

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

As Engrossed: S3/22/11

# A Bill

SENATE BILL 759

5 By: Senator P. Malone  
6

## For An Act To Be Entitled

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

## Subtitle

14 AN ACT TO AMEND THE INFORMAL DISPUTE  
15 RESOLUTION PROCESS FOR LONG-TERM CARE  
16 FACILITIES; AND FOR OTHER PURPOSES.  
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18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 *SECTION 1. Arkansas Code § 20-10-1902(3), concerning the definition of*  
22 *impartial decision maker for dispute resolution for long-term care*  
23 *facilities, is amended to read as follows:*

24 *(3)(A) "Impartial decision maker" means an individual employed*  
25 *by a state agency to conduct an informal dispute resolution hearing for the*  
26 *agency.*

27 *(B) "Impartial decision maker" does not include an*  
28 *individual who is presently or has been within the previous twenty-four (24)*  
29 *months actively involved in any survey process under the Department of Human*  
30 *Services;*

31  
32 *SECTION 2. Arkansas Code § 20-10-1906(a), concerning scheduling*  
33 *informal dispute resolution hearings, is amended to read as follows:*

34 *(a)(1) Upon receipt of a request for an informal dispute resolution*  
35 *hearing from a facility, the ~~Division of Health of the Department of Health~~*  
36 *~~and Human Services~~ Department of Health shall assign the matter to an*



1 impartial decision maker.

2 (2) If a deficiency in dispute concerns a pharmacy, a  
3 pharmacist, a pharmacy tag, or a deficiency where the expertise of a  
4 pharmacist is required, the informal decision maker shall:

5 (A) Be a pharmacist if the informal decision maker is a  
6 single individual; or

7 (B) Include a pharmacist if the informal decision maker is  
8 a group of individuals.

9

10 SECTION 3. Arkansas Code § 20-10-1906(e)(2)(A), concerning submission  
11 of documentary evidence for an informal dispute resolution record review, is  
12 amended to read as follows:

13 (2)(A) If the informal dispute resolution hearing is conducted  
14 by record review, the ~~impartial hearing officer~~ impartial decision maker may  
15 request, and the parties shall provide, a written statement setting forth the  
16 parties' positions for accepting, rejecting, or modifying each deficiency in  
17 dispute.

18

19 SECTION 4. Arkansas Code § 20-10-1907 is amended to read as follows:  
20 20-10-1907. Informal dispute resolution hearing -- Conduct.

21 ~~(a)(1) In all cases except record review, the facility shall present~~  
22 ~~the initial arguments.~~

23 ~~(2) The Office of Long-Term Care shall then present its~~  
24 ~~arguments.~~

25 (a) Unless the facility chooses another order of presentation of  
26 arguments:

27 (1) The Office of Long-Term Care shall present the initial  
28 arguments at the hearing; and

29 (2) After the office completes its arguments, the facility shall  
30 present its arguments.

31 (b)(1) As a matter of fairness to all parties, the impartial decision  
32 maker shall determine in conjunction with all parties:

33 (A) The appropriate time needed for each presentation of  
34 information and argument; and

35 (B) The sequence and appropriate time for each rebuttal  
36 argument.

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 its~~  
3 ~~arguments.~~

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

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 for  
22 or on the behalf of the facility.

23           (f) Only employees of the office may appear or participate at the  
24 hearing for or on behalf of the office.

25           (g) A person authorized under subsection (e) or (f) of this section to  
26 participate in the hearing may present direct questions to an opposing  
27 participant during the rebuttal argument.

28           (h)(1) Within fourteen (14) days of a final decision concerning the  
29 issues presented in the hearing and any related matters, the Department of  
30 Health shall provide the parties with a report concerning the hearing, all  
31 decisions made on the basis of the hearing, and any related matters.

32           (2) The report required under subdivision (h)(1) of this section  
33 shall include without limitation:

34           (A) Information concerning any change to the disputed  
35 deficiency; and

36           (B) A listing of each specific item of the deficiency and

1 all changes made to the deficiency.

2 (i)(1) The Department of Human Services shall compile and make  
3 available to all facilities subject to this section a quarterly report that  
4 shall include without limitation the number of informal dispute resolutions  
5 during the previous quarter that were:

6 (A) Heard;

7 (B) Decided in favor of the state agency; and

8 (C) Decided in favor of the facility.

9 (2) The office shall review the reports under subdivision (i)(1)  
10 of this section and shall:

11 (A) Determine what patterns of sustained and overturned  
12 deficiencies exist; and

13 (B) Evaluate the training process to address the  
14 identified patterns.

15 ~~(g)(j)~~ No A party may shall not be represented by an attorney.

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17 /s/P. Malone  
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