



**Pennsylvania House of Representatives  
Aging and Older Adult Services Committee  
Public Hearing on HB 1052 Establishing  
An Independent Informal Dispute Resolution Process  
October 4, 2011**

Good morning Chairman Hennessey, Chairman Curry, Members of the Committee, staff and guests. My name is Dr. Eli N. Avila, and I am the Secretary for the Pennsylvania Department of Health (Department). Thank you for the opportunity to speak to you today regarding the Department's procedures for reviewing the results of the surveys conducted by the Division of Nursing Care Facilities at nursing homes in the Commonwealth, as well as House Bill 1052.

The Department regularly evaluates its health care facility licensing activities, and is supportive of and welcomes initiatives to improve upon the efforts currently made to work with facilities and health care consumers toward the effective licensing of the facilities. The establishment of an informal procedure for the independent review of deficiencies issued by the Department, as proposed in House Bill 1052, presents us all with one of these opportunities.

In addition to its responsibilities as the state licensing agency for nursing homes, the Department's Division of Nursing Care Facilities (Division) carries out the functions of the State Survey Agency for the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (or CMS). In this capacity, the Division conducts surveys and makes recommendations to CMS for certification of nursing homes in the Medicare program. Pursuant to the federal regulations governing the responsibilities of the Division as the State Survey Agency, the Division has established a process for the informal review of deficiencies. Deficiencies, as they are commonly referred to in the nomenclature used by CMS, are the items of non-compliance with applicable statutes and regulations discovered during the Division's nursing home surveys. This review process, referred to as "informal dispute resolution" (or IDR) offers a nursing home an opportunity to request that the Division review recently-issued deficiencies and provide documentation and other information to demonstrate that the deficiency should not have been cited.

This IDR review is offered at no cost to the nursing home, and is conducted by individuals in the Division that were not directly involved in the survey, but who are licensed health care practitioners and participate in the same training provided by the Department and CMS to all nursing home surveyors. If an IDR review results in the removal or revision of any deficiencies, the Division will issue a revised statement of deficiencies and any penalties that were imposed on the nursing home that are no longer justified as a result of the revised statement of deficiencies will be amended or withdrawn. Often, the Division's IDR reviews are completed within 30 days of the Division's receipt of a nursing home's request for an IDR review, before penalties are imposed and before the deficiencies are posted on the Department's publicly accessible website. This ensures that the statement of deficiencies available to the public accurately represents a nursing home's compliance with the applicable laws and regulations. The Division's IDR process has been reviewed and approved by CMS.

Since January 2010, the Division has received requests from nursing homes to review 199 individually cited deficiencies under its existing IDR procedures. Of these, 19 deficiencies were removed from the statements of deficiencies altogether and another 19 were revised or reworded based on the documentation and other information submitted by the nursing home. Of the deficiencies reviewed, 120 were issued to nursing homes operated by a for-profit health care provider, 55 were issued to nursing homes operated by non-profit providers, and 24 were issued to nursing homes operated by state or county government providers.

Under House Bill 1052, the Department will offer an alternative form of IDR review – an “independent informal dispute resolution” review (or IIDR). Under this IIDR review, the Department will contract with an independent entity that will serve as an IIDR agent and has begun discussions with appropriate organizations to serve in this capacity. A nursing home will be provided with the option to request that the deficiencies issued by the Division be reviewed by the IIDR agent. The costs for this IIDR review will be paid by the nursing home. In accordance with the timelines and procedures outlined in the bill, and as otherwise agreed to by the Department and the IIDR agent, the IIDR agent will review the deficiencies and any information or documentation submitted by the facility and the Division, and issue a written report regarding whether the deficiencies should remain as cited or be revised or removed. The report will be reviewed by the Division, and the Division will make a determination of whether it agrees or disagrees with the IIDR agent's report.

The Department has had the opportunity to work with representatives of the stakeholder community in the development of this bill to ensure that the IIDR review process will have minimal impact on the existing survey and licensing procedures and that the bill will not result in additional costs to the Department or

the Commonwealth. The Division will also continue to offer its no-cost IDR process that will permit nursing homes to seek review of deficiencies issued by the Division without incurring an additional cost.

I would also like to take this opportunity to briefly inform the Committee about the expected implementation of a separate informal dispute resolution process that will be established in accordance with federal regulations recently published by CMS under provisions of the Patient Protection and Affordable Care Act. Under the requirements of the Affordable Care Act and the regulations published by CMS, the State Survey Agency is required to establish an independent informal dispute resolution process, separate from the existing IDR process utilized by the Division. This IIDR process is required to be in place by January 1, 2012.

This IIDR process will not apply to all the deficiencies issued by the Division that are currently eligible for review under the Division's existing IDR process or under the IIDR process that would be established by House Bill 1052. Instead, this process will exist only for the review of deficiencies that have resulted in imposition by CMS of certain civil monetary penalties (or CMPs). Not all deficiencies result in CMS imposing CMPs. Accordingly, pursuant to CMS's regulations, this process will not replace the Division's existing IDR process, as it is intended to provide for review of a more limited scope of deficiencies issued by the Division. For these reasons, as well as for other limitations imposed by CMS's regulations concerning the IIDR process under the Affordable Care Act, this process will also not supplant the IIDR process that would be established by House Bill 1052.

The Division will operate three separate informal dispute resolution processes. However, with the exception of some very limited circumstances, a nursing home will only be permitted to request review under one of the three and cannot seek multiple reviews of the same deficiencies. The Division continues to review the regulations and additional limited guidance issued by CMS and is also currently communicating with CMS to ensure proper and timely implementation of the IIDR process under the Affordable Care Act. As with the IIDR process established under House Bill 1052, the Department will work with representatives of the stakeholder community and CMS to ensure that the IIDR review process under the Affordable Care Act will have minimal impact on the existing survey and licensing procedures and that it will not result in additional costs to the Department or the Commonwealth.

Thank you for the opportunity to discuss with you House Bill 1052 and the Department's existing and anticipated procedures for review of deficiencies issued by the Division. I am happy to answer any questions the Committee may have.