

No. 2011-128

## AN ACT

HB 1052

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

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

Section 1. Short title.

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

Section 2. Purpose and intent.

The purpose of this act is to establish an informal review process for long-term care nursing facilities to dispute Department of Health survey findings using an independent agent. This informal review process is intended to ensure that a statement of deficiencies, as maintained in Federal and State data systems, accurately identifies a long-term care nursing facility's actual state of compliance with applicable regulations by providing nursing facilities with the opportunity to redress grievances arising during the survey process prior to the entry of the survey results in the Federal data system and without need to engage in formal litigation.

Section 3. Definitions.

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

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

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

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

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

"Independent IDR agent." The entity designated by the Department of Health to conduct an independent IDR on its behalf.

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

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

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

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

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

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

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

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

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

"Survey." An inspection of a facility conducted by representatives of the Department of Health in accordance with procedures outlined in Chapter 7 of the Centers for Medicare and Medicaid Services 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 an independent IDR process.—

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

(2) (i) The department shall designate Pennsylvania's QIO as the independent IDR agent.

(ii) In the event that Pennsylvania's QIO is unable to serve as the independent IDR agent, the department, in consultation with the Health Policy Board, shall designate the QIO of another state that has experience in conducting informal dispute resolutions for a state survey agency as the independent IDR agent.

(iii) If no other QIO is available to serve as the independent IDR agent, the department, in consultation with the Health Policy Board, shall designate as the independent IDR agent an independent review organization that is accredited by the Utilization Review Accreditation Commission.

(iv) Notwithstanding any other provision of the law to the contrary, the department shall enter into a sole source contract with the independent IDR agent as necessary to implement the provisions of this act.

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

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

(i) desk review;

(ii) telephone review; or

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

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

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

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

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

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

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

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

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

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

#### Section 5. Data collection.

The department shall collect and maintain the following data:

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

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

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

Section 6. Liability and responsibility.

Except as otherwise provided in this act, nothing in this act is intended to affect common law or statutory liability and responsibility of licensees.

Section 7. Effective date.

This act shall take effect in 120 days.

APPROVED—The 22nd day of December, A.D. 2011

TOM CORBETT