

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 2159 Session of  
2009

INTRODUCED BY STERN, MUNDY, FLECK, GEIST, GINGRICH, HESS,  
HORNAMAN, KAUFFMAN, MAJOR, MOUL, MURT, O'NEILL, PHILLIPS,  
READSHAW, SIPTROTH, SWANGER, VULAKOVICH, WATSON AND  
YOUNGBLOOD, DECEMBER 9, 2009

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,  
DECEMBER 9, 2009

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 survey.

15 Section 3. Definitions.

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

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

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

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

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

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

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

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

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

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

1 solutions are sustained.

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

5 (1) is a certified medical director; or

6 (2) has successfully completed a geriatric fellowship  
7 approved by the American Geriatrics Society.

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

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

16 "Severity." Whether deficiencies constitute:

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

18 (2) no actual harm with a potential for more than  
19 minimal harm, but not immediate jeopardy;

20 (3) actual harm which is not immediate jeopardy; or

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

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

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

28 (1) immediate jeopardy to resident health or safety;

29 (2) a pattern of or widespread actual harm which is not  
30 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

1 conference made by a facility, the panel shall hold the IDR  
2 conference. The IDR conference shall afford the facility the  
3 opportunity to provide additional information or  
4 clarification in support of the facility's contention that  
5 the deficiencies were erroneously cited. This opportunity  
6 shall be at the option of the facility:

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

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

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

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

1 Section 5. Informal dispute resolution panel.

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

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

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

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

21 Section 6. Scope of informal dispute resolution review.

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

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

27 (2) remedies imposed;

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

30 (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.