



The Informal Conference Process for Health Care Facilities

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Nursing facilities, skilled nursing facilities, residential care facilities, intermediate care facilities for the intellectually disabled, hospitals, hospices, home health agencies, programs and facilities caring for children, elder group homes, assisted living programs and adult day programs are all subject to oversight by the Department of Inspections and Appeals' ("DIA's") Health Facilities Division. This Division is responsible for licensing and certifying Medicare and Medicaid programs and other health care providers operating in the state. In addition, this Division conducts on-site inspections, investigates complaints and initiates corrective or disciplinary proceedings to ensure a facility's or program's compliance with federal and state law. While you may be familiar with the survey process, you may not (thankfully) be as familiar with the process to challenge an adverse survey finding or an adverse result stemming from a complaint investigation.

In the past few years, a number of changes have been made to the processes for challenging a citation or "tag" stemming from a survey or complaint investigation. The primary changes have been to the informal conference process, which is the process that can be undertaken in attempt to obtain dismissal of an adverse finding before going through the more rigorous contested case proceedings.

While each type of facility has its own specific rules and regulations, the general timeline of the informal conference proceedings is as follows:

1. DIA conducts on-site survey and/or complaint investigation. An "exit interview" is conducted at the facility by the investigators.
2. DIA's surveyor takes the results of his/her survey or investigation to others at DIA and those parties discuss what, if any, citations should be issued and what, if any, penalties should be imposed.
3. DIA issues documentation to the facility identifying the citations and penalties.
4. The facility then has a certain period of time (typically 20 days) to notify DIA if it desires to contest the findings. The facility can ask for an informal conference or a contested case proceeding. If requesting an informal conference, the facility should ask for the surveyor worksheets and any other documents relating to the investigation at the same time in order to adequately prepare for the informal conference.
5. Once the informal conference is requested, the facility then has a certain period of time to identify who is attending the informal conference and to provide documentation to support the facility's position. This documentation may include

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- records obtained from DIA, additional records from the facility, statements from witnesses and any other items that support the facility's position.
6. Once the request for an informal conference is made and the documentation submitted, the conference, which can be face to face or via telephone, must be conducted within 10 days.
 7. The informal conference is conducted by an "independent reviewer" who then decides whether to affirm or dismiss the citation and/or penalties. An independent reviewer must be an Iowa-licensed attorney who is not employed by DIA, has not been employed by DIA in the past 8 years and who has not appeared in front of DIA on behalf of a health care facility in the past 8 years. Currently, DIA has contracts with three independent reviewers: Jeff Boehlert (Des Moines), Ellen Akst Jones (Fairfield) and Ciara L. Vesey (Bettendorf).
 8. At the informal conference, both DIA and the facility are allowed to "make their case." This can be through an attorney presentation and/or through statements of administrators and witnesses. Each party is given a limited amount of time, which is usually 30 minutes each. The independent reviewer can and often does ask questions, and the facility and DIA can respond to statements made by the other.
 9. In addition to the informal conference, the independent reviewer also has in his/her possession DIA's survey or investigation materials and the information provided by the facility in its written submission.
 10. The independent reviewer then issues a written decision. The decision has to state the specific reasons for the affirmation, modification or dismissal of the citation.
 11. If the independent reviewer's decision modifies or dismisses the citation, DIA then issues an amended or corrected citation.
 12. If the independent reviewer affirms the citation, the facility then has the opportunity to continue to challenge the citation by "formally contesting" the citation through contested case proceedings.

Other requirements, such as the submission of a plan of correction, are typically still required even though the informal conference is taking place. If, however, the independent review modifies or dismisses the citation, the facility can then submit an amended plan of correction to reflect such changes to the citation.

If the facility is certified under Medicare or Medicaid, the informal conferences are held concurrently with the "informal dispute resolution" process under federal law. However, after completion of the informal conference/informal dispute resolution process, there may be different and distinct actions or notices that a facility needs to provide to the Centers for Medicare & Medicaid Services ("CMS") to contest the federal citations *in addition* to the state contested case proceedings. Typically, if there is a federal citation proceeding, DIA will stay its contested case proceedings until the conclusion of the federal process.

The informal conference process, especially in its present form, is a great tool to attempt to resolve citation issues prior to engaging in contested case proceedings. Unlike before when the "independent reviewer" was a former DIA employee, the current definition of independent reviewer provides a greater independence to the process. Experience has shown that the

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independent reviewers are truly that and are able to make decisions both for and against DIA's position. Even if the independent reviewer does not dismiss the citation, the process itself is helpful in understanding DIA's position and documentation prior to initiating contested case proceedings.

There are a number of specific and often quick deadlines involved in the informal conference process and thus, it is important to be aware of and follow the Iowa Administrative Rules that are applicable to your specific type of facility. An attorney can also be helpful in preparing you for this process and to ensure that deadlines are met.

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