

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 1095** Session of
2011

INTRODUCED BY SCARNATI, CORMAN, BROWNE, WAUGH, ROBBINS, GORDNER,
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VOGEL, EICHELBERGER, BOSCOLA, SOLOBAY AND LEACH, JUNE 3, 2011

AS AMENDED ON SECOND CONSIDERATION, OCTOBER 31, 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 deficiencies; and providing for the powers
4 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." A long-term care nursing facility's alleged
11 noncompliance with 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 long term care facilities), the
14 act of July 19, 1979 (P.L.130, No.48), known as the Health Care
15 Facilities Act, or 28 Pa. Code Pt. IV Subpt. C (relating to
16 long-term care facilities).

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

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

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

24 "Independent IDR agent." The entity designated by the
25 Department of Health that conducts an independent IDR on its
26 behalf.

27 "Informal dispute resolution " or "IDR." An appeal process
28 within the Department of Health, in compliance with 42 CFR
29 488.331 (relating to informal dispute resolution), by which a
30 long-term care facility may challenge deficiencies cited during

1 a survey and certification inspection by the Department of
2 Health.

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

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

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

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

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

14 "QIO." A federally designated Medicare quality improvement
15 organization.

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

18 "Statement of deficiencies." Written notice by the
19 Department of Health to a facility specifying the items of
20 noncompliance found upon completion of a survey.

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

27 Section 4. Informal dispute resolution process.

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

29 (1) The department shall establish an IDR process to
30 determine whether a cited deficiency contained in a statement

1 of deficiencies against a facility should be upheld.

2 (2) The department shall designate Pennsylvania's QIO as
3 the independent IDR agent. In the event that Pennsylvania's
4 QIO is unable to serve as the independent IDR agent, the
5 department, in consultation with the Health Policy Board,
6 shall designate the QIO of another state that has experience
7 in conducting informal dispute resolutions for a state survey
8 agency as the independent IDR agent. If no other QIO is
9 available to serve as the independent IDR agent, the
10 department, in consultation with the Health Policy Board,
11 shall designate as the independent IDR agent an independent
12 review organization that is accredited by the Utilization
13 Review Accreditation Commission. Notwithstanding any other
14 provision of law to the contrary, the department shall enter
15 into a sole source contract with the independent IDR agent as
16 necessary to implement the provisions of this act.

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

20 (4) The independent IDR agent shall offer facilities
21 that provide the independent IDR process a choice of the
22 following levels of review:

23 (i) desk review;

24 (ii) telephone review; or

25 (iii) in-person review, including the utilization of
26 video conferencing.

27 (5) The independent IDR process may not replace or be a
28 substitute for the existing informal dispute resolution
29 process conducted by the department, but shall be an optional
30 process that can be selected by facilities on a fee-for-

1 service basis.

2 (6) The fee for the independent IDR process shall be
3 established by the independent IDR agent, provided that the
4 fees are approved by the department and consistent with law.

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

8 (b) Minimum requirements of the independent IDR process.--
9 The department shall establish written policies and procedures
10 governing the independent IDR process that comply with the
11 provisions of 42 CFR 488.331 (relating to informal dispute
12 resolution) and the State Operations Manual regarding the
13 informal dispute resolution process. The independent IDR
14 procedures shall include, but are not limited to, the following:

15 (1) Within ten business days of the end of the survey,
16 the department shall, by certified mail or by the intranet of
17 the department, if the facility is connected to the intranet,
18 transmit to the facility a statement of alleged deficiencies.

19 (2) A facility that may request an informal dispute
20 resolution review be conducted by either department staff not
21 associated with the survey at no charge or an independent IDR
22 by the independent IDR agent designated by the department on
23 a fee-for-service basis. A facility may select only one
24 method of review. A facility must submit its request for an
25 independent IDR review and indicate its selection of the type
26 of review and level of review in writing within the same ten-
27 day period applicable to the facility for submission of the
28 plan of correction.

29 (3) (i) Within 45 days of receipt of the request for an
30 independent IDR by a facility, the independent IDR agent

1 shall issue a written decision to the facility based upon
2 its review of the facts, survey findings, State
3 Operations Manual and applicable law.

4 (ii) If the independent IDR agent sustains the
5 deficiency, the independent IDR agent's written
6 determination shall include the rationale for its
7 decision and provide recommended action that the facility
8 can implement to achieve compliance.

9 (iii) If the department disagrees with an
10 independent IDR agent's determination that reverses a
11 deficiency, the department shall provide a written
12 explanation for its decision to nullify the independent
13 IDR agent's report to the independent IDR agent and to
14 the facility.

15 Section 5. Data collection.

16 The department shall collect and maintain the following data:

17 (1) The total number of review requests received on an
18 annual basis, including the number of independent IDR
19 requests and the number of State informal dispute resolution
20 review requests.

21 (2) The total number of independent IDRs completed,
22 including the number of reviews that resulted in the removal
23 of a deficiency, the number of reviews that resulted in the
24 downgrade of a deficiency and the number of reviews that
25 upheld a deficiency.

26 (3) The total number of State informal dispute
27 resolution reviews completed, including the number of reviews
28 that resulted in the removal of a deficiency, the number of
29 reviews that resulted in the downgrade of a deficiency and
30 the number of reviews that upheld a deficiency.



1 SECTION 6. LIABILITY AND RESPONSIBILITY.

2 EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, NOTHING IN THIS ACT
3 IS INTENDED TO AFFECT COMMON LAW OR STATUTORY LIABILITY AND
4 RESPONSIBILITY OF LICENSEES.

5 Section 20. Effective date.

6 This act shall take effect in 120 days.