

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1095 Session of
2011

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

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, OCTOBER
17, 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 DEFICIENCIES; and providing for the ←
4 powers and 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~~ A long-term care nursing ←
11 ~~facility to meet~~ FACILITY'S ALLEGED NONCOMPLIANCE WITH a ←
12 requirement of the Social Security Act (49 Stat. 620, 42 U.S.C.
13 § 301 et seq.), 42 CFR Pt. 483 Subpt. B (relating to
14 requirements for ~~states and~~ long term care facilities), the act ←
15 of July 19, 1979 (P.L.130, No.48), known as the Health Care
16 Facilities Act, or 28 Pa. Code Pt. IV Subpt. C (relating to
17 long-term care facilities).

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

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

20 ~~"Findings." Items of noncompliance noted in a statement of~~ ←
21 ~~deficiencies.~~

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

27 "Independent IDR agent." The entity ~~under contract with~~ ←
28 DESIGNATED BY the Department of Health that conducts an ←
29 independent IDR ON ITS BEHALF. ←

30 "Informal dispute resolution " or "IDR." An appeal process

1 within the Department of Health, in compliance with 42 CFR
2 488.331 (relating to informal dispute resolution), by which a
3 long-term care facility may challenge deficiencies cited during
4 a survey and certification inspection by the Department of
5 Health.

6 "Plan of correction." A facility's response to deficiencies
7 that explain:

8 (1) The manner by which corrective action will be
9 accomplished.

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

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

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

17 "QIO." A ~~federally designated medicare~~ FEDERALLY DESIGNATED ←
18 MEDICARE quality improvement organization.

19 "State Operations Manual." The Centers for Medicare and
20 Medicaid Services State Operations Manual.

21 "Statement of deficiencies." Written notice by the
22 Department of Health to a facility specifying the ~~facility's~~ ←
23 ~~operational and program deficiencies~~ ITEMS OF NONCOMPLIANCE ←
24 found upon completion of a survey.

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

1 Section 4. Informal dispute resolution process.

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

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

6 (2) The department shall ~~contract with~~ DESIGNATE ←
7 Pennsylvania's QIO, ~~or the QIO of another state that has~~ ←
8 ~~experience in conducting informal dispute resolutions for a~~
9 ~~state survey agency, should Pennsylvania's QIO not seek the~~
10 ~~contract to be~~ AS the independent IDR agent. IN THE EVENT ←
11 THAT PENNSYLVANIA'S QIO IS UNABLE TO SERVE AS THE INDEPENDENT
12 IDR AGENT, THE DEPARTMENT, IN CONSULTATION WITH THE HEALTH
13 POLICY BOARD, SHALL DESIGNATE THE QIO OF ANOTHER STATE THAT
14 HAS EXPERIENCE IN CONDUCTING INFORMAL DISPUTE RESOLUTIONS FOR
15 A STATE SURVEY AGENCY AS THE INDEPENDENT IDR AGENT. IF NO
16 OTHER QIO IS AVAILABLE TO SERVE AS THE INDEPENDENT IDR AGENT,
17 THE DEPARTMENT, IN CONSULTATION WITH THE HEALTH POLICY BOARD,
18 SHALL DESIGNATE AS THE INDEPENDENT IDR AGENT AN INDEPENDENT
19 REVIEW ORGANIZATION THAT IS ACCREDITED BY THE UTILIZATION
20 REVIEW ACCREDITATION COMMISSION. NOTWITHSTANDING ANY OTHER
21 PROVISION OF LAW TO THE CONTRARY, THE DEPARTMENT SHALL ENTER
22 INTO A SOLE SOURCE CONTRACT WITH THE INDEPENDENT IDR AGENT AS
23 NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ACT.

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

27 (4) The independent IDR agent shall offer facilities
28 that provide the independent IDR process a choice of the
29 following levels of review:

30 (i) desk review;

1 (ii) telephone review; or
2 (iii) ~~expert review~~ IN-PERSON REVIEW, INCLUDING THE
3 UTILIZATION OF VIDEO CONFERENCING. ←

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

9 (6) The fee for the independent IDR process shall be
10 established by the independent IDR agent, provided that the
11 fees are approved by the department AND CONSISTENT WITH LAW. ←

12 (7) Independent IDR recommendations made by the
13 independent IDR agent shall be subject to final review and
14 approval by the department.

15 (b) Minimum requirements of the independent IDR process.--
16 The department shall establish written policies and procedures
17 governing the independent IDR process that comply with the
18 provisions of 42 CFR 488.331 (relating to informal dispute
19 resolution) and the State Operations Manual regarding the
20 informal dispute resolution process. The independent IDR
21 procedures shall include, but are not limited to, the following:

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

26 (2) A facility that may request an informal dispute
27 resolution review be conducted by either department staff not
28 associated with the survey at no charge or an independent IDR
29 by the independent IDR agent ~~under contract with~~ DESIGNATED ←
30 BY the department on a fee-for-service basis. A facility may

1 select only one method of review. A facility must submit its
2 request for an independent IDR review and indicate its
3 selection of the type of review and level of review in
4 writing within the same ten-day period applicable to the
5 facility for submission of the plan of correction.

6 (3) (i) Within 45 days of receipt of the request for an
7 independent IDR by a facility, the independent IDR agent
8 shall issue a written decision to the facility based upon
9 its review of the facts, survey findings, State
10 Operations Manual and applicable law.

11 (ii) If the independent IDR agent sustains the
12 deficiency, the independent IDR agent's written
13 determination shall include the rationale for its
14 decision and provide recommended action that the facility
15 can implement to achieve compliance.

16 (iii) If the department disagrees with an
17 independent IDR agent's determination that reverses a
18 deficiency, the department shall provide a written
19 explanation for its decision to nullify the independent
20 IDR agent's report to the independent IDR agent and to
21 the facility.

22 Section 5. Data collection.

23 The department shall collect and maintain the following data:

24 (1) The total number of review requests received on an
25 annual basis, including the number of independent IDR
26 requests and the number of State informal dispute resolution
27 review requests.

28 (2) The total number of independent IDRs completed,
29 including the number of reviews that resulted in the removal
30 of a deficiency, the number of reviews that resulted in the

1 downgrade of a deficiency and the number of reviews that
2 upheld a deficiency.

3 (3) The total number of State informal dispute
4 resolution reviews completed, including the number of reviews
5 that resulted in the removal of a deficiency, the number of
6 reviews that resulted in the downgrade of a deficiency and
7 the number of reviews that upheld a deficiency.

8 Section 6 20. Effective date.



9 This act shall take effect in 120 days.