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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1095 Session of  
2011

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INTRODUCED BY SCARNATI, CORMAN, BROWNE, WAUGH, ROBBINS, GORDNER,  
ERICKSON, WARD, TOMLINSON, GREENLEAF, ALLOWAY, BRUBAKER,  
EARLL, ARGALL, D. WHITE, McILHINNEY, FOLMER, SMUCKER,  
PICCOLA, MENSCH, PIPPY, YAW, RAFFERTY, M. WHITE, BAKER,  
VOGEL, EICHELBERGER, BOSCOLA, SOLOBAY AND LEACH, JUNE 3, 2011

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REFERRED TO AGING AND YOUTH, JUNE 3, 2011

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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 (49  
12 Stat. 620, 42 U.S.C. § 301 et seq.), 42 CFR Pt. 483 Subpt. B  
13 (relating to requirements for states and long term care  
14 facilities), the act of July 19, 1979 (P.L.130, No.48), known as  
15 the Health Care Facilities Act, or 28 Pa. Code Pt. IV Subpt. C  
16 (relating to long-term care 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.