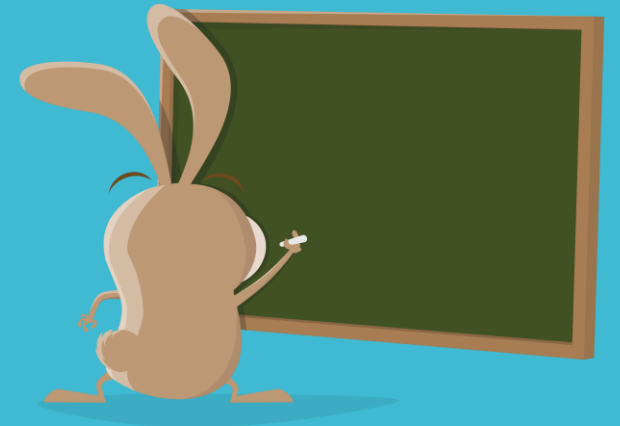


# NURSING HOME INFOMRAL DISPUTE RESOLUTION (IDR):

## Understanding the Process & Preparing for Success



- ❖ Samantha Williams, BSN,  
RN, DNS-CT, QCP
  - ❖ Cascadia Healthcare
  - ❖ Clinical Resource
- ❖ Heather E. Baird, BSN,  
RN, JD, MPH, CHC
  - ❖ Cascadia Healthcare
- ❖ Associate General Counsel

# AGENDA

What and Why – Background, Purpose, Etc.

When – Determining Whether to IDR

Who – Participants

Where – It's Game Time

How – The Process

Game Time – Mock IDR

Questions and Discussion (time permitting)

# WHAT AND WHY?: Background

- ❖ Always try to address known issues DURING survey
- ❖ IDR Process created by Federal Rule (42 CFR 488.331)
  - ❖ State-level alternative dispute resolution
  - ❖ Began July 1, 1995 (effective date of OBRA 1987) in response to Administrative Dispute Resolution Act of 1990
- ❖ Process varies among states
- ❖ No Idaho state rules, but helpful guidance on the DHW Nursing Home Homepage





# Skilled Nursing

Resources and training for skilled nursing providers

[Skilled Nursing Licensing, Certification and Facility Standards](#)

[Training and Education Resources](#)

[Skilled Nursing Provider Resources](#)

## Informal dispute resolution process

**Informal Dispute Resolution Process:** This document describes how to submit an appeal after the facility receives the formal written survey report. [IDR Process](#) - Overview

**Informal Dispute Resolution Request Form:** [IDR Request Form](#)

Review our Frequently Asked Questions document if you have additional questions about how to submit an Informal Dispute after you receive your survey results: [IDR Frequently Asked Questions](#) (FAQs)

For Independent Informal Dispute Resolution (IIDR) Requests review the [IIDR Process](#) and see the [IIDR Request Form](#) to request an IIDR.

# WHAT AND WHY?: Purpose

## DHW:

*The principal objective of this informal review process is to provide a vehicle to informally resolve disputes related to survey deficiencies.*

## Heather's interpretation:

*Collaborative chance to review facts and the survey process; you are asking the decision-makers and your ongoing regulator-partners to re-evaluate their decision...*

- ❖ States must provide nursing homes the opportunity for an IDR review of WHETHER the FACTS in the 2567 SUPPORT finding NONCOMPLIANCE
- ❖ States must provide written notice of IDR process
- ❖ Survey enforcement actions proceed regardless of IDR request
- ❖ If IDR is successful, tags are removed from 2567 and enforcement actions imposed solely as a result of those deficiencies are rescinded













**WHAT AND  
WHY?:**  
Requirements

# WHAT AND WHY?: Exclusions

An IDR is not an opportunity to:

- ❖ Dispute Scope and Severity UNLESS:
  - Substandard Quality of Care
  - Immediate Jeopardy
- ❖ Remedies imposed for cited deficiencies
- ❖ Allege failure of the survey team to comply with survey process requirements
- ❖ Allege inconsistency of the survey team citing among facilities
- ❖ Critique the IDR process itself

|   | Isolated   | Pattern   | Widespread  |
|---|--|---|---|
| Immediate jeopardy to resident health or safety   | <b>J</b><br>PoC Required<br>  | <b>K</b><br>PoC Required<br> | <b>L</b><br>PoC Required<br> |
| Actual harm that is not immediate   | <b>G</b><br>PoC Required   | <b>H</b><br>PoC Required<br> | <b>I</b><br>PoC Required<br> |
| No actual harm with potential for more than minimal harm that is not immediate jeopardy | <b>D</b><br>PoC Required   | <b>E</b><br>PoC Required  | <b>F</b><br>PoC Required<br> |
| No actual harm with potential for minimal harm  | <b>A</b><br><u>No</u> PoC Required<br><br>No remedies<br>Commitment to Correct<br>Not on CMS-2567 | <b>B</b><br>PoC Required<br> | <b>C</b><br>PoC Required<br> |

 *Substandard quality of care* means one or more deficiencies related to participation requirements under §483.10 “Resident rights”, paragraphs (a)(1) through (a)(2), (b)(1) through (b)(2), (e) (except for (e)(2), (e)(7), and (e)(8)), (f)(1) through (f)(3), (f)(5) through (f)(8), and (i) of this chapter; §483.12 of this chapter “Freedom from abuse, neglect, and exploitation”: §483.24 of this chapter

| IIDR   | [formal] Appeal  |
|--|--|
| <ul style="list-style-type: none"> <li>❖ 42 CFR 488.431 (ACA effective January 1, 2012)</li> <li>❖ w/in 10 days of CMS Imposition of Remedies Letter</li> <li>❖ Only available for tags with Federal CMPs; similar “exclusions” to IDR</li> <li>❖ Conducted by either: (i) state agency (other than SSA); or (ii) entity with MCR/MCD expertise select by State and approved by CMS</li> <li>❖ Includes resident notice</li> <li>❖ Mutually exclusive w/ IDR <u>UNLESS</u> the IDR process completed prior to imposition of Federal CMP</li> </ul> | <ul style="list-style-type: none"> <li>❖ Within 60 days of CMS Imposition of Remedies Letter</li> <li>❖ Provides nursing home structured review of disputed deficiencies by DAB of DHHS</li> <li>❖ Conducted by ALJ</li> <li>❖ Long and potentially expensive process (lawyer; 35% waiver)</li> <li>❖ NOT mutually exclusive w/ IDR and/or IIDR</li> </ul> |

# WHAT AND WHY?: Compare and Contrast





# WHEN?

Should we IDR this tag?



Did our facility's actions violate the intent of the regulation (see SOM- there's an intent statement for each reg)



Can we provide documentation to prove compliance?



What are the effects on our 5 Star? Is this worth asking for IDR?



Should we pursue IIDR instead?

# WHO?: Selecting Presenters

## Must be knowledgeable of:



# ❖ 5-Member Panel

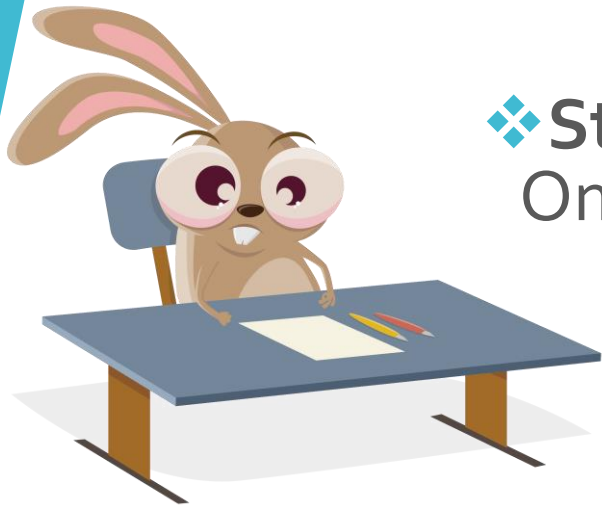
## ❖ 2 – Provider Community

- ❖ IHCA Executive Director
- ❖ DON

## ❖ 2 – Department of Health and Welfare

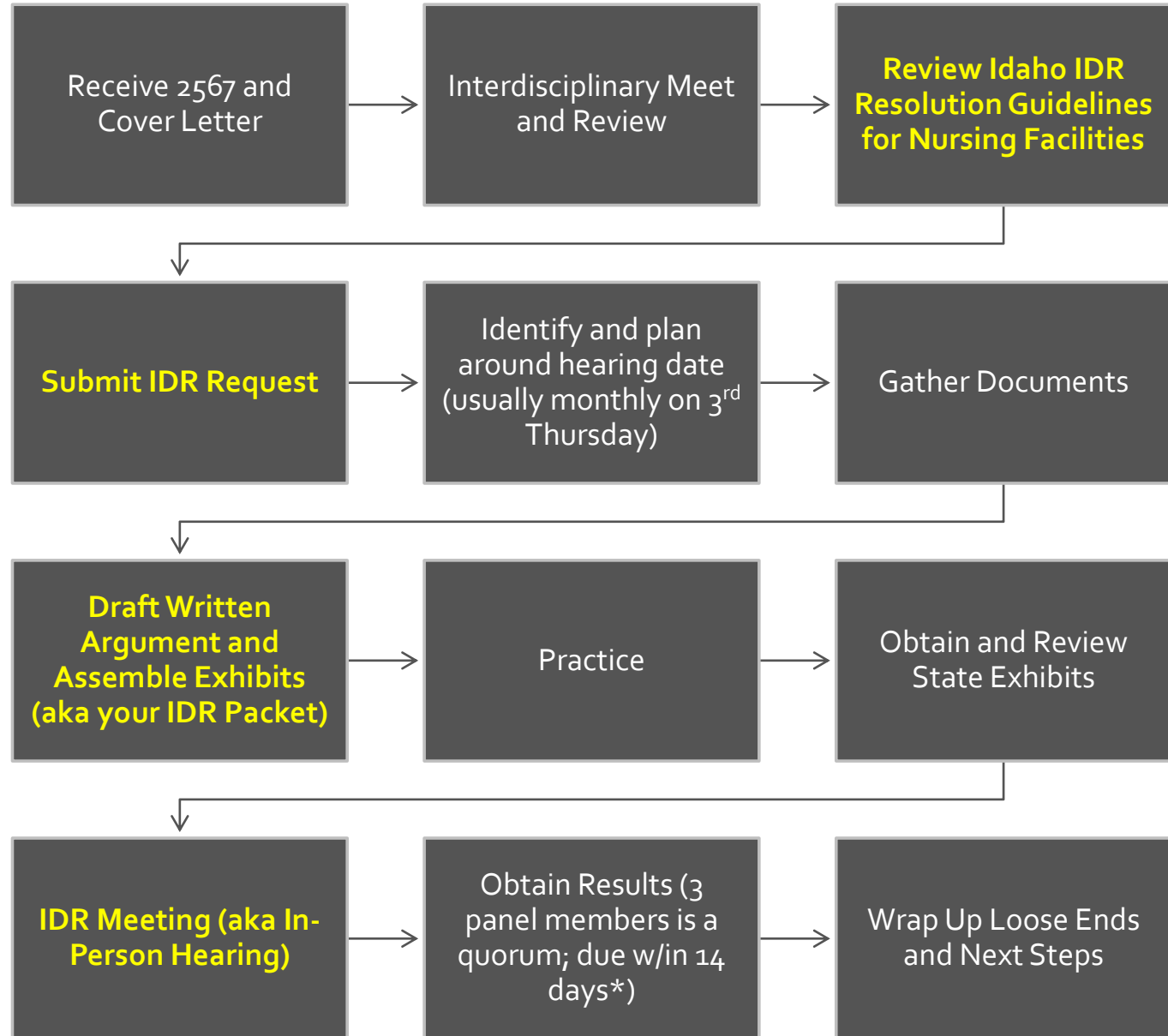
- ❖ Division Administrator
- ❖ State Training Coordinator

## ❖ State Ombudsman (Regional Ombudsman as alternate)



WHO?:  
Panelists

# HOW?: Overview



## ***Informal Dispute Resolution Guidelines for Nursing Facilities***

### **1. Introduction**

- 1.1. The Idaho Department of Health and Welfare, Bureau of Facility Standards (Department), working with the Idaho Health Care Association (IHCA), and representatives from nursing facilities and advocate agencies, has established the following informal review process for the purpose of resolving disputes with nursing facilities over federal and state deficiencies cited during a survey. The survey process brings together a number of professional interests. The Department, through the survey team, is responsible for meeting a large array of survey requirements in a thorough, professional manner. Nursing facilities are interested in being evaluated fairly and consistently by qualified survey personnel. The foremost interest of all parties is the resident's right to the highest possible quality of care and life, including the prompt correction of deficiencies that interfere with this right.
- 1.2. This informal review process has been developed with the expectation that all parties act in good faith, treat others with respect and professionalism, and recognize that there will be issues of honest disagreement.

### **2. Guiding Principles**

- 2.1. The process described in this document complies with the federal Centers for Medicare and Medicaid Services (CMS) minimum requirements for informal dispute resolution at *42 CFR §488.331* and related *CMS State Operations Manual* instructions.
- 2.2. This process does not alter or delay the required timetables associated with licensure or certification, termination or other adverse actions, including especially the short time frames established for immediate jeopardy findings.
- 2.3. This informal process does not limit any other appeal available under other federal laws or regulations.
- 2.4. Facilities may not use the informal process to delay the formal imposition of remedies or to challenge any other aspect of the survey or enforcement process including the:
  - 2.4.1. Scope and severity assessments of deficiencies with the exception of scope and severity assessments that constitute substandard quality of care or immediate jeopardy;

# HOW?: IDR Guidelines for Nursing Facilities

- ❖ 10-page how-to instruction manual





# HOW?: Building Your IDR Packet

- ❖ The IDAPA IDR process specifies that “any evidence submitted must have been in existence in its submitted form and content as of the survey date.”
- ❖ This means the documentation for your IDR was in place PRIOR to survey
- ❖ Examples:
  - ❖ physician orders
  - ❖ care plan
  - ❖ progress notes
  - ❖ Evaluations
- ❖ Major Exception: statements from witnesses/experts/others

# HOW?: Building your IDR Packet

## ❖ When gathering documentation for IDR submission, remember to keep it:

- ✓ Relevant: medical records that directly address the cited area; highlight items for focus
- ✓ Concise: 15 minute time limit for presenting
- ✓ Organized: Clearly labeled documents, numbered pages, a table of contents if necessary



# HOW?: Submitting your IDR Packet

- ❖ All materials due 15 calendar days before the hearing
- ❖ Attach original + 7 copies
- ❖ Have a delivery plan
- ❖ Make it as user friendly as possible



# HOW?: IDR Meeting

1

In-Person/Phone/Written

2

Introductions and Overview by IDR Panel Chair

3

Facility Presents for 15 Minutes per Deficiency (max 30 minutes)

4

SSA Presents for 15 Minutes

5

Clarifications, questions, responses, time managed by Panel Chair

6

Neither party attends the other party's presentation

# MOCK IDR



# QUESTIONS AND DISCUSSION

(time permitting)

