
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1052 Session of
2011

INTRODUCED BY GINGRICH, BEAR, CALTAGIRONE, COHEN, CREIGHTON,
CUTLER, DAY, DENLINGER, GEIST, HARHART, HESS, KAUFFMAN,
MILNE, MOUL, MYERS, RAPP, SWANGER, J. TAYLOR AND VULAKOVICH,
MARCH 14, 2011

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES, MARCH
14, 2011

AN ACT

1 Establishing an independent informal dispute resolution process
2 for long-term care nursing facilities to dispute Department
3 of Health survey findings; and providing for the powers and
4 duties of the Department of Health.

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

7 Section 1. Short title.

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

11 Section 2. Purpose and intent.

12 The purpose of this act is to establish an informal review
13 process for long-term care nursing facilities to dispute
14 Department of Health survey findings using an independent agent.
15 This informal review process is intended to ensure that a
16 statement of deficiencies, as maintained in Federal and State
17 data systems, accurately identifies a long-term care nursing

1 facility's actual state of compliance with applicable
2 regulations by providing nursing facilities with the opportunity
3 to redress grievances arising during the survey process prior to
4 the entry of the survey results in the Federal data system and
5 without need to engage in formal litigation.

6 Section 3. Definitions.

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

10 "Deficiency." The failure of a long-term care nursing
11 facility to meet a requirement of the Social Security Act (42
12 U.S.C. § 301 et seq.), 42 CFR Pt. 483 Subpt. B (relating to
13 requirements for long term care facilities), the act of July 19,
14 1979 (P.L.130, No.48), known as the Health Care Facilities Act,
15 or 28 Pa. Code Pt. IV Subpt. C (relating to long-term care
16 facilities).

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

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

19 "Findings." Items of noncompliance noted in a statement of
20 deficiencies.

21 "Independent IDR." An appeal process conducted by an
22 independent IDR agent, in compliance with 42 CFR 488.331
23 (relating to informal dispute resolution), by which a long-term
24 care facility may challenge deficiencies cited during a survey
25 and certification inspection by the Department of Health.

26 "Independent IDR agent." The entity under contract with the
27 Department of Health that conducts an independent IDR.

28 "Informal dispute resolution " or "IDR." An appeal process
29 within the Department of Health, in compliance with 42 CFR
30 488.331 (relating to informal dispute resolution), by which a

1 long-term care facility may challenge deficiencies cited during
2 a survey and certification inspection by the Department of
3 Health.

4 "Plan of correction." A facility's response to deficiencies
5 that explain:

6 (1) The manner by which corrective action will be
7 accomplished.

8 (2) The manner by which the facility will identify other
9 residents who might be affected by the deficient practice.

10 (3) The measures that will be used or systemic changes
11 that will be made by the facility to ensure that the
12 deficient practice will not recur.

13 (4) The manner by which the facility will monitor its
14 operations to ensure that corrective actions are sustained.

15 "QIO." A federally-designated medicare quality improvement
16 organization.

17 "State Operations Manual." The Centers for Medicare and
18 Medicaid Services State Operations Manual.

19 "Statement of deficiencies." Written notice by the
20 Department of Health to a facility specifying the facility's
21 operational and program deficiencies found upon completion of a
22 survey.

23 "Survey." An inspection of a facility conducted by
24 representatives of the Department of Health in accordance with
25 procedures outlined in Chapter 7 of the Centers for Medicare and
26 Medicaid Services State Operations Manual, relating to survey
27 and enforcement process for skilled nursing facilities and
28 nursing facilities.

29 Section 4. Informal dispute resolution process.

30 (a) Establishment of an independent IDR process.--

1 (1) The department shall establish an IDR process to
2 determine whether a cited deficiency contained in a statement
3 of deficiencies against a facility should be upheld.

4 (2) The department shall contract with Pennsylvania's
5 QIO, or the QIO of another state that has experience in
6 conducting informal dispute resolutions for a state survey
7 agency, should Pennsylvania's QIO not seek the contract to be
8 the independent IDR agent.

9 (3) The department shall obtain all necessary approvals
10 from the Centers for Medicare and Medicaid Services to
11 contract with the independent IDR agent.

12 (4) The independent IDR agent shall offer facilities
13 that provide the independent IDR process a choice of the
14 following levels of review:

- 15 (i) desk review;
- 16 (ii) telephone review; or
- 17 (iii) expert review.

18 (5) The independent IDR process may not replace or be a
19 substitute for the existing informal dispute resolution
20 process conducted by the department, but shall be an optional
21 process that can be selected by facilities on a fee-for-
22 service basis.

23 (6) The fee for the independent IDR process shall be
24 established by the independent IDR agent, provided that the
25 fees are approved by the department.

26 (7) Independent IDR recommendations made by the
27 independent IDR agent shall be subject to final review and
28 approval by the department.

29 (b) Minimum requirements of the independent IDR process.--
30 The department shall establish written policies and procedures

1 governing the independent IDR process that comply with the
2 provisions of 42 CFR 488.331 (relating to informal dispute
3 resolution) and the State Operations Manual regarding the
4 informal dispute resolution process. The independent IDR
5 procedures shall include, but are not limited to, the following:

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

10 (2) A facility that may request an informal dispute
11 resolution review be conducted by either department staff not
12 associated with the survey at no charge or an independent IDR
13 by the independent IDR agent under contract with the
14 department on a fee-for-service basis. A facility may select
15 only one method of review. A facility must submit its request
16 for an independent IDR review and indicate its selection of
17 the type of review and level of review in writing within the
18 same ten-day period applicable to the facility for submission
19 of the plan of correction.

20 (3) (i) Within 45 days of receipt of the request for an
21 independent IDR by a facility, the independent IDR agent
22 shall issue a written decision to the facility based upon
23 its review of the facts, survey findings, State
24 Operations Manual and applicable law.

25 (ii) If the independent IDR agent sustains the
26 deficiency, the independent IDR agent's written
27 determination shall include the rationale for its
28 decision and provide recommended action that the facility
29 can implement to achieve compliance.

30 (iii) If the department disagrees with an

1 independent IDR agent's determination that reverses a
2 deficiency, the department shall provide a written
3 explanation for its decision to nullify the independent
4 IDR agent's report to the independent IDR agent and to
5 the facility.

6 Section 5. Data collection.

7 The department shall collect and maintain the following data:

8 (1) The total number of review requests received on an
9 annual basis, including the number of independent IDR
10 requests and the number of State informal dispute resolution
11 review requests.

12 (2) The total number of independent IDRs completed,
13 including the number of reviews that resulted in the removal
14 of a deficiency, the number of reviews that resulted in the
15 downgrade of a deficiency and the number of reviews that
16 upheld a deficiency.

17 (3) The total number of State informal dispute
18 resolution reviews completed, including the number of reviews
19 that resulted in the removal of a deficiency, the number of
20 reviews that resulted in the downgrade of a deficiency and
21 the number of reviews that upheld a deficiency.

22 Section 6. Effective date.

23 This act shall take effect in 120 days.