

SENATE BILL 1865

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 68,
relative to nursing homes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by
adding the following as new sections:

68-11-276.

(a) The department shall establish an independent informal dispute
resolution program (IIDR) for nursing homes as required by Section 6111 of the
Patient Protection and Affordable Care Act (Pub. L. 111-148).

(b) If a nursing home is entitled to an informal dispute under 42 C.F.R.
§ 488.331 or 42 C.F.R. § 488.431, or pursuant to state law if cited for a licensure
deficiency, the nursing home may request an opportunity for IIDR.

(c) The IIDR program must contain, at a minimum, the following elements:

(1) The department shall contract with at least two (2) independent
review organizations to conduct the IIDR process for nursing homes. Any
independent review organization contracted with shall:

- (A) Be accredited by the Utilization Review
Accreditation Commission;
- (B) Have an understanding of medicare and
medicaid program requirements;
- (C) Have no conflict of interest; and

(D) Be acceptable to the centers for medicare and medicaid services and meet the requirements of any federal regulations concerning IIDR entities.

(d) The IIDR process shall consist of the following steps:

(1) The statement of deficiencies issued by the department shall include or be accompanied by notification of the availability of, and an explanation of, the IIDR process.

(2) Within ten (10) days of receipt of the notification of civil monetary penalties imposed by the centers for medicare and medicaid services that will be placed in a centers for medicare and medicaid services escrow account, or the notification of the imposition of any other remedy for which IIDR is provided, the nursing home may request in writing an IIDR conference.

(3) The department may only require that the nursing home's request for IIDR:

(A) Be in writing and transmitted either by U.S. Mail, common carrier or electronically;

(B) Identify the deficiencies that are being contested through IIDR;

(C) Explain why the nursing home believes the deficiencies are not correctly cited;

(D) Identify any involved resident and that resident's representative, if any; and

(E) State the manner in which the nursing home chooses to conduct the IIDR conference which shall be limited to the following options:

- (i) A desk review of written information submitted by the nursing home;
- (ii) A telephonic conference;
- (iii) An internet-facilitated meeting or videoconference, if the nursing home can facilitate the availability of technology for such a meeting; or
- (iv) A face-to-face conference held at the nursing home or a mutually agreed upon location.

(4) Within five (5) working days of receipt of a written request for the IIDR process, the department shall refer the request to an independent review organization from the list of independent review organizations contracted with the department. The department shall vary the selection of the independent review organization on a rotating basis.

(5) The department shall acknowledge in writing to the nursing home that the request for independent review has been received and forwarded to an independent review organization for review. The notice shall include the name, address and contact information of the independent review organization.

(6) The department shall notify the involved resident or resident's representative, and long term care ombudsman of their opportunity to submit written comment as required by the centers for medicare and medicaid services.

(7) The nursing home may submit any additional nursing home records, information, exhibits or other documentation to support its argument without a page limitation. All documentation must be received

by the independent review organization no later than five (5) working days prior the IIDR conference, and may be transmitted in electronic format.

(8) The independent review organization shall hold an IIDR conference no later than fifteen (15) working days following receipt of the written request for the IIDR process made by a nursing home, unless the nursing home requests additional time to schedule the conference.

(9) If the independent review organization determines the need for additional information, clarification or discussion after conclusion of the IIDR conference, the director and the nursing home shall present the requested information as soon as possible, but no later than five (5) working days after receipt of the request.

(10) Within ten (10) calendar days of the IIDR conference, the independent review organization shall make a determination, based upon the facts and information presented, and shall transmit a written decision to the nursing home and the department.

(11) If additional information was requested and submitted after conclusion of the IIDR conference, the independent review organization shall have an additional five (5) days to make a determination.

(12) The independent review organization's written decision shall include at a minimum:

(A) A list of each disputed deficiency or survey finding;

(B) A summary of the IIDR recommendation for each deficiency or finding and the rationale for the recommendation;

(C) Any documents submitted by the nursing home;

and

(D) Any comments submitted;

(13) Upon receipt of independent review organization's written decision, the department shall review the recommendations and make the following decision(s) within ten (10) calendar days of receiving the independent review organization's written decision:

(A) The department may agree with the independent review organization's written decision and accept the recommendations made. If the department accepts those recommendations, it shall notify the nursing home of its acceptance in a written letter.

(B) The department may disagree with the independent review organization's written decision and may reject the recommendations made. If the department rejects those recommendations, it shall explain in a written letter to the nursing home why it disagrees with the rationale for the reversal of the independent review organization's decision.

(14) If the independent review organization determines that the original statement of deficiencies should be changed as a result of the IIDR process and the department accepts that determination, the department shall transmit a revised statement of deficiencies to the nursing home within ten (10) calendar days of the independent review organization's determination. The nursing home shall have an additional ten (10) calendar days from the receipt of the revised statement of

deficiencies to submit a revised plan to correct any remaining deficiencies.

(15) Use of the IIDR process by a nursing home does not waive the nursing home's right to any formal hearing or other appeal process afforded by law or regulation. The IIDR is not a formal evidentiary proceeding.

(16) The IIDR process provides recommendations to this state and the centers for medicare and medicaid services and decisions made from it by the department or centers for medicare and medicaid services are not subject to appeal, unless otherwise specifically provided for by law.

68-11-277. Not later than December 1st of each year, the department shall report to the general assembly on the IIDR process, and such report shall contain, at a minimum:

- (a) The number of IIDR conferences requested and conducted;
- (b) The number of deficiencies appealed through the IIDR process;
- (c) The number of deficiencies sustained in IIDR conferences;
- (d) The number of deficiencies overturned in IIDR conferences;
- (e) The number of deficiencies changed in IIDR conferences; and
- (f) The number of civil monetary penalties reduced by IIDR results where the facility overturned one or more deficiencies appealed;

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.