AN ACT

1 Establishing an informal dispute resolution process for long-term care nursing facilities and an informal dispute resolution panel within the Department of Health; and providing for membership of the panel, for the scope of informal resolution review and for data collection.

6 The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Long-Term Care Nursing Facility Informal Dispute Resolution Act.

11 Section 2. Purpose.

12 The purpose of this act is to give long-term care nursing facilities the opportunity to refute deficiencies cited in a department survey.

15 Section 3. Definitions.

16 The following words and phrases when used in this act shall have the meanings given to them in this section unless the
context clearly indicates otherwise:


"Department." The Department of Health of the Commonwealth.

"Facility." A long-term care nursing facility.

"Findings." Examples of noncompliance noted on a statement of deficiencies.

"IDR." Informal dispute resolution as provided for in this act.

"Immediate jeopardy." A situation in which a deficiency has caused or is likely to cause serious injury to, harm to, impairment of or death of a resident.

"Long-term care nursing facility." A facility that provides either skilled or intermediate nursing care or both levels of care to more than one patient unrelated to the licensee for a period exceeding 24 hours. The term does not include an intermediate care facility exclusively for the mentally retarded, commonly called ICF/MR.

"Panel." The informal dispute resolution panel established in section 4(a).

"Plan of correction." A facility's response to deficiencies which explains how corrective action will be accomplished, how the facility will identify other residents who might be affected by the deficient practice, what measures will be used or systemic changes made to ensure that the deficient practice will
not recur and how the facility will monitor to ensure that solutions are sustained.

"Qualified geriatrician." A physician who meets the requirements of the American Medical Directors Certification Program and:

(1) is a certified medical director; or
(2) has successfully completed a geriatric fellowship approved by the American Geriatrics Society.

"Remedies." Enforcement actions, including termination of a provider agreement with Medicare, Medicaid, or both; denial of payment for new admissions; denial of payment for all residents; imposition of a temporary manager; civil money penalties; monitoring; directed plan of correction; directed in-service training or other alternative enforcement actions.

"Scope." The degree to which a pattern or widespread deficiencies throughout a facility are isolated.

"Severity." Whether deficiencies constitute:

(1) no actual harm with potential for minimal harm;
(2) no actual harm with a potential for more than minimal harm but not immediate jeopardy;
(3) actual harm which is not immediate jeopardy; or
(4) immediate jeopardy to resident health or safety.

"Statement of deficiencies." Written notice by the department to a facility specifying the deficiencies found upon inspection.

"Substandard quality of care." A deficiency relating to requirements for resident behavior and facility practice, quality of life or quality of care which constitutes:

(1) immediate jeopardy to resident health or safety;
(2) a pattern of or widespread actual harm which is not immediate jeopardy to resident health or safety.
immediate jeopardy; or

(3) a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm.

"Survey." An inspection of a facility conducted by representatives of the department in accordance with procedures outlined in Chapter 7 of the Federal State Operations Manual, relating to survey and enforcement process for skilled nursing facilities and nursing facilities.

Section 4. Informal dispute resolution process.

(a) Establishment of panel.--The department shall establish an informal dispute resolution panel to determine whether a cited deficiency as evidenced by a statement of deficiencies against a facility should be upheld.

(b) Minimum requirements of process.--The department shall promulgate regulations which shall incorporate by reference the provisions of 42 CFR § 488.331 (relating to informal dispute resolution) and shall contain the following minimum requirements of the IDR process:

(1) Within ten business days of the end of the survey, the department shall transmit to the facility a statement of deficiencies committed by the facility, by certified mail or the department intranet, if the facility is connected to the intranet.

(2) Within ten days of receipt of the statement of deficiencies, the facility shall return a plan of correction to the department. The facility may request an IDR conference to refute the deficiencies cited in the statement of deficiencies. The request must be submitted in writing within the same ten-day period that the facility has for submission of the plan of correction.
(3) Within 14 days of receipt of the request for an IDR conference made by a facility, the panel shall hold the IDR conference. The IDR conference shall afford the facility the opportunity to provide additional information or clarification in support of the facility's contention that the deficiencies were erroneously cited. This opportunity shall be, at the option of the facility:

(i) a review of written information submitted by the facility; or

(ii) either a conference call or a face-to-face meeting at the headquarters office of the Division of Nursing Care Facilities.

(4) Within five calendar days of the IDR conference, the panel shall make a determination, based upon the facts and findings presented, and shall transmit the decision to the facility.

(5) If the panel rules that the original statement of deficiencies should be changed as a result of the conference, the department shall transmit a revised statement of deficiencies to the facility with the notification of the determination.

(6) Within ten calendar days of receipt of the determination made by the department and the revised statement of deficiencies, the facility shall submit a plan of correction to the department.

(7) The department may not post on its Internet website or enter into the Centers for Medicare and Medicaid Services Online Survey, Certification and Reporting System any information about deficiencies which are in dispute unless the dispute determination is made and the facility has
responded with a revised plan of correction, if needed.

Section 5. Informal dispute resolution panel.

(a) Membership.--The panel shall consist of three members who shall be separate from the Informal Dispute Resolution Unit within the Division of Nursing Care Facilities of the department. Panel members must meet the minimum surveyor qualifications, and at least one of the members must be a registered nurse. A member of the State Board of Examiners of Nursing Home Administrators shall be an ex-officio member of the panel.

(b) Qualified geriatrician.--If a deficiency under dispute involves physician decision making, the panel shall consult with a qualified geriatrician to provide information and recommendations regarding physician practice.

(c) Additional consultants.--Additional consultants, requested by the panel or the facility, may be consulted if specific expertise is needed to address deficiencies under dispute.

(d) Panel decisions.--A decision of the panel shall be forwarded to the director of the Bureau of Facility Licensure and Certification who shall notify the facility of the decision.

Section 6. Scope of informal dispute resolution review.

(a) Matters not subject to challenge.--A facility may not challenge:

(1) the scope and severity assessments of deficiencies, except for the scope and severity assessments which constitute substandard quality of care or immediate jeopardy;

(2) remedies imposed;

(3) alleged failure of a survey team to comply with a requirement of the survey process;
(4) alleged inconsistency of the survey team in citing deficiencies among facilities; or
(5) alleged inadequacy or inaccuracy of the IDR process.

(b) Matters subject to challenge.--A facility may challenge individual findings which lead to the assessment of scope and severity.

Section 7. Data collection.

The department shall collect and maintain data regarding:

(1) The number of IDR requests made on an annual basis.
(2) The number of written reviews.
(3) The number of conference calls and face-to-face meetings under section 4(b)(3)(ii).
(4) The number of requests in which no change was made.
(5) The number of requests in which a deficiency was removed.
(6) The number of requests in which a deficiency was downgraded.

This information shall also be maintained per deficiency.

Section 20. Effective date.

This act shall take effect in 60 days.