
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2662 Session of
2002

INTRODUCED BY VANCE, SCHULER, PICKETT, M. BAKER, BENNINGHOFF,
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STABACK, STEELMAN, TANGRETTI, E. Z. TAYLOR, THOMAS, WALKO,
WATSON, WOJNAROSKI AND ZIMMERMAN, MAY 22, 2002

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
MAY 22, 2002

AN ACT

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

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

8 Section 1. Short title.

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

11 Section 2. Purpose.

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

15 Section 3. Definitions.

16 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Deficiency." A long-term care nursing facility's failure to
4 meet a requirement of the Social Security Act (49 Stat. 620, 42
5 U.S.C. § 301 et seq.), 42 CFR Pt. 483 Subpt. B (relating to
6 requirements for states and long term care facilities), the act
7 of July 19, 1979 (P.L.130, No.48), known as the Health Care
8 Facilities Act, or 28 Pa. Code Pt. IV Subpt. C (relating to long
9 term care facilities).

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

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

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

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

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

19 "Long-term care nursing facility." A facility that provides
20 either skilled or intermediate nursing care or both levels of
21 care to two or more patients, who are unrelated to the licensee,
22 for a period exceeding 24 hours. Intermediate care facilities
23 exclusively for the mentally retarded, commonly called ICF/MR,
24 shall not be considered long-term care nursing facilities for
25 the purposes of this act and shall be licensed by the Department
26 of Public Welfare.

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

29 "Plan of correction." A facility's response to deficiencies
30 that explains how corrective action will be accomplished, how

1 the facility will identify other residents who might be affected
2 by the deficient practice, what measures will be used or
3 systemic changes made to ensure that the deficient practice will
4 not recur and how the facility will monitor to ensure that
5 solutions are sustained.

6 "Qualified geriatrician." A medical doctor or a doctor of
7 osteopathy licensed by the Commonwealth who meets the
8 requirements of the American Medical Directors Certification
9 Program and either is a certified medical director or has
10 successfully completed a geriatric fellowship approved by the
11 American Geriatrics Society.

12 "Remedies." Enforcement actions, including, but not limited
13 to, termination of a provider agreement with Medicare, Medicaid,
14 or both; denial of payment for new admissions; denial of payment
15 for all residents; imposition of a temporary manager; civil
16 money penalties; monitoring; directed plan of correction;
17 directed in-service training or other alternative enforcement
18 actions.

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

21 "Severity." Whether deficiencies constitute:

22 (1) no actual harm with potential for minimal harm;

23 (2) no actual harm with a potential for more than
24 minimal harm but not immediate jeopardy;

25 (3) actual harm that is not immediate jeopardy; or

26 (4) immediate jeopardy to resident health or safety.

27 "Statement of deficiencies." Written notice by the
28 Department of Health to a facility specifying the deficiencies
29 found upon inspection.

30 "Substandard quality of care." One or more deficiencies

1 relating to requirements for resident behavior and facility
2 practice, quality of life or quality of care that constitute:

- 3 (1) immediate jeopardy to resident health or safety;
- 4 (2) a pattern of or widespread actual harm that is not
5 immediate jeopardy; or
- 6 (3) a widespread potential for more than minimal harm,
7 but less than immediate jeopardy, with no actual harm.

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

13 Section 4. Informal dispute resolution process.

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

18 (b) Minimum requirements of process.--The department shall
19 promulgate rules or regulations, which shall contain the
20 following minimum requirements of the IDR process:

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

26 (2) Within ten calendar days of receipt of the statement
27 of deficiencies, the facility shall return a plan of
28 correction to the department. The facility may request an IDR
29 conference to refute the deficiencies cited in the statement
30 of deficiencies. The request must be submitted in writing

1 within the same ten-calendar-day period that the facility has
2 for submission of the plan of correction.

3 (3) Within 14 calendar days of receipt of the request
4 for an IDR conference made by a facility, the panel shall
5 hold the IDR conference. The IDR conference shall afford the
6 facility the option of:

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

9 (ii) either a conference call or a face-to-face
10 meeting at the headquarters office of the Division of
11 Nursing Care Facilities
12 to provide additional information or clarification in support
13 of the facility's contention that the deficiencies were
14 erroneously cited.

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

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

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

28 (7) The department may not post on its World Wide Web
29 site or enter into the Centers for Medicare and Medicaid
30 Services Online Survey, Certification and Reporting System

any information about deficiencies that 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.--When a deficiency under dispute involves physician decisionmaking, 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.--Decisions 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 that constitute substandard quality of care or immediate jeopardy;

(2) remedies imposed;

1 (3) alleged failure of a survey team to comply with a
2 requirement of the survey process;

3 (4) alleged inconsistency of the survey team in citing
4 deficiencies among facilities; or

5 (5) alleged inadequacy or inaccuracy of the IDR process.

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

9 Section 7. Data collection.

10 The department shall collect and maintain data regarding the
11 number of IDR requests made on an annual basis, the number of
12 written reviews, the number of conference calls and the number
13 of face-to-face conferences. Data shall also be maintained on
14 the number of requests in which no change was made, the number
15 of requests in which a deficiency was removed and the number of
16 requests in which a deficiency was downgraded. This information
17 shall also be maintained per deficiency.

18 Section 8. Applicability of Federal regulations.

19 The provisions of 42 CFR § 488.331 (relating to informal
20 dispute resolution) shall be incorporated by reference into the
21 rules or regulations promulgated by the department in the
22 implementation of this act.

23 Section 9. Effective date.

24 This act shall take effect in 60 days.