

## ISSUE BRIEF

### Utilize an Independent Third Party for Informal Dispute Resolution (IDR)

*Action for Indiana General Assembly:* Ensure fair and objective review of disputed nursing home survey findings by removing the Indiana State Department of Health (ISDH) from the Informal Dispute Resolution (IDR) process and utilizing an impartial third party for all IDR hearings. Currently, the ISDH conducts nursing home surveys and conducts the IDR hearings.

In Indiana, nursing home surveys are conducted by the Indiana State Department of Health (ISDH). These surveys are conducted once every **9 to 15 months** and are unannounced; the facilities have no ability to prepare for them in advance. The Centers for Medicare and Medicaid Services (CMS) establish the guidelines for nursing home surveys and ISDH staff applies these guidelines to Indiana facilities.

Because there is no recognized quality assurance mechanism (e.g., ISO) in place that ensures each of these surveys is conducted in a consistent manner, there is frequent disagreement between the surveyor, (an ISDH employee) and the staff at the facility regarding the outcomes of the survey. The formal results are provided to the facility on a **CMS Form 2567**, which is the official notification of any deficiencies that have been identified. Any assessed financial penalties are also noted at that time.

A nursing facility may appeal the findings made by the ISDH survey team. The first level of appeal is the Informal Dispute Resolution (IDR). In Indiana the IDR process is also conducted by ISDH, which means that the appeal is heard by the same organization that conducted the survey. Not surprisingly, approximately **90 percent** of all IDR proceedings in Indiana favor ISDH. Those that favor the provider are based on the provider's use of legal counsel, a cost that is not allowable in the current cost-based reimbursement system. ISDH does offer one third party option – **the Michigan Peer Review Organization** – but the provider must pay the entire cost of this option in advance which is also not allowable under the current reimbursement system. The typical IDR process in Indiana can take several months; during this time, financial penalties continue to accrue.

The figure below demonstrates the low probability of success for the with the current IDR process.

**2007 Informal Dispute Resolution Results**

Agency Conducting Review	Reviews Conducted	Reviews Supporting the Surveyor	Reviews Resulting in Amendments	Reviews Supporting the Provider
Michigan Peer Review Organization	30	93.33%	3.33%	3.33%
Indiana State Department of Health	279	77.07%	12.24%	10.67%

Source: Indiana State Dept. of Health, 2007.

Essentially, the current IDR process lacks due process for nursing facilities. The fact that **90 percent** of the findings are in favor of ISDH is indicative of the unfavorable odds a provider has in overturning an adverse finding.

#### **Adopting a third party approach to the IDR process benefits both the State of Indiana and nursing facilities.**

- The Indiana Health Care Association (IHCA) recommends utilizing a pool of registered nurses from local healthcare organizations that are rotated for each IDR process. These nurses can be paid for with the Civil Monetary Penalty (CMP) fund, which is made up of over \$8 million in fines paid by nursing facilities.
- More objective IDRs make more objective surveys; thus, surveyors can focus on real deficiencies and avoid frivolous findings that create unnecessary costs for both the State and the provider.