

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: S3/13/03*

# A Bill

SENATE BILL 717

5 By: Senator Malone  
6  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE AN INFORMAL DISPUTE RESOLUTION  
10 PROCESS FOR LONG-TERM CARE FACILITIES; AND FOR  
11 OTHER PURPOSES.  
12

### Subtitle

14 TO CREATE AN INFORMAL DISPUTE RESOLUTION  
15 PROCESS FOR LONG-TERM CARE FACILITIES.  
16  
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code Title 20, Chapter 10 is amended to add an  
21 additional subchapter to read as follows:

#### 20-10-1901. Purpose.

23 (a) The General Assembly finds that this subchapter is necessary to  
24 provide an alternative process to formal judicial or administrative appeals  
25 of deficiencies for long-term care facilities as a means for faster, more  
26 efficient, and less expensive resolution of disputes concerning deficiencies  
27 cited against long-term care facilities.

28 (b) It is the intent of the General Assembly to provide a process  
29 supplemental to formal appeal that is both fair and impartial to all parties  
30 to address disputes between facilities and the Office of Long Term Care when  
31 a deficiency is cited against a long term care facility.  
32

#### 20-10-1902. Definitions.

34 For purposes of this subchapter:

35 (1) "Deficiency" means a violation or alleged violation by a long-term  
36 care facility of applicable state or federal laws, rules, or regulations



1 governing the operation or licensure of a long-term care facility;

2 (2) "Deficiency tag number" means an alphanumeric designation of a  
3 deficiency by the Office of Long-Term Care that denotes the applicable state  
4 or federal rule, regulation, or law allegedly violated and that is used on  
5 the statement of deficiencies;

6 (3) "Long-term care facility" has the same meaning as under § 20-10-  
7 213;

8 (4) "Impartial decision maker" means an individual employed by a state  
9 agency to conduct an informal dispute resolution hearing for the agency;

10 (5) "Informal dispute resolution" means a nonjudicial process or forum  
11 before an impartial decision maker that provides a facility cited for  
12 deficiency with the opportunity to dispute a citation for deficiency;

13 (6) "Party" means a facility requesting an informal dispute resolution  
14 hearing, the Office of Long-Term Care, or both;

15 (7) "State Survey Agency" means the Office of Long-Term Care, the  
16 federally designated state entity that performs Medicaid and Medicare surveys  
17 and inspections of Arkansas long-term care facilities; and

18 (8)(A) "Statement of deficiencies" means a statement prepared by the  
19 Office of Long-Term Care citing the applicable state or federal laws, rules,  
20 or regulations violated by a long-term care facility and the facts supporting  
21 the citation.

22 (B) A statement of deficiencies may also be referred to as a  
23 "2567".

24  
25 20-10-1903. Agency to conduct the informal dispute resolution hearing.

26 (a) Informal dispute resolution hearings shall be conducted by the  
27 Department of Health, or its successor agency.

28 (b) The Department of Health shall assign all informal dispute  
29 resolution hearings to the unit or section charged with performing survey or  
30 inspection activity for hospital and hospital-based skilled nursing facility.

31  
32 20-10-1904. Impartial decision maker – Qualifications.

33 (a) The impartial decision maker may be an individual or a committee  
34 of individuals employed by the Department of Health.

35 (b)(1) An impartial decision maker shall be a nurse, a physician, a  
36 pharmacist, or any combination of nurses, physicians, or pharmacists,

1 employed by the Department of Health.

2 (2) Each person acting as an impartial decision maker shall be  
3 licensed by the State of Arkansas by their respective licensing agencies or  
4 boards.

5 (c) All impartial decision makers shall undergo and complete surveyor  
6 training arranged by the Office of Long-Term Care.

7  
8 20-10-1905. Request for an informal dispute resolution hearing.

9 (a) A facility that wishes to challenge a deficiency shall, within ten  
10 (10) calendar days of the receipt of the statement of deficiencies from the  
11 Office of Long-Term Care, make a written request to the Department of Health.

12 (b) The written request shall include:

13 (1) A list of all deficiencies that the facility wishes to  
14 challenge; and

15 (2) A statement indicating whether the facility wants the  
16 hearing to be conducted by telephone conference call, by record review of the  
17 impartial decision maker, or by a meeting in which the facility and the  
18 Office of Long-Term Care appear before the impartial decision maker.

19  
20 20-10-1906. Scheduling of informal dispute resolution hearings and  
21 submission of documentary evidence.

22 (a) Upon receipt of a request for an informal dispute resolution  
23 hearing from a facility, the Department of Health shall assign the matter to  
24 an impartial decision maker.

25 (b) The impartial decision maker shall:

26 (1) Schedule a time and date for a hearing; and

27 (2) Inform the parties of the time and date of the hearing.

28 (c) If the request for an informal dispute resolution hearing includes  
29 a request by the facility for a hearing at which the facility may appear  
30 before the impartial decision maker, the impartial decision maker shall:

31 (1) Arrange for facilities appropriate for conducting the  
32 hearing; and

33 (2) Inform the parties of the location of the facility.

34 (d)(1) Each party shall submit to the impartial decision maker all  
35 documentary evidence that the party believes has a bearing on or relevance to  
36 the deficiencies in dispute by the date specified by the impartial decision

1 maker.

2 (2) Documentary evidence that is not submitted by the date  
3 specified by the impartial decision maker may be:

4 (A) Refused and not considered by the impartial decision  
5 maker; or

6 (B)(i) Accepted by the impartial decision maker.

7 (ii) If the evidence is accepted, the impartial  
8 decision maker shall provide the opposing party the opportunity to submit  
9 additional documentary evidence.

10 (iii) However, the additional evidence shall be  
11 limited to information that addresses or rebuts the documentary evidence  
12 submitted after the date specified by the impartial decision maker.

13 (e)(1) If the request for an informal dispute resolution hearing does  
14 not include a request by the facility for a hearing at which the facility may  
15 appear before the impartial decision maker, or upon agreement of the facility  
16 and the Office of Long-Term Care, the impartial decision maker may conduct  
17 the hearing by telephone conference call or by a review of documentary  
18 evidence submitted by the parties.

19 (2)(A) If the informal dispute resolution hearing is conducted  
20 by record review, the impartial hearing officer may request, and the parties  
21 shall provide, a written statement setting forth the parties positions for  
22 accepting, rejecting, or modifying each deficiency in dispute.

23 (B) The written statement shall specify the documentary  
24 evidence that supports the position of each party for each deficiency in  
25 dispute.

26 (C) The facility shall provide its written statement to  
27 the impartial decision maker and the Office of Long-Term Care.

28 (D) The Office of Long-Term Care shall then provide its  
29 written statement in rebuttal to the impartial decision maker and the  
30 facility.

31  
32 20-10-1907. Conduct of the informal dispute resolution hearing.

33 (a)(1) In all cases except record review, the facility shall present  
34 the initial arguments.

35 (2) The Office of Long-Term Care shall then present its  
36 arguments.

1           (b)(1) The hearing shall be limited to no more than two (2) hours in  
2 length, with each party being permitted one (1) hour to present their  
3 arguments.

4           (2) However, the impartial hearing officer may grant each party  
5 additional, equal time for good cause as determined by the impartial decision  
6 maker.

7           (c)(1) Rules of evidence or procedure shall not apply, except as  
8 provided in this section.

9           (2) The impartial decision maker may:

10           (A) Accept any information that the impartial decision  
11 maker deems material to the issue being presented; and

12           (B) Reject any information that the impartial decision  
13 maker deems immaterial to the issue being presented.

14           (d)(1) The hearing may not be recorded.

15           (2) However, the impartial decision maker may make written or  
16 recorded notes of the arguments.

17           (e) Only employees of the facility, attending physicians of residents  
18 of the facility at the time of the deficiency, pharmacists providing  
19 medications to residents of the facility at the time of the deficiency, and  
20 consultant pharmacists or nurse consultants utilized by the facility, or the  
21 medical director of the facility may appear or participate at the hearing  
22 for, or on the behalf of, the facility.

23           (f) Only employees of the Office of Long-Term Care may appear or  
24 participate at the hearing for, or on behalf of, the Office of Long-Term  
25 Care.

26           (g) No party may be represented by an attorney.

27  
28           20-10-1908. Determination of the impartial decision maker and the  
29 Office of Long-Term Care.

30           (a)(1) Upon the conclusion of all arguments by the parties, the  
31 impartial decision maker shall issue a written statement of findings that  
32 shall be entitled "Determinations".

33           (2) Determinations shall include:

34           (A) A recitation of the deficiency tag numbers;

35           (B) A statement of whether a disputed deficiency should  
36 remain, be removed, or be modified on the statement of deficiencies; and

1                   (C) The facts and persuasive arguments that support the  
2 impartial decision maker's finding for each deficiency tag number.

3                   (b)(1) Determinations of the impartial decision maker shall be  
4 provided to the parties.

5                   (2) The Office of Long-Term Care shall review the Determination  
6 and shall issue a written document entitled" State Survey Agency  
7 Determination".

8                   (3) The State Survey Agency Determination shall state:

9                   (A) Whether, for each disputed deficiency mentioned in the  
10 impartial decision maker's Determination, the finding of the impartial  
11 decision maker is accepted, rejected, or accepts as modified by the State  
12 Survey Agency;

13                   (B) For each deficiency finding by the impartial decision  
14 maker that the Office of Long-Term Care does not accept the finding of the  
15 impartial decision maker, a statement explaining the reasons that the finding  
16 was not accepted along with the facts, circumstances, or reasons for not  
17 accepting the finding; and

18                   (C) For each disputed deficiency finding of the impartial  
19 decision maker that the Office of Long-Term Care accepts the finding with  
20 modification, a recitation of the modification, and the reason or reasons for  
21 the modification.

22                   (c) A State Survey Agency Determination is not subject to appeal,  
23 reargument, or reconsideration.

24                   (d) The Office of Long-Term Care shall deliver a copy of the State  
25 Survey Agency Determination to the facility and to the impartial decision  
26 maker.

27                   (e)(1) The Office of Long-Term Care shall, in accordance with the  
28 State Survey Agency Determination, issue an amended state of deficiencies if  
29 the State Survey Agency Determination results in modification to any  
30 deficiencies cited in the original statement of deficiencies.

31                   (2) If the Office of Long-Term Care determines that amendments  
32 to the statement of deficiencies should result in changes to the scope or  
33 severity assigned to any deficiency, the amended statement of deficiencies  
34 shall reflect the changes to the scope or severity of any cited deficiency.

35                   (f) The amended statement of deficiencies shall be provided to the  
36 facility.

1  
2 20-10-1909. Matters not subject to informal dispute resolution.

3 (a)(1) The informal dispute resolution hearing is limited to  
4 deficiencies cited on a statement of deficiencies.

5 (2) No other issues may be addressed at an informal dispute  
6 resolution hearing, including, but not limited to:

7 (A) Scope and severity assessments of deficiencies, unless  
8 the scope and severity assessments allege substandard quality of care or  
9 immediate jeopardy;

10 (B) Any remedies imposed;

11 (C) Any alleged failure of the survey team to comply with  
12 a requirement of the survey process;

13 (D) Any alleged inconsistency of the survey team in citing  
14 deficiencies among facilities; and

15 (E) Any alleged inadequacy or inaccuracy of the informal  
16 dispute resolution process.

17 (b) If the impartial decision maker finds that matters not subject to  
18 informal dispute resolution are presented, the impartial decision maker shall  
19 strike all documentary evidence related to, or presented for the purpose of,  
20 disputing the matter not subject to informal dispute resolution.

21 (c) The impartial decision maker may not include in the Determination  
22 any matter not subject to informal dispute resolution.

23  
24 20-10-1910. Effect of a request for informal dispute resolution.

25 A request for an informal dispute resolution shall not:

26 (1) Stay any action for enforcement or imposition of remedies; or

27 (2) Affect or preclude a facility's right to judicial or  
28 administrative appeal.

29  
30 */s/ Malone*