Medicaid Services, Form HSQ-156-F

[14] Office of Inspector General, Office of Evaluation and Inspections, Technical Support Staff's extract of the OSCAR system on July 28, 2003, for CY 2002. Of the initial 14 States, 1 State (Pennsylvania) indicated during preinspection that it would be unable to participate. As this was a purposive sample, and in the interest of resource limitations, we subsequently replaced that State with the 15th State on our list.