



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

January 7, 2009

**IR Procedures for Providers
Nursing Facilities, ICFs-MR, Assisted Living Facilities**

Informal reconsideration (IR) is the process by which a Long-Term Care provider may request that the Health and Human Services Commission (HHSC) review a Department of Aging and Disability Services (DADS) final decision to revoke, deny (renewal), or suspend licensure. The IR process is *not* an opportunity for the provider to show compliance pursuant to the Administrative Procedure Act. The IR process is *not* a review of the validity of the survey results on which the DADS decision to revoke, deny (renewal), or suspend licensure is based.

Note: *Informal Dispute Resolution (IDR)* is the process by which a Long-Term Care provider may request that HHSC review a DADS deficiency/violation that was cited during a *survey* or other investigation. An IDR must be requested separately on an IDR request form to address any disputed deficiencies or violations.

***IDR* addresses deficiencies/violations. *IR* examines the final licensure ACTION by DADS, not the deficiencies/violations that led to the action.**

Note: IR of certification action for ICFs-MR is different than the IR process for licensure action as described above and will continue to be performed by DADS. Please continue to submit requests for Informal Reconsideration of ICF-MR certification actions to DADS.

The provider will:

- ◆ Receive an opportunity for informal reconsideration (IR) of the disputed DADS final licensure action where applicable;
- ◆ Receive a copy of all information sent to HHSC by DADS; and
- ◆ Be informed of the results of the IR.

The IR process is intended to determine the validity of the licensure action. It is not intended to resolve complaints regarding alleged surveyor misconduct, survey protocol, or existing federal or state standards, to dispute deficiencies, or to provide an opportunity to remove previously corrected deficiencies or violations.

It is the provider's responsibility to present sufficient information (rebuttal letter and optional attachments) to the IR reviewer to support the desired IR outcome. The facility is responsible for sending this information directly to HHSC.

IR Outcomes

The following are possible outcomes of the IR desk review process:

- ◆ The final DADS licensure action is affirmed; or
- ◆ The final DADS licensure action is reversed.

IR PROCESS

IR Request Form

HHSC *and* DADS state office must receive the IR request form within **10 calendar days** of the provider receiving the DADS notification letter of final licensure action. DADS must deliver the notification letter of final licensure action by means allowing confirmation of the provider's receipt, e.g., certified mail with return receipt. This DADS letter will notify the provider of the opportunity to request an IR and will include the HHSC IR request form. If the 10th calendar day falls on a Saturday, Sunday, or legal holiday¹, the request is due the following business day.

1. The provider must fax the IR request form to DADS Provider Licensing Enforcement Unit.
2. The provider *must* fax the IR request form PLUS the fax confirmation showing that the DADS Provider Licensing Enforcement Unit received a faxed copy of the IR request form to the HHSC fax number listed on the IR request form.
3. The provider must fax the required registration information **with** the IR request form. See below.
4. IR request forms that are incomplete or incorrect will be denied an IR. (Particular attention should be paid to the date the DADS final licensure action letter was received by the provider.)
5. A fax cover sheet should be used with all faxed information to identify the facility and appropriate contact information.
6. If an attorney is listed on the IR request form, the acknowledgement letter and the final letter and decision and rationale are mailed to the attorney **ONLY**.
7. The attorney should not be listed on the IR request form unless the attorney is submitting the IR packet.

NOTE: The provider has up to 10 calendar days from the receipt of the DADS letter of final licensure action by DADS to fax the IR request form to DADS AND HHSC. To maximize the amount of time in which the provider has to prepare for the submission of supporting documentation, the provider may fax the IR request form, DADS fax confirmation, and registration information on the 10th calendar day after receiving the DADS letter of final licensure action. (If the 10th calendar day falls on a Saturday, Sunday, or legal holiday, the IR request form and fax confirmation may be sent on the following business day.)

Registration

As required by Texas GOVT. CODE §531.058, any individual representing an institution or facility in an IR process must submit *on a separate list (there is not a specific form)* the following registration information with the IR request form:

- ◆ The individual's employment history during the preceding five years, including employment in regulatory agencies of this state and other states;
- ◆ Ownership, including the identity of the controlling person or persons, of the institution or facility the individual is representing before HHSC; and
- ◆ The identity of other entities the individual represents or has represented before HHSC during the previous 24 months.²

Rebuttal Letter Components

HHSC must receive **two copies** of the rebuttal letter and supporting documentation within **five calendar days** (or the following business day, if the 5th day falls on a Saturday, Sunday, or legal holiday) of submittal of the IR request form. One copy will be used by HHSC to perform the IR. The second copy will be provided to DADS.

¹ Legal holiday: Federal and/or State

² TEX.GOV'T CODE ANN §531.058(a)(3) and Health and Safety Code §247.051(a)(3)

(The provider should **not** send a copy directly to DADS.) Overnight mail should be directed to the attention of the IDR Program Manager, HHSC IDR Program, 1106 Clayton Lane, Suite 300W, MC H970, Austin, Texas 78723.

The rebuttal letter is a written statement that includes:

- ◆ The **DADS final licensure action** that is disputed.
- ◆ The **reason(s)** the DADS final licensure action is disputed. (All submitted information must directly relate to the disputed DADS final licensure action.)
- ◆ The **desired outcome** for the IR regarding the disputed DADS final licensure action.
- ◆ **Optional attachments** should **directly demonstrate that the DADS decision to take final licensure action is not supportable. Material must:**
 - ◆ Be properly labeled;
 - ◆ Be legible;
 - ◆ Be non-duplicative;
 - ◆ Include highlights of specific entries to be reviewed for the disputed DADS final licensure action; and
 - ◆ Describe the relevance of the documentation to the disputed DADS final licensure action.

Material that does not meet the above criteria will not be reviewed. Faxed copies of the supporting documentation will not be reviewed.

Note: *Do not submit complaints about a surveyor or survey protocol.* Submit in writing any survey or surveyor complaints that were not resolved at the regional level to the DADS Program Manager for Compliance, Oversight, and Analysis for Regulatory Services.

Rebuttal Letter Requirements

The purpose of the rebuttal letter is to present the facility's position factually and succinctly. The rebuttal letter is the provider's opportunity to present the reason(s) why the DADS final licensure action is disputed. Each rebuttal letter argument **may** be supported by attachments that are consecutively numbered.

Optional attachments: An attachment is documentation that supports the position the provider is presenting. Attachments:

- ◆ Include only information directly related to the reason for disputing the DADS final licensure action.
- ◆ With few exceptions, include only documentation that existed in its original form and content **prior** to the date of the letter of the DADS final licensure action.
- ◆ May include witness statements. Each statement must be a separate attachment.
- ◆ May include documentation from appropriate facility records.
- ◆ Must be *legible* documents. **Illegible documents that are not adequately transcribed will not be reviewed.**
- ◆ May include citations of professional sources or standards. If so, submit a copy of the **relevant portion** of the source or professional standard cited.
- ◆ May include facility forms specific to the disputed final action. Explain the relevancy of the form. (Do not provide a blank form unless it is to prove that a form existed *at a specific time.*)

IR Preparation

HHSC requires the following format to facilitate the IR review process:

- ◆ Submit **two copies** of all supporting information/attachments.
- ◆ Begin each attachment on a new page with a labeled tab.
- ◆ **Tab, label, or otherwise identify each** attachment with **consecutive numbers** on the right-hand side or lower edge of the document.
- ◆ Each attachment should be referenced in the rebuttal letter. An attachment must be identified in the rebuttal letter, tabbed, labeled, or otherwise identified or **it will not be reviewed**.
- ◆ **Number** all pages consecutively.
- ◆ **Highlight** information relevant to the DADS final licensure action. Highlight the appropriate narrative, text, or information in the attachments.
- ◆ Identify the facility name on all documents.
- ◆ Indicate full name and title (typed) of persons signing affidavits, written statements and other documents and indicate the date on which the document was created.
- ◆ **Do not delete names of residents or de-identify** documents referenced in disputed DADS final licensure action.
- ◆ Submit supporting documents by 2-day mail, hand delivery, or overnight mail only. **Faxed copies of supporting documentation will not be reviewed.**

Do not submit:

- ◆ Statement(s) of deficiencies/violations.
- ◆ The plan of correction. This is not a rebuttal argument and is not relevant to the IR review.
- ◆ De-identified documents.
- ◆ Information dated *after* or actions that took place *after* the date of the DADS final licensure action letter (subject to rare exception).
- ◆ Legal arguments or briefs.
- ◆ Information regarding disputed deficiencies/violations.

Shared IR Information

HHSC will share all received IR information with both parties.

- ◆ Parties have until the end of the second business day after receipt of the IR information sent by HHSC to provide HHSC with a response, if so desired. Responses to this information must be made by e-mail, fax, hand delivery, or overnight delivery only. Responses will be shared with both parties. There will be no further responses by either party, with the exception noted in the next bullet.
- ◆ HHSC, at the reviewer's discretion, may request additional information or clarification from either party. The response is due no later than the end of the second business day after the information/clarification is requested. HHSC will notify, in writing, all parties of the request for additional information/clarification and the subsequent response, if any. There is no opportunity to rebut the response to HHSC's request for additional information or clarification.

Note: State law governing nursing facilities (Health and Safety Code, Section 242.133), assisted living facilities (Health and Safety Code, Section 247.068), and ICFs-MR (Health and Safety Code, Section 252.132) prohibits retaliation against an employee who reports a possible violation or cooperates in an investigation.

IR Decision

HHSC will complete the IR desk review and issue an IR decision no later than the 30th calendar day after receipt of the IR request. If the 30th calendar day falls on a Saturday, Sunday, or legal holiday, the decision and rationale will be issued the following business day.



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

January 7, 2009

**IR Procedures for DADS
Nursing Facilities, ICFs-MR, Assisted Living Facilities**

Informal reconsideration (IR) is the process by which a Long-Term Care provider may request that the Health and Human Services Commission (HHSC) review a Department of Aging and Disability Services (DADS) final decision to revoke, deny (renewal), or suspend licensure. The IR process is *not* an opportunity for the provider to show compliance pursuant to the Administrative Procedure Act. The IR process is *not* a review of the validity of the survey results on which the DADS decision to revoke, deny (renewal), or suspend licensure is based.

Note: *Informal Dispute Resolution (IDR)* is the process by which a Long-Term Care provider may request that HHSC review a DADS deficiency/violation that was cited during a *survey* or other investigation. An IDR must be requested separately on an IDR request form to address any disputed deficiencies or violations.

***IDR* addresses deficiencies/violations. *IR* examines the final licensure ACTION by DADS, not the deficiencies/violations that led to the action.**

Note: IR of certification action for ICFs-MR is different than the IR process for licensure action as described above and will continue to be performed by DADS. Please continue to submit requests for Informal Reconsideration of ICF-MR certification actions to DADS.

DADS will:

- ◆ Deliver the notification letter of final licensure action by means allowing confirmation of the provider's receipt, e.g., certified mail with return receipt;
- ◆ Receive a copy of the IR request form from the provider before HHSC will accept an IR request;
- ◆ Provide HHSC with the information on which DADS' decision to take licensure action was based, including but not limited to, the applicable Texas Administrative Code (TAC) criteria that authorize DADS to revoke/deny/suspend licensure and a summary explaining how the provider met that criteria;
- ◆ Receive a copy of all IR information reviewed in the IR process; and
- ◆ Be informed of the results of the IR desk review and rationale for the decision.

IR Outcomes

The following are possible outcomes of the IR process:

- ◆ The DADS final licensure action is affirmed; or
- ◆ The DADS final licensure action is reversed.

IR Process

Within **seven calendar days** of DADS initial receipt of the IR request form, HHSC must receive from DADS **two copies** of relevant, organized documents in English that support the disputed DADS final licensure action. If the 7th calendar day falls on a Saturday, Sunday, or legal holiday, the documents are due to HHSC the following business day.

DADS Supporting Documentation

Supporting documentation must include, but is not limited to:

- ◆ The TAC citation(s) identifying the criteria on which the final licensure action is based and giving DADS the authority to deny (renewal), revoke, or suspend licensure.
- ◆ A summary document that explains why and how the provider met the above-referenced criteria.
- ◆ Any other information analyzed by DADS state office on which the final licensure action decision was based.

IR Preparation

HHSC requires the following format to facilitate the IR desk review process:

- ◆ Submit **two copies** of all supporting information.
- ◆ Ensure that all documents submitted are **legible. Illegible documents will not be reviewed.**
- ◆ If quoting a document, indicate the source of the quote and submit a copy of the source document.
- ◆ Indicate facility's name or other identifying information on all supporting documentation. **Documents without this information will not be reviewed.**
- ◆ Tab, label, or otherwise identify the document on the right-hand side or lower edge and cross-reference it as appropriate.
- ◆ Begin each attachment on a new page with a labeled tab; **number** all tabs consecutively.
- ◆ **Number** all pages consecutively.
- ◆ **Highlight** the information relevant to the DADS final licensure action. Highlight the appropriate narrative, text, or medical information. Submit only information that relates to the reason(s) the DADS final licensure action is disputed.
- ◆ Indicate full name and title (typed) of persons signing affidavits, written statements, and other documents and indicate the date on which the document was created.
- ◆ **Highlight** the original date on each document, if known.
- ◆ **Do not de-identify** documents.
- ◆ When citing a source or professional standard, submit a copy of the **relevant portion** of the source or professional standard cited.
- ◆ Identify the facility name on all documents.
- ◆ Submit supporting documents by 2-day mail, hand delivery, or overnight mail only to the attention of the IDR Program Manager, HHSC IDR Program, 1106 Clayton Lane, Suite 300W, MC H970, Austin, Texas 78723. **Faxed copies of supporting documentation will not be reviewed.**

Submittal of Information

DADS should submit relevant supporting documentation for the disputed DADS' final licensure action. Information submitted must be sufficient to support the disputed DADS' final licensure action.

Shared IR Information

HHSC will share all received IR information with both parties.

- ◆ Parties have until the end of the second business day after receipt of the IR information sent by HHSC to provide HHSC with a response, if so desired. Responses to this information must be by fax, email, hand delivery, or overnight delivery only. Responses will be shared with both parties. There will be no further responses by either party with the exception noted in the next bullet.
- ◆ HHSC, at the reviewer's discretion, may request additional information or clarification from either party. The response is due no later than the end of the second business day after the information/clarification is requested. HHSC will notify, in writing, all parties of the request for additional information/clarification and the subsequent response, if any. There is no opportunity to rebut the response to HHSC's request for additional information or clarification.

IR Decision

HHSC will complete the desk review and issue an IR decision no later than the **30th calendar day after receipt of the IR request**. If the 30th calendar day falls on a Saturday, Sunday, or legal holiday, the decision will be issued the following business day.



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

January 7, 2009

**IR Procedures for HHSC Reviewers
Nursing Facilities, ICFs-MR, Assisted Living Facilities**

Informal reconsideration (IR) is the process by which a Long-Term Care provider may request that the Health and Human Services Commission (HHSC) review a Department of Aging and Disability Services (DADS) final decision to revoke, deny (renewal), or suspend licensure. The IR process is *not* an opportunity for the provider to show compliance pursuant to the Administrative Procedure Act. The IR process is not a review of the validity of the survey results on which the DADS decision to revoke, deny (renewal), or suspend licensure is based.

Note: *Informal Dispute Resolution (IDR)* is the process by which a Long-Term Care provider may request that HHSC review a DADS deficiency/violation that was cited during a *survey* or other investigation. An IDR must be requested separately on an IDR request form to address any disputed deficiencies or violations.

***IDR* addresses deficiencies/violations. *IR* examines the final licensure ACTION by DADS, not the deficiencies/violations that led to the action.**

Note: IR of certification action for ICFs-MR is different than the IR process for licensure action as described above and will continue to be performed by DADS. Please continue to submit requests for Informal Reconsideration of ICF-MR certification actions to DADS.

Conflict of Interest Statement

HHSC commits to utilizing qualified reviewers who are neutral third parties to conduct the IR desk review process. Reviewers will not be assigned cases in which a known conflict of interest exists.

Timelines. HHSC will:

- ◆ No later than the third business day after receipt of the IR request form, acknowledge an IR request by faxing the provider an acknowledgement letter and informing DADS state office staff of the IR request.
- ◆ Send copies of all IR information received to all parties.
- ◆ Conduct an objective IR review and issue an IR decision no later than the **30th calendar day** after receipt of the IR request. If the 30th calendar day falls on a Saturday, Sunday, or legal holiday, the decision will be issued the following business day.

Shared IR Information

HHSC will share all received IR information with both parties.

- ◆ Parties have until the end of the second business day after receipt of the IR information sent by HHSC to provide HHSC with a response, if so desired. Responses to this information must be by fax, email, hand delivery, or overnight delivery only. Responses will be shared with both parties. There will be no further responses by either party with the exception noted in the next bullet.
- ◆ HHSC, at the reviewer's discretion, may request additional information or clarification from either party. The response is due no later than the end of the second business day after the information/clarification is requested. HHSC will notify, in writing, all parties of the request for additional information/clarification and the subsequent response, if any. There is no opportunity to rebut the response to HHSC's request for additional information or clarification.

IR Decision and Rationale Letter

Components

Upon reaching a decision about the disputed DADS final licensure action, the IR reviewer will prepare a written notification to the provider, with copies to DADS state office staff. The decision and rationale will include:

- ◆ Identifying information, including survey exit date(s), if applicable, and receipt date of the IR request.
- ◆ A brief synopsis of the statutory or regulatory basis for the DADS final licensure action.
- ◆ A reasoned analysis of the submitted evidence and applicable licensing requirement(s) as well as the rationale for the reviewer's decision concerning the disputed DADS final licensure action.

Surveyor or survey protocol complaints will not be addressed in HHSC's IR decision and rationale.

If DADS has provided more than one statutory or regulatory basis for its decision to take final licensure action, the IR reviewer can conclude the review at the point the IR reviewer determines that one of the bases is supported by the evidence and is adequate to support DADS' decision to take final licensure action. The IR reviewer need not review any additional bases for DADS' decision once the IR reviewer determines that any one basis independently supports DADS' decision to take final licensure action. The IR reviewer may determine that none of the bases for DADS' decision is supported by the evidence.

Timeline

HHSC will complete the decision and rationale letter no later than the **30th calendar day** after receipt of the IR request. If the 30th calendar day falls on a Saturday, Sunday, or legal holiday, the decision and rationale will be completed the following business day.

Request Form for Informal Reconsideration (IR)

This form³ must be completed and signed in order to request an informal reconsideration (IR) for long-term care facilities. Contact the HHSC IDR/IR Program if you have questions at 512.706.7268; by e-mail at IDR@hhsc.state.tx.us; or refer to the HHSC IR Procedures at the HHSC website: http://www.hhs.state.tx.us/OMB/IDR/idf_GPF_02_start.shtml

- Step 1. **Fax** a copy of **this form** to the **DADS**⁴ Provider Licensing Enforcement Unit 512.438.2729.
- Step 2. **Fax: 3 items:** IR request form, DADS fax confirmation, & registration information* to **IDR/IR Program** at 512.706.7275 within **10 calendar days** of receiving the statement of final licensure action from DADS.
- Step 3. The **IDR/IR Program** must **receive TWO copies** of a **rebuttal letter** by fax, 2-day mail, hand delivery, or overnight mail to the address below within **five calendar days** of submitting this request. If the 5th calendar day falls on a Saturday, Sunday, or legal holiday, the documentation is due the following business day.
- Step 4. (**Optional**): To support you decision, you may send supporting documentation**. If submitted, supporting documentation must be sent by 2-day mail, hand delivery, or overnight mail and be received by HHSC with five calendar days of submitting the IR request.

HHSC IDR Program
1106 Clayton Lane
Suite 300 W.
Austin, TX 78723

HHSC must receive the IR request form and rebuttal letter within the required time frames or the IR will be denied. If the designated due date (calendar day) falls on a Saturday, Sunday, or legal holiday⁵, the due date becomes the following business day.

Facility Name _____ Region: _____ Facility ID _____

Facility Contact Name/Telephone Number _____

Mailing Address, City, Zip Code, and County _____

Fax Number and E-mail Address _____

Corporate Office, (if any), and its Mailing Address, City, Zip Code, Phone, Fax, and e-mail.

Date DADS **Final Licensure Action Letter** Received _____

Attorney Representative (if any), Phone #, Fax # _____

Attorney Address, City, Zip Code _____

If listed, all correspondence will be directed solely to the attorney, not the facility.

Check Type of Disputed DADS **Final Licensure Action** _____ Revocation _____ Denial of renewal _____ Suspension

***Registration Information:** Any individual participating in an IR process must attach the following registration information to the IR request form: (1) the individual's employment history during the preceding five years, including employment in regulatory agencies of this state and other states; (2) ownership, including the identity of the controlling person or persons, of the institution or facility the individual is representing before the commission; and (3) the identity of other entities the individual represents or has represented before the Commission during the previous 24 months. (TEX. GOV'T CODE ANN §531.058(a)(3) and Health and Safety Code §247.051(a)(3))

**** Supporting Documentation --** Attachments (identified by tabs) highlighted, optional.

Submitted by: _____ Date _____

Must be signed or request is subject to denial

“With a few exceptions, Texas privacy laws and the Public Information Act entitles you to ask HHSC about the information collected on this form, to receive and review this information, and to request that HHSC correct inaccuracies. HHSC's procedures for requesting corrections are in Title 1 of the Texas Administrative Code, Sections 351.17 through 351.23.”

³ Health and Human Services Commission (HHSC) IR Request Form September 15, 2003, revised January 09

⁴ Department of Aging and Disability Services

⁵ Legal holiday: Federal and/or State



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

January 7, 2009

INFORMAL RECONSIDERATION TIMELINES

Within 10 Calendar Days of Provider's Receipt of DADS' Letter of Final Licensure Action From DADS

HHSC must receive Provider's IR request form. If the 10th calendar day falls on a Saturday, Sunday, or legal holiday, the IR request form must be received by HHSC the following business day.

On receipt of the IR request form, HHSC will acknowledge receipt of the IR request to the provider or provider's representative and DADS.

Within 5 Calendar Days of HHSC's Receipt of the IR Request Form (Optional)

If supporting documentation is submitted, HHSC must receive it from the provider within this timeframe. If the 5th calendar day falls on a Saturday, Sunday, or legal holiday, the documentation must be received by HHSC the following business day.

Within 7 Calendar Days of DADS' Initial Receipt of the IR Request Form

HHSC must receive information/supporting documentation from DADS' State Office. If the 7th calendar day falls on a Saturday, Sunday, or legal holiday, the documentation must be received by HHSC the following business day.

No Later than the 10th Calendar Day after HHSC Receives the IR Request Form

HHSC will send all the supporting documentation received from each party to other party, i.e., provider information will be sent to DADS and DADS' information will be sent to the provider.

Within 2 Business Days after the Supporting Documentation is Sent to the Parties by HHSC

The parties may submit a response to the supporting documentation provided.

Within 30 Days after HHSC's Receipt of the IR Request Form

HHSC must complete the IR process. HHSC will inform the provider and DADS' state office of IR decision and rationale. If the 30th calendar day falls on a Saturday, Sunday, or legal holiday, the decision and rationale will be completed and provided to the parties on the following business day.