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HOUSE OF REPRESENTATIVES
AGING AND OLDER ADULT SERVICES

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TUESDAY, OCTOBER 4, 2011
9:32 A.M.

PUBLIC HEARING ON ESTABLISHING AN INDEPENDENT INFORMAL DISPUTE RESOLUTION PROCESS

BEFORE:

HONORABLE TIM HENNESSEY, CHAIRMAN
HONORABLE LAWRENCE CURRY, CHAIRMAN
HONORABLE LYNDA SCHLEGEL CULVER
HONORABLE MARK GILLEN
HONORABLE MAUREE GINGRICH
HONORABLE FRED KELLER
HONORABLE JIM MARSHALL
HONORABLE NICK MICCARELLI
HONORABLE DUANE MILNE
HONORABLE ROSEMARIE SWANGER
HONORABLE RANDY VULAKOVICH
HONORABLE KATHARINE WATSON
HONORABLE PAMELA DELISSIO
HONORABLE MARIA DONATUCCI
HONORABLE SID MICHAELS KAVULICH
HONORABLE BRANDON NEUMAN
HONORABLE EDDIE DAY PASHINSKI
HONORABLE STEVE SAMUELSON
HONORABLE KEN SMITH

JANIS L. FERGUSON, RPR, CRR
REPORTER - NOTARY PUBLIC

I N D E X

CHAIRMAN HENNESSEY: Good morning. Welcome to this informational hearing of the House Aging and Older Adult Services Committee. We're honored to have the presence of Secretary Eli Avila, from the Department of Health, among us as our -- one of our testifiers today.

And the Bill -- the hearing today is to seek information, input from various parties with regard to House Bill 1052, the -- which would establish an independent dispute resolution body within the Department of Health.

Also on the agenda, we had intended to seek the movement of House Bill 1720, which is the Uniformed Guardianship Jurisdiction Act. And after the hearing last week, we had some input in terms of some concerns that we -- in the -- in the Bill, as drafted, we used the term "conservator", and people were pointing out that more frequently in Pennsylvania statutes we use the term "guardian of the estate". We're trying to work out an amendment that will try to streamline the House Bill 17 -- yes, House Bill 1720 with existing Pennsylvania statutes. So we would expect that we will list that for a voting meeting -- for the next voting meeting, which will be October 19th.

So with that, we'll take 1720 off of the agenda. We will -- we don't really need a motion to consider -- or to listen to comments about House Bill 1052. But I will introduce Erin Raub, on our staff at the Aging and Older Adult Services Committee, to give us some -- a brief summary of 1052 before we start the discussion.

To my left, to many viewers' right, who is watching on television, is our Minority Chair Larry Curry from Montgomery County.

Larry, do you have anything you want to say?

CHAIRMAN CURRY: No. (Inaudible.)

CHAIRMAN HENNESSEY: Okay. Well, thank you. Okay. Well, then I'll ask Erin to just give us a brief summary, and then I'll call on Representative Gingrich to talk about her Bill.

MS. RAUB: House Bill 1052 is sponsored by Representative Mauree Gingrich, who is sitting to my right. It establishes an independent informal dispute resolution process within the Department of Health. The Department of Health would actually designate a quality improvement organization, which would review those disputes. A lot of times long-term care facilities, when they have their surveys' findings,

and there's deficiencies, if they believe those deficiencies are incorrect, they can go, right now, as of right now, and do an informal process with the Department.

This would establish an independent process through the QIO, in which they could go back, review it, and if the deficiencies can be upheld or dismissed through the independent review process.

CHAIRMAN HENNESSEY: Okay. Representative Gingrich?

REPRESENTATIVE GINGRICH: Thank you. Thank you, Chairman, for calling this hearing. Erin, thank you for doing a good job of summarizing.

She is correct in that -- and I'm going to do a quiz on this afterwards and see how many people can say it. This Bill will establish an independent informal dispute resolution opportunity for the providers in our nursing homes. And it is kind of hard to say. So we often say IIDR, so you'll know what we're talking about if we -- if we use that acronym.

Thank you so much for being here, my colleagues. I know there's a lot of conflicts with meetings. And please understand, to our presenters and those observing in the audience, when people come

and go, we're not being rude; we just have voting meetings to go to all at the same time. They don't make it easy for us.

But this Bill has been in the works for many years, and it is such a delight for me to see the providers, the Department, the Legislature come together on doing something very positive for our growing number of Pennsylvania seniors. And today, at this hearing, hopefully we'll get to ask some of those questions that will help us understand exactly why we need to do this and how we're going to do this. And, as I said, it is a new independent informal dispute resolution option.

So thank you to the Chairman and the staff and all the providers for working with me so hard on this Bill. Thanks.

CHAIRMAN HENNESSEY: Thank you, Representative Gingrich.

Because we're not going to be taking votes today, we won't call a formal roll call, but we will note your presence here at the meeting.

With that, we should move into a discussion of the Bill. We are honored to have testifiers. First we'll have the Pennsylvania Department of Health Secretary Eli Avila, and Michael

Wolf, the Deputy Secretary of Health, Acting Deputy Secretary of Quality Assurance.

We will then hear from Russ McDaid, who is Vice President of Public Policy at LeadingAge PA.

We'll hear from Quality Insights of Pennsylvania, Naomi Hauser, and also from the Pennsylvania Health Care Association. They will be represented by Anne Henry, the Chief Financial Officer of PHCA.

Without further ado -- I'm not so sure what "ado", but we won't have any more of it. We'll ask secretary Avila, you can begin when you're ready.

SECRETARY AVILA: Thank you. Good morning. Good morning, Chairman Hennessey, Chairman Curry, members of the Committee, staff, and guests. My name is Dr. Eli Avila, and I am Secretary for the Pennsylvania Department of Health.

Before I continue, I'd like to give special thanks to Representative Mauree Gingrich for her long-term leadership on this issue and also on the needs of all the older citizens of the Commonwealth. Without her, we would not be here today on the cusp of an agreement on this critical issue.

I also would like to give special thanks to the Senate President, Joe Scarnati, and the

Leadership of Excellence Staff, which includes Sharon Schwartz, Vicky Wilkin, and Casey Long.

Also, to my immediate right is Michael Wolf, who is the Executive Deputy Secretary of the Department of Health. He's also taken on a second role for a while as the Acting Secretary -- Deputy Secretary for Quality Assurance. To my far right is Robert Datorre, who is the assistant counsel over this division.

Thank you for the opportunity to speak to you today regarding the Department's procedures for reviewing the results of the surveys conducted by the Division of Nursing Care Facilities at nursing homes in the Commonwealth, as well as House Bill 1052.

The Department regularly evaluates its health care facilities -- facility licensing activities, and is supportive of and welcomes initiatives to improve upon the efforts currently made to work with facilities and health care consumers toward the effective licensing of the facilities. The establishment of an informal procedure for the independent review of deficiencies issued by the Department, as proposed in House Bill 1052, presents us all with one of these opportunities.

In addition to its responsibilities as

the State Licensing Agency for nursing homes, the Department's Division of Nursing Care Facilities carries out the functions of the State Survey Agency for the United States Department of Health and Human Services' Center for Medicare and Medicaid Services, or CMS. In this capacity, the Division conducts surveys and makes recommendations to CMS for certification of nursing homes in the Medicare program.

Pursuant to the federal regulations governing the responsibilities of the Division, as the State Survey Agency, the Division has established a process for the informal review of deficiencies. Deficiencies, as they are commonly referred to in the nomenclature used by CMS, are the items of non-compliance with applicable statutes and regulations discovered during the Division's nursing home surveys. This review process, referred to as informal dispute resolution, or IDR, offers a nursing home an opportunity to request that the Division review recently issued deficiencies and provide documentation and other information to demonstrate that the deficiency should not have been cited.

This IDR review is offered at no cost to the nursing home and is conducted by individuals in

the Division that were not directly involved in the survey, but who are licensed health care practitioners and participate in the same training provided by the Department and CMS to all nursing home surveyors.

If an IDR review results in the removal or revision of any deficiencies, the Division will issue a revised statement of deficiencies, and any penalties that were imposed on the nursing home that are no longer justified as a result of their revised statement of deficiencies will be amended or withdrawn.

Often the Division's IDR reviews are completed within 30 days of the Division's receipt of a nursing home's request for an IDR review, before penalties are imposed and before the deficiencies are posted on the Department's publicly accessible website. This ensures that the statement of deficiencies available to the public accurately represents a nursing home's compliance with the applicable laws and regulations. The Division's IDR process has been reviewed and approved by CMS.

Since January 2010, the division has received requests from nursing homes to review 199 individually cited deficiencies under its existing IDR procedures. Of these, 19 deficiencies were removed

from the statements of deficiencies altogether, and another 19 were revised or rewarded based on the documentation and other information submitted by the nursing home.

Of the deficiencies reviewed, 120 were issued to nursing homes operated for a -- by a for-profit health care provider, 55 were issued to nursing homes operated by non-profit providers, and 24 were issued to nursing homes operated by state or county government providers.

Under House Bill 1052, the Department will offer an alternative form of IDR review, called an independent informal dispute resolution review or IIDR. Under this IIDR review, the Department will contract with an independent entity that will serve as an IIDR agent and has begun discussions with appropriate organizations to serve in this capacity.

A nursing home will be provided with the option to request that the deficiencies issued by the Division be reviewed by the IIDR agent. The cost of this IIDR review will be paid by the nursing home.

In accordance with the timelines and procedures outlined in the Bill and as otherwise agreed to by the Department and the IIDR agent, the IIDR agent will review the deficiencies and any

information or documentation submitted by the facility, and the Division -- and issue a written report regarding whether the deficiencies should remain as cited or be revised or removed. The report will be reviewed by the Division, and the Division will make a determination of whether it agrees or disagrees with the IIDR agent's report.

The Department has had the opportunity to work with the representatives of the stakeholder community in the development of this Bill to ensure that the IIDR review process will have minimal impact on the existing survey and licensing procedures and that the Bill will not result in additional cost to the Department or the Commonwealth. The Division will also continue to offer its no-cost IDR process that will permit nursing homes to seek review of deficiencies issued by the Division without incurring an additional cost.

I would also like to take this opportunity to briefly inform the Committee about the expected implementation of a separate and formal dispute resolution process that will be established in accordance with federal regulations recently published by CMS under provisions of the Patient Protection and Affordable Care Act.

Under -- under the requirements of the Affordable Care Act and the regulations published by CMS, the State Survey Agency is required to establish an independent informal dispute resolution process separate from the existing IDR process utilized by the Division. This IIDR process is required to be in place by January 1st of 2012. This IIDR process will now apply to all the deficiencies issued by the Division that are currently eligible for review under the Division's existing IDR process or under the IIDR process that would be established by House Bill 1052. Instead, this process will exist only for deficiencies that have resulted in imposition by CMS of certain civil monitoring penalties, or CMP's. Not all deficiencies result in CMS imposing CMP's.

Accordingly, pursuant to CMS's regulations, this process will not replace the Division's existing IDR process, as it is intended to provide for review of a more limited scope of deficiencies issued by the Division.

For these reasons, as well as for other limitations imposed by CMS's regulations concerning the IIDR process under the Affordable Care Act, this process will also not supplant the IIDR process that will be established by House Bill 1052.

The Division will operate three separate informal dispute resolution processes. However, with the exception of some very limited circumstances, a nursing home will only be permitted to review -- to request review under one of the three, and cannot seek multiple reviews of the same deficiencies.

The Division continues to review the regulations and additional limited guidance issued by CMS and is also currently communicating with CMS to ensure proper and timely implementation of the IIDR process under the Affordable Care Act. As with the IIDR process established under House Bill 1052, the Department will continue -- will work with representatives of the stakeholder community and CMS to ensure that the IIDR review process under the Affordable Care Act will have minimal impact on the existing survey and licensing procedures that -- and that it will not result in additional costs to the Department or the Commonwealth.

Thank you for the opportunity to discuss with you -- with you House Bill 1052 and the Department's existing and anticipated procedures for review of deficiencies issued by the Division. I am happy to answer any questions the Committee may have,

but I will defer to Michael Wolf, who is actively engaged in -- in this process.

CHAIRMAN HENNESSEY: Okay. Thank you, Mr. Secretary. We'll be happy to take those questions in just a second. But let me interrupt for a second.

Not only are we honored to have you here; we're also honored to have the Secretary of Aging, Brian Duke, stop by our Committee meeting. It's not often that we have two Secretaries of our government agencies stop by at a single Committee meeting. I guess that sort of shows you the kind of clout that Mauree Gingrich has in the legislature.

Secretary -- Secretary Duke, do you have any comments? We thank you for your interest in this Bill. But if you'd like to make any comments to the Committee, please grab a microphone.

I should also thank Representative DeLissio, who garnered -- or got Secretary Duke to stop by after an earlier meeting.

SECRETARY DUKE: Is that on? There we go.

Thank you for that opportunity to stop by and say hello very quickly. I'm on my way to another commitment. I just wanted to stop by and express our support of this initiative that the Secretary has presented, the IDR, and look forward to

hear future deliberations and how it proceeds through Committee.

Also, I want an opportunity to meet again with the Committee sooner to talk about our strategic planning initiatives we'll be kicking off. At the beginning of November, we'll begin a four-year planning process -- a process to create a four-year plan. Hope it doesn't take four years. That will help direct our aging services moving forth in the Commonwealth of Pennsylvania.

So put that on a coming attractions list and look forward to coming to meet with the Committee as part of that process.

CHAIRMAN HENNESSEY: Thank you, Mr. Secretary. We will schedule that, hopefully before the end of October, if we can -- if we have a meeting that we can put that --

SECRETARY DUKE: Or just meet with the leadership and figure out how to proceed -- we could meet with the leadership and determine the committee or who you designate to tell them about the process and how we're going to begin the process and how we're going to proceed, and then we'll be working on it until June, so there's not necessarily that urgency to do it right before the beginning of November. All

right?

CHAIRMAN HENNESSEY: Well, thank you very much for sharing your time with us this morning. I know you --

SECRETARY DUKE: Thank you. I'm on my way. Thank you, Representative.

CHAIRMAN HENNESSEY: Thank you. You're welcome.

Deputy Secretary Wolf, do you have any comments that you wanted to add to Dr. Avila's comments, or do you -- are you simply wanting to respond to questions the Committee might have?

DEPUTY SECRETARY WOLF: I will be happy to answer any questions that you might have about the process and what we've been working on with the stakeholders.

CHAIRMAN HENNESSEY: Okay. Does any -- Sid?

REPRESENTATIVE KAVULICH: Thank you, Mr. Chairman.

Mr. Wolf, Mr. Avila mentioned the Division will operate three dispute processes. Can you explain to me why we need three?

DEPUTY SECRETARY WOLF: Sure. I'd be happy to. I think that it's an excellent question.

The first one is a dispute resolution

process that is the ongoing one, and that is offered at no cost to the nursing -- to the nursing home facility. That's an important thing to remember. It's done internally, it's done by employees of the Department of Health.

What we're talking about this morning is the second part of that. And that would be something that would be done by an external organization at the cost to the nursing home.

So we felt it very important, from a departmental standpoint, to continue to offer a free service. If they -- if the facility in question did not believe that they had received the appropriate level of attention, they can then take it up to a second level, which would at that point in time cost the facility additional funding.

And then the third one is something that was -- the third resolution process is something that was given to us under health care reform and something that is being driven out of Washington, and it's only -- as the Secretary mentioned, it's only applicable to certain types of cases that -- and issues that rise up to the federal level.

CHAIRMAN HENNESSEY: Sid, are you finished?

REPRESENTATIVE KAVULICH: Yes. Thank you.

CHAIRMAN HENNESSEY: Thank you, Representative Kavulich. Thank you, Representative Kavulich.

Representative Pashinski.

REPRESENTATIVE PASHINSKI: Thank you, Mr. Chairman, and thank you very much for your testimony today.

I think we're all concerned about the safety and welfare of the aged at a most vulnerable time in their period of life. And I'm just a little -- a little confused between the IDR, the IIDR, the new regulations coming in, and so on.

It appears that you are in favor of an independent group coming in to do a survey, to do a review. Is that correct?

DEPUTY SECRETARY WOLF: Yes, that is correct.

REPRESENTATIVE PASHINSKI: Okay. I then have the feeling -- with the Department of Health, who has the authority and the responsibility to oversee the health, safety, and welfare of the aged, I am a little bit dismayed at why the Health Department themself wouldn't be the ones that could handle an appropriate and objective evaluation. Why do we need someone that's an independent to come in and either

verify or question the results of an evaluation?

DEPUTY SECRETARY WOLF: Sure. I'd be happy to answer that question for you.

CHAIRMAN HENNESSEY: Excuse me, Mike. Could you pull the microphone closer.

DEPUTY SECRETARY WOLF: Sure. I apologize. I'm also a little bit -- the weather has not been fantastic lately, as we all know, and it's been a little issue for me.

So let me answer the Representative's question. I think it's a very simple one.

First of all, as I had mentioned earlier, the first process and the ongoing process that works now in the Department is something that is offered and is offered -- the way it is -- that it's done is it is actually accomplished by other members of the Department of Health staff.

If someone believes that they -- if a facility believes that they do not -- have not received a fair shake, for whatever reason that might be, we're offering -- this Bill will then offer them a second opportunity at their cost. And I think that's an important thing to reference. The first one is free; the second one is at their cost to say we -- we believe that the survey in question is inaccurate, and

we want to make sure that we believe that -- and get our chance to move forward on a resolution that we see -- that the facility believes is more equitable towards them.

REPRESENTATIVE PASHINSKI: But you have an appeal process within your own system.

DEPUTY SECRETARY WOLF: That's correct.

REPRESENTATIVE PASHINSKI: And what -- my point that I'm making here is that I believe the Health Department should be at the utmost of ethical standards and present the proper evaluation system. If there's evidence that the system is failing somewhere, is this -- is it failing throughout the state? Is it just a region that we're having problems with?

DEPUTY SECRETARY WOLF: No.

REPRESENTATIVE PASHINSKI: Because then you have to look internally to see what your system is lacking.

DEPUTY SECRETARY WOLF: That's -- and Representative Pashinski, we are looking at the surveying process in its totality; not just in nursing homes, but also hospitals, acute care facilities, et cetera. So this is not a process -- this legislation is aimed specifically at nursing homes.

What we are looking at, the totality of the surveying process across the board. This is not -- this -- this -- our internal review continues throughout the entirety of the survey process. This Bill just addresses one sliver of that.

REPRESENTATIVE PASHINSKI: Okay. But our -- Representative Gingrich has identified something that is not right within the system. And I -- I -- I believe that we all are here to try to make sure that the people that we're -- have the responsibility of protecting, those very vulnerable folks in the nursing home, are being taken care of. I mean, and that is your charge; the Health Department there.

So now we're discovering that there may be some deficiencies in the evaluation process, and I'm wondering what the Health Department has done to overcome those deficiencies, other than to say, well, the only way to -- to actually provide a good objective evaluation is to have an independent evaluator come in to verify or to disagree with the evaluation.

DEPUTY SECRETARY WOLF: I think one of the things that's important -- if I didn't stress this early on enough, I apologize. But when you look at the process as a whole, what we're offering is that --

again, I go back to the idea, we're offering a free evaluation to be done if there's a disagreement. So that's step one.

The second step is -- is not necessarily based -- the Department cannot -- once -- if -- if we would go through an IDR, an internal one -- and as the Secretary referenced, we've provided some statistics about what has the process looked like to date. The second step, the informal independent resolution, dispute resolution process would only occur if the nursing care facility -- the nursing home facility believes that there is a problem. Not necessarily the Department. That that facility believes that there is a problem that exists. So the onus goes back to the facility, not necessarily the Department.

REPRESENTATIVE PASHINSKI: Well, but the facility is disagreeing with the result of your evaluation.

DEPUTY SECRETARY WOLF: That's correct.

REPRESENTATIVE PASHINSKI: And then there's an appeal process you have already in place.

DEPUTY SECRETARY WOLF: That's correct.

REPRESENTATIVE PASHINSKI: So prior -- let's say -- let's say we don't have this Bill here. Let's

say we don't have the Bill.

DEPUTY SECRETARY WOLF: Correct.

REPRESENTATIVE PASHINSKI: The fact of the matter is 10 percent of all those nursing homes that have received evaluation are contesting them and have been overturned. Is that correct?

DEPUTY SECRETARY WOLF: Yes, that is accurate.

REPRESENTATIVE PASHINSKI: Well, that indicates, to me, that there may be a systemic problem within the Department.

DEPUTY SECRETARY WOLF: Well, I guess I would agree -- I would respectfully disagree under the one -- under one thing. What we talked about is we gave you a snapshot in time, with the recognition that we are doing hundreds more, and -- that there were 206 who felt -- or, excuse me -- 199 who believed they wanted to come forward and say we believe there's an issue.

The additional ones -- and I'll be happy to get the Committee the actual numbers of the number of surveys that were accomplished over this period of time as well, which will, I think -- believe will hopefully help to put this into context. Those facilities then said, we -- we believe there's an

issue. Okay, fine. And engaged in that activity around the independent -- excuse me -- the informal dispute resolution.

So it was 10 percent of that number who did that. And what we'll provide to you, the Committee, is the number in its totality as well over the same period of time, to put it into perspective.

REPRESENTATIVE PASHINSKI: Well, once again, let me just say that I think we're all here to try to protect the vulnerable people that are in nursing homes. And anything that we can do that's going to do that, I certainly would support that.

CHAIRMAN HENNESSEY: Eddie. Oh, I'm sorry. I think Representative Gingrich wanted to fill in some of the information that -- and in response to your questions. All right.

REPRESENTATIVE GINGRICH: Thank you, Mr. Chairman. Thank you, Eddie.

REPRESENTATIVE PASHINSKI: You're welcome, Mauree.

REPRESENTATIVE GINGRICH: You can tell you and I work well together. That's for sure.

I want to clarify. I wasn't identifying a significant problem that we were trying to cure. We were trying to enhance the process. And

that's why -- I don't know if you were here when we first started. I said it took such a long time. Because this concept of how can we improve the process -- not correct the process. The process does work well. We have new CMS regs that the Department is adhering to as well. Timing was right at this moment to do this as well.

It's just another opportunity at a review process. You'll hear from providers later in the hearing which is going to help you, like it helped me over the years. It gives another set of eyes to look at any particular -- certainly identified scope of -- what do they call them -- items of non-compliance. It's a defined scope that they're looking at.

But whereas the Department is responsible to both establish the survey, do the inspections, and then judge themselves a hundred percent of the time, that's asking a lot of the Department, their broad group of employees and so on as well. Gives another -- I am good with this, because I think it enhances the process and gives another level of review from a very qualified outside set of eyes. It's being done across the country, and we took a good look at a lot of other states.

Just wanted to see if that helped you. I get where you're coming from.

REPRESENTATIVE PASHINSKI: You always help me, Mauree, and we do work well together.

You started this project in, what, 2002?

REPRESENTATIVE GINGRICH: It's actually been a long time, yeah. At least that, sure.

REPRESENTATIVE PASHINSKI: Okay. So, again, we normally don't start stuff unless there's a red flag that comes up.

REPRESENTATIVE GINGRICH: Well, I think the process was looking for a way to enhance efficiencies, and you know that's what we're supposed to be doing. That's really how -- both the providers were looking for an opportunity in this certain scope of compliance issues, that depending upon the eyes of the inspector, may be something they agree to and fully accept, or one that they would like reviewed again.

So -- as I said, we looked at a lot of other states who have done this, and it seems to have worked well. Relieved some of the load on the Department too, while we're looking at better quality care everywhere we can; hospitals, nursing homes, and so on.

REPRESENTATIVE PASHINSKI: And I appreciate that, and I don't want to take up all the --

REPRESENTATIVE GINGRICH: Thank you so much.

REPRESENTATIVE PASHINSKI: Thank you very much. I appreciate everybody's efforts.

CHAIRMAN HENNESSEY: Representative Neuman.

REPRESENTATIVE NEUMAN: Thank you, Mr. Chairman. Thank you, Secretary, and thank you, Deputy Secretary Wolf for your testimony and answering some questions.

I have a couple questions. The first thing I want to know is this IIDR agent, is there a certification process for this agent? How do we know that he's qualified to review a nursing home?

(Discussion held off the record.)

DEPUTY SECRETARY WOLF: I apologize. I just wanted to -- it's always good to ask your legal counsel sometimes, just to make a double check.

The Bill will -- identifies that we have to work within certain parameters and around certain organizations, and we are act -- we have begun conversations with the appropriate organizations who can go about doing this activity for us.

REPRESENTATIVE NEUMAN: But there's no -- DOH is not doing a certification process of these

agents?

DEPUTY SECRETARY WOLF: Bob, do you want to take the --

MR. DATORRE: The Department will contract with the agent, and, in doing so, will confirm they can carry out the function required here. That's what some of those discussions have started. And in other states that use IDR's, our understanding is that the QIO's in those states do that as well.

The QIO's serve under contract currently with CMS to do a similar function, where they review deficiencies, they review issues in nursing homes. So they do have qualified staff, they have health care practitioners. And we'll look at -- they have the additional training to know how -- how our regulations work, how the CMS regulations work, so that they can do the appropriate review on their end.

REPRESENTATIVE NEUMAN: So it's the -- correct me if I'm wrong, but it's the DOH that assigns the IIDR agent and not the nursing home?

MR. DATORRE: Well, with the language in the Bill, there will be one IIDR agent; the Pennsylvania QIO. And if the Pennsylvania QIO can't do the function -- and I won't testify today as to whether they can do that or not. I couldn't speak to that

issue -- that we would look at another QIO's. So an organization that does have the qualifications, as you said, to do this job.

REPRESENTATIVE NEUMAN: Does the nursing home or Department of Health pick the agent that does the review?

MR. DATORRE: Well, there will be one -- there will just be one. There won't be a selection of, you know, a few. So --

REPRESENTATIVE NEUMAN: One agent for all reviews. And DOH would select that agent?

MR. DATORRE: It will be -- yes, in accordance with the language of the statute.

REPRESENTATIVE NEUMAN: Thank you.

The other thing is we've been talking about costs a lot. We are adding another review level. Is the nursing homes going to pick up the cost of the Department of Health's review of the IIDR agent's report?

MR. DATORRE: The Bill provides for --

CHAIRMAN HENNESSEY: Rob -- Rob, speak into the mic., please.

MR. DATORRE: Sure. The Bill provides for the nursing home to pay for this IIDR review.

REPRESENTATIVE NEUMAN: For the review. But

whenever the DOH employees are reviewing the -- are we billing the nursing homes at that point, DOH, when they're reviewing this report, or how does that work? I know the report's going to be paid for and the review of the nursing home is going to be paid for by the nursing home. But then it goes to the Department of Health. We have to assign employees to review that and then file either an agreeance [sic] or a dispute with what IIDR agent saw. That time that's being spent by -- on taxpayers' dollars, who is going to pay for that? The review of the report.

MR. DATORRE: I think the -- the discussion right now is that that will be assumed into the operating costs of the Department, as appropriate. It -- we will also gain from these reviews and that we will learn from what the QIO provides as to whether they disagree or degree with the Department's initial deficiencies.

REPRESENTATIVE NEUMAN: Okay. The other issue, if a state or government provider of a nursing home wants to dispute this, who pays for an IIDR review of a Government facility?

DEPUTY SECRETARY WOLF: It would continue to be that facility.

REPRESENTATIVE NEUMAN: It would be the

government.

DEPUTY SECRETARY WOLF: This is -- yes. Precisely. This is largely -- this idea is all about -- it's their -- their dispute with the nursing home facility, whether it be private, nonprofit, public. It's their issue moving forward, not necessarily the Department of Health's.

REPRESENTATIVE NEUMAN: But the for-profits consist of -- out of the 199, 120 of the deficiencies were for-profits, so it seems like the for-profits are going to be the ones that are going to be asking for an agent the most. Would you agree with that?

DEPUTY SECRETARY WOLF: Based upon the initial? Yes, absolutely.

REPRESENTATIVE NEUMAN: Okay. My final question is Aging and Older Adult Services, how does this help senior citizens?

DEPUTY SECRETARY WOLF: Our -- our goal -- and it's a great question. Obviously, we're -- our principal concern is protecting the health and welfare of the people inside those facilities. Our goal is to make sure that our surveying process is done to the best of its ability. We want to make sure that the people that we work with and the people who we regulate have an opportunity -- if they dispute our

findings, we're giving them the opportunity to either, one, change the mind of the -- work within the Department structure for dispute resolution. Number two, if they don't believe that they have received a fair shake there, to give them a second opportunity at this as well, and be done -- be it done externally, where it's not necessarily -- it will be done independent from the Department, and then we're going to be able to do, as Robert had mentioned, be able to get -- generate feedback and get it back to our surveying team, and how do we improve our process in this totality.

REPRESENTATIVE NEUMAN: Now, I'm sorry, I do have one more question. How will the IIDR report be used in a court of law?

MR. DATORRE: This is an informal process, so there would not be any formal appeals, so we would not be adding any burden to the Commonwealth Court or any procedures.

REPRESENTATIVE NEUMAN: Okay. Thank you very much. I really appreciate your answers.

CHAIRMAN HENNESSEY: Dr. Avila, we have some other questions; Representative Swanger, Representative Donatucci. Can you stay -- we have three other testifiers, and we're trying to move them

along. Could you stay till the end of the meeting? Is that your plan? Or do you have things that you must get back to the agency for?

SECRETARY AVILA: I do have another meeting to go to, but Mr. Wolf, Mr. Datorre will be able to stay.

CHAIRMAN HENNESSEY: Okay. Representative Swanger, Representative Donatucci, could you hold the questions, then, for -- till the end of the other testifiers? Or -- you're looking askance. Can you --

(Discussion held off the record.)

CHAIRMAN HENNESSEY: Well, why don't you answer a quick question, then, if you can. And we'll try to --

REPRESENTATIVE SWANGER: Do I understand that there could be three parts to this regular -- or this dispute resolution process? Someone may choose to file their appeal with -- or their -- to have their resolution conducted by the Department at no cost. That would be an internal review. Then could the facility appeal that decision to the Department, and then would they have a second chance to appeal to the independent agency? Is that -- is that how that would work?

DEPUTY SECRETARY WOLF: The process --

and -- the process would be that -- excuse me -- there's the first one, and that is the one that's done internally to the Department. That's -- that's the first step. The second step is if that one does not reach a satisfactory answer for the facility, the facility then has the right and ability to pursue the independent informal review process. But that is totally based upon the facility's decision-making at that point in time, not the Department's.

REPRESENTATIVE SWANGER: Right. So they could not take two appeals; one within the Department and then one with the independent organization. Is that correct?

SECRETARY AVILA: That is correct, yes.

REPRESENTATIVE SWANGER: Okay, thank you. I understand.

CHAIRMAN HENNESSEY: Maria, can you wait till the end of the meeting?

Okay. Thank you very much, Dr. Avila, Mr. Wolf, Mr. Datorre.

SECRETARY AVILA: Thank you.

DEPUTY SECRETARY WOLF: Thank you.

CHAIRMAN HENNESSEY: Our next testifier is Russ McDaid, who is the Vice President, Public Policy, with LeadingAge Pennsylvania.

Russ, good morning.

MR. McDAID: Good morning, Chairman Hennessey. How are you? Good morning, Chairman Hennessey. My -- I'm good. I'm great. Good morning, Chairman Hennessey, Chairman Curry, distinguished members of the Committee. My name is Russ McDaid. I'm the Vice President of Public Policy -- speak up? Okay. I'm the Vice President of Public Policy for LeadingAge, PA. We were formally PANPHA. Many of you knew us as PANPHA for roughly 48 years. We recently went through a name change.

We're a statewide association representing more than 360 not-for-profit providers of senior care and services. Our providers, our members provide the full continuum of care, from nursing facility care, which we're speaking to here today with House Bill 1052, through the entire continuum, down to housing services; meeting the needs of our -- of our elders on a daily basis.

I appreciate the opportunity to testify. And given the fact that I think we want to get through this, and we may have some other questions, I will not read my entire testimony, but want to -- want to make a couple of points.

First, we want to thank and express our

gratitude to Representative Mauree Gingrich as well for her leadership on this issue. And as you heard from the testimony of the Department and some of the questions, it's not a simple issue. However, it's one that is -- we believe House Bill 1052 is in the best interests of the residents that we care for and those nursing facilities that provide their the care. It provides another layer of review. It does not replace the existing review, which we think is an important piece. And as I'll share with you in a little bit here, we do think it was -- it was a necessary piece.

In response to some of the concerns that you heard from Representative Pashinski, a couple of things.

The first is, you know, this is an independent informal dispute resolution process, and the Department of Health's current IDR process meets the federal standards, to be sure. And as you heard, roughly 10 percent of those IDR's that come before them end up being overturned by the Department themselves. They say, you know what, now we want a second look. We got this one wrong in some way; we're overturning it.

And we at LeadingAge PA thank the secretary and his staff for the excellent job that

they have done in coming to the table, looking at this, and determining that in despite of the current existing process, that we can only add value to the process by adding the independent IDR layer to the process.

Because we -- we share everyone's belief that the Department acts with the utmost of ethics and integrity. Unfortunately, they're also human. And the individuals who review these things -- you know, when is the last time any of us made a decision on Tuesday and then decided on Thursday, you know what, I was wrong; I'm going to reverse my decision; I really didn't mean it; I'm going to go in another direction. And it's awfully hard to move off of that.

And all we're asking for this this Bill, in working with Representative Gingrich and your Committee, is the opportunity to have an independent set of eyes that the facility would pay for to say, you know what, you know, we looked at this, we have the same type of clinicians that are looking at this as the Department does, and, in our mind, it either is upheld or we see where the Department has some concerns, we would not have cited it in that way, and issue another opinion.

The question about certifying -- the Quality Insights of Pennsylvania, they'll be testifying immediately after me. You know, my initial reaction to your question, Representative, was that CMS has certified them. The Federal Center for Medicaid and Medicare services has certified them to be Pennsylvania's quality improvement organization. And they've had the same kind of clinicians on staff as the Department has, and provide that independent rigorous review. And they'll speak to their qualifications when they come after me.

But certainly, you know, that, along with the Department's due diligence, I think, should give you all the comfort that you're looking for; that these folks are truly qualified to do the task that we're laying out in House Bill 1052.

And the final piece was the cost, and is this a duplicative layer. Not only are the providers picking up the cost if they choose to go the independent IDR route, but we firmly believe, LeadingAge PA believes that this actually could save the Department some time, potentially. Any of those IDR's that are chosen -- that the provider may choose not to go through the Department's process. They may choose the independent IDR process through Quality

Insights of Pennsylvania. At that point in time, Quality Insights will do a thorough review, the same type of review the Department would do, and they will give the Department their finding. Which -- which the Department still has the ultimate authority. The Department is the only entity that has the authority to either withhold that -- or, I'm sorry, uphold that deficiency or say, you know what, we agree. If the recommendation is to overturn the deficiency, the Department can say, you know what, having seen that independent review, we agree with it; we will remove that deficiency from the record. We believe that will take far less time for the individual staff who are performing these and performing the full review.

So we think the verdict is still out on whether this is an additional cost layer for the Department.

A couple issues that I want to mention, then offer myself up for questions. The -- the need for the -- for the independent informal dispute resolution, I spoke to, briefly, the Department of Health staff being human. And, you know, we heard -- when -- in coming before you today, I -- you know, in reviewing my colleague, Anne Henry's testimony -- and Anne, I'm sure, will add to this. You know, she has

what we think is an excellent indication of why the independent IDR process is necessary.

However, I will tell you when I'm out and about -- and, anecdotally, we hear a great number of people come to the table saying the IDR process needs an augmentation, it needs an independent layer, we need something else, because on some of these we would just like to avail ourselves of an additional process. And when I ask them to share the specific stories, they are want to do so. Again, not based in any reality, not that there's even been retribution from the Department staff in any manner that we're aware of, but that's the fear. The fear is that they're unwilling to come forward.

I should have 35 or 40 stories here in my testimony, if what we hear from our members when we're out with them is indicative, and yet, we were able to secure one that you have before you in the written testimony. And -- and I'd be willing to guess that Anne would share the very same experience; where the breadth of people who say, you know what, we need an independent component to this process is great; however, when it comes time to put it on paper, to say, hello, I'm -- I'm Suzie Smith from So-and-so Care, and I'm here to share with you the concerns I

have, they're -- they're reticent to do so. Which is really one of the reasons why, you know, we believe that this Bill is a win/win; that it's the right time.

We've got a department that sees a benefit -- and thank them for the leadership -- in seeing a benefit and no threat, frankly, and another independent set of eyes, if a provider chooses to go that way, instead of having -- availing themselves of the Department's process, allowing for that process to be in existence. Well, you've heard they're building that third process that the Feds are requiring them. And either one of those reviews, at the end of the day, the Department has the ultimate decision on whether they agree or disagree. So it's not like, you know, the provider is paying for a favorable ruling. They are paying for an independent set of eyes. And at that point the Department will look at that review and say, yep, we agree or, nope, we don't agree; one of the two. And only Secretary Avila and his staff have the authority to do that.

So I'll conclude with that. Thank you all for the opportunity to testify. Thank you again, Representative Gingrich, for your leadership on this issue. And I'd be willing to entertain any questions that you have at this point.

CHAIRMAN HENNESSEY: Russ, can you stay till the end. Maybe --

MR. McDAID: Absolutely.

CHAIRMAN HENNESSEY: -- after the other testifiers come up, we'll put you up together as a panel.

MR. McDAID: I'll be here through the end.

CHAIRMAN HENNESSEY: Good. Thank you. Thank you for your testimony.

Next we have Naomi Hauser, who is a registered nurse and here representing Quality Insights of Pennsylvania. The CMS-designated --

MS. HAUSER: Yes. QIO is contracted by the CMS.

CHAIRMAN HENNESSEY: And you are the Health Care Quality Improvement Director for Quality Insights. So --

MS. HAUSER: That's correct.

CHAIRMAN HENNESSEY: -- you can begin your testimony when you're ready.

MS. HAUSER: Okay. Chairmen Hennessey and Curry and members of the Committee, as well as staff members, thank you for this opportunity. It's very interesting hearing from the Health Department and from Russ McDaid, for their perspectives, and it

sounds as if, you know, we have had contact about this, we have discussed this. And my goal today is to help you better understand what the role of the QIO would be, what our qualifications are, as you, you know, well asked about that, and hopefully be able to entertain some questions that you have about that.

Let me tell you a little bit about myself. My name is Naomi Hauser. I am a registered nurse. I have been with Quality Insights since 2002. And I have over 40 years' long-term care -- hard to believe, but I have over 40 years of long-term care experience. I was a state surveyor in New York State, and I surveyed nursing homes there and -- which gives me -- I'm also a legal nurse consultant. And it gives me the perspective from the provider, as well as the regulatory side of health care. So I think that that's one of the qualifiers. And many of the staff members that we have, have similar qualities -- qualifications.

So I welcome this opportunity to talk about the independent informal dispute resolution, as well as discuss the House Bill 1052.

Let me tell you a little bit more about Quality Insights. We are contracted by CMS. We are a quality improvement organization, better known as a

QIO. And we're federally designated. And our whole purpose is to review and improve the care provided to our state Medicare population.

Some of what we are is a not-for-profit organization. Our mission is improving the health of the people we serve. We have two offices in Pennsylvania -- one is in King of Prussia, the other is in Harrisburg -- but we reach out across the Commonwealth.

And we have a diverse staff. There was a question asked about what are the qualifications of our staff. We have physicians, we have registered nurses, we have epidemiologists, we have data analysis and information technology professionals.

The QIO program -- again, I just want to emphasize -- is to improve the health and care for all Medicare beneficiaries. Currently, we collaborate with hospitals, nursing homes, physician offices, and allied health stakeholders throughout the Commonwealth to really accomplish the triple aim of Health and Human Services' goal, which is improving care for individuals, improved care for populations, and reducing health care costs.

We have four major aims that we focus on in the work that we do for the providers and for

the beneficiaries. The first one is we focus on improving patient care. And in that component, we look at hospital-acquired infections and -- in the hospitals, and we look at pressure ulcers, restraint rates, and other health-related acquired conditions in nursing homes. We also look at the component of adverse drug events in a number of settings across the Commonwealth.

The second area, aim, is integrating care for populations in communities. That has to do with care transitions or the way in which beneficiaries transition from settings to providers, and it goes across setting.

The third area that we focus on is improving health for populations and communities. We are partnering in that area with physician offices, and we focus there on preventative service for Medicare beneficiaries, such as immunization, cancer screenings, and we also focus on care provided to patients with heart disease.

Of particular interest to the Committee might be the area of beneficiary and family-centered care aim that we focus on. And that is Quality Insights is responsible for reviewing the quality and necessity of care to Medicare patients in the state.

Specifically, we review certain provider notices of discharge and continuation of services, we review potential cases of patient dumping, known as EMTALA, we implement quality improvement activities to address concern identified in the course of medical record review.

We also provide people with Medicare an outlet to file complaints about quality of care. We have a very structured, consistent, and professional Medicare review process that we implement.

So, in short, the quality improvement organization, we offer breadth and depth of experience in a wide range of staff and expertise in health care quality review and improvement beyond all -- throughout Pennsylvania.

I don't think I have to go over the IDDR [sic] or the IDR. I think we've had enough talk about that. So I'm just going to skip over that, because I think, you know, there are other people that could answer that better than I at this point.

But I do want to skip off to the fact that -- what our approach would be. Although early in the game we've had some early-on conversations with the Department of Health, as well as the associations. And we will offer a rigorous decision-making process,

expertly trained reviewers, we'll do quality reviews, and we'll have continuous training. We'll also offer timeliness.

So Quality Insights' program will be unique in the fact that we will incorporate a quality review mechanism into this infamous IDR process. So that will be through decisions to -- continuously being monitored.

This process, as was mentioned before, is done in many states across the nation, has been done successfully with a lot of good feedback. Secondly, the volume of IDR's, which has also been addressed, we can help to reduce the burden to the Department of Health in that way.

And the third is that we can lessen the burden and timeliness, efficiency for the whole appeal process.

So, finally, by allowing the QIO to complete some of the reviews, the providers have more choices. And I heard mention about whether things are -- this is to correct inefficiencies or if something is done wrong.

I think the idea of choice is important; that the providers have a choice, and that nothing has to really be done wrong, but just giving

the providers a choice, I think they would feel better about that.

So with that, I thank you for -- and the members of the Committee, for providing me with this opportunity to let you know about Quality Insights' experience related to quality review and improvement, the federal and legislative requirements of the IDR, and our proposed approach.

So in summation, what -- if Quality Insights becomes the independent agent, it should result in improved outcomes, timeliness, improvement, and workflow efficiency for completion of deficiency corrections during this survey process.

Thank you very much. Any questions?

CHAIRMAN HENNESSEY: Thank you, Naomi. If you can -- can you stay to be part of the panel at the end?

MS. HAUSER: I can.

CHAIRMAN HENNESSEY: Okay. Thank you very much --

MS. HAUSER: Okay, thank you.

CHAIRMAN HENNESSEY: -- for your testimony.

Next among our testifiers is Anne Henry, who is the Chief Financial Officer of the Pennsylvania Health Care Association.

Anne, begin when you're ready. Thank you.

MS. HENRY: Good morning, Chairman Hennessey, Chairman Curry, members of the Committee. I'm Anne Henry. I'm actually the Chief Operating Officer for the Pennsylvania Health Care Association, and I'm also a licensed nursing home administrator, and I've been doing work in and around nursing homes for 20-plus years. I started at a very young age.

The Pennsylvania Health Care Association is a statewide advocacy organization for the Commonwealth's elderly and disabled, and our mission is to make sure that those who need long-term care receive quality services in the most appropriate and cost-effective area at every stage of their life.

I won't belabor the points. I think my colleague, Russ McDaid, made a lot of good points that are present in my written testimony. But I, obviously, want to thank Representative Gingrich for introducing our Bill, which we find to be very important.

You know, as -- as Russ discussed and the Department discussed the survey process, the survey process, as designed by the Federal Government, leads to -- or allows for a lot of subjectivity and

interpretation by surveyors. It allows them to bring their own human experiences and life experiences into that process. That's not saying that it's right or wrong, the deficiencies they cite, but they bring that human element into anything that -- that they write in that deficiency report. And we understand there are significant reviews by the Department, but we also understand that it's very difficult to be critical of your other colleagues or your peers in doing those reviews.

And that's why we feel at PHCA, it's critical that we have a choice whether to go through the current department IDR process or to go through the IIDR process, as outlined in House Bill 1052.

We also know that -- that the survey process tends to be punishment-oriented and doesn't allow for a lot of collaboration. And that's by design of the Federal Government. It's not that the Department of Health doesn't want to collaborate and doesn't want to give the -- the nursing facilities information that they need to enhance the quality. Their hands are really tied. And that's why we believe, to bring the QIO into the process, who can look at the deficiencies, who can bring other experiences from, you know, their reviews of other

facilities and to help nursing facilities to overcome deficiencies that they believe the Department of Health cited appropriately, or to just give them some little guidances to help to improve quality, we don't think this -- this Bill is just about a new process. We really believe that it's also giving nursing homes the ability to enhance and better the quality in their facilities.

As Russ did say, I did struggle to get examples of deficiencies to bring into this testimony. I will tell you that the -- the example that I have, I had to really cleanse it and make it read much like a story, because facilities -- whether the Department would ever do this or not -- we don't believe they would -- but they're very, very fearful of retribution. And that's the other thing that's really critical to having a two-prong process where facilities can choose, because they believe that any concept of retribution will be minimized by having a separate process with the QIO.

Again, we did study -- Pennsylvania Health Care did do an extensive study of what's happening in the nation on IDR's and IIDR's. We have three states that we believe the language in House Bill 1052 is very similar to. Those states are

Michigan, Indiana, and Illinois. And we believe that their processes have worked well.

We also, in our discussions with the Michigan QIO, have understood that it actually has saved the State of Michigan some State dollars, as opposed to adding dollars.

And, finally, I think the other last critical part of 1052 is the fact that there is a data collection mechanism so that you, the Committee, and the General Assembly will be given information to see in the future whether this concept works or not and whether we should, you know, do tweaks along the way, or those kinds of things.

And with that, again, Pennsylvania Health Care is strongly supportive of the Bill, and we thank you for your time.

CHAIRMAN HENNESSEY: Thank you, Anne. Excuse me. Thank you, Anne, for your testimony. Can you stay to be part of the panel?

MS. HENRY: Um-hum.

CHAIRMAN HENNESSEY: Russ, Naomi, if you come forward. Also, Mike -- is Mike Wolf and Rob Datorre still -- they are still here. Please come forward.

Maria -- Representative Donatucci, I

sort of cut you off earlier, in terms of the questioning. I appreciate your willingness to do that. But why don't we get back to your question now.

REPRESENTATIVE DONATUCCI: Thank you, Mr. Chairman and thanks to all of you.

I may have got my answer by reading Nurse Hauser's testimony. Because you kept saying that, "The process will not replace the Division to do the same process. It's intended to provide for review of a more limited scope of deficiencies." And I read in Nurse Hauser's a list of -- presuming everything else is game for this --

MS. HAUSER: I'm sorry; I don't -- I don't --

REPRESENTATIVE DONATUCCI: You have in here the issues that may not be heard in an IDR include, but are not limited to, and you --

MS. HAUSER: That was taken directly from either the Federal Register or from the Bill itself.

REPRESENTATIVE DONATUCCI: Okay. So everything else can be heard.

MS. HAUSER: Yes.

REPRESENTATIVE DONATUCCI: All right. See, you did answer my question. Thank you.

CHAIRMAN HENNESSEY: Yes. Representative

DeLissio.

REPRESENTATIVE DELISSIO: Not so much a question, but a statement.

As a former licensed nursing home administrator, who was a provider, who has gone through countless number of surveys over the years, I -- I applaud this effort wholeheartedly.

Like any group of employees anywhere in the world, not all surveyors are created equal. And, most importantly, not all surveyors have ever worked in a long-term care facility. In fact, at the time when I was practicing, a lot of them never had worked in a long-term care facility, nor at that time -- and it may have changed -- did their training include any training on the grounds or in the campus of a long-term care facility.

And, you know, quite frankly, this is about lives and making sure folks are safe. Particularly folks who are vulnerable. And everybody whose -- well, I certainly was, and the folks -- my peers were supportive of delivering services -- high-quality services at all times.

On any given day, anything could hit the fan as a result of somebody's behavior; acting out, whatever it is. And sometimes surveyors come in,

and they're -- these are the regs, and it's got to be perfect. There is no world that is perfect. It's just not possible.

So the fact that -- and sometimes these citations come about because somebody has come in, and they've seen something in a moment in time and don't have the background to make an appropriate judgment or don't take the time to investigate it more fully and aren't comfortable making that judgment.

So the idea of an independent informal process that a facility can appeal to is -- and you do get that feeling. And I can't quite tell you why, Chairman; why that feeling of retribution is there; that if we were ever to call the regional office to say we have a concern about this surveyor -- but, yet, when peers share among themselves, there are definitely trends and patterns that can be tagged back to individual surveyors.

You know, it's a very uncomfortable situation, because they're unannounced surveys. Interestingly enough, hospitals are announced surveys, or used to be. We were unannounced. So at any given moment, your entire day can be disrupted. There are all of these variables that play into it. And frequently you get a citation that is, like, out of

the blue, and you don't understand it.

People interpret things differently as well. Some have narrower interpretations of these regs; others broader. Please remember that long-term care is one of the most highly-regulated industries in the country. So the regulatory process is unbelievably overwhelming.

So I -- as a former provider, as a former licensed NHA, I absolutely support this. I will be very interested to track the data that will be collected as a result of this, and any other additional input that can be given to the Department of Health as it pertains to feedback, to enhance the skill set of surveyors will only enhance the process.

Thank you.

CHAIRMAN HENNESSEY: Thank you, Representative DeLissio.

Representative Swanger.

REPRESENTATIVE SWANGER: I guess my -- my question is for Deputy Secretary Wolf.

Is the decision of the independent agent final and binding upon the Department?

DEPUTY SECRETARY WOLF: I'll -- excuse me. Sorry. I'll turn that one over to my legal counsel.

MR. DATORRE: The language of the Bill does

provide for the Department to review that and make a determination as to whether it agrees or disagrees. And if it disagrees, the Department will issue its own report as to why it disagrees with the conclusions.

REPRESENTATIVE SWANGER: I'm so confused. Now, what would prevail? The Department's position or the independent agent's?

MR. DATORRE: The Department is ultimately responsible for -- for the deficiencies of the departments. And that's why the final report will -- will allow the nursing home to have a fuller understanding of why there's a disagreement and ultimately why that deficiency stands.

UNIDENTIFIED SPEAKER: I'll just ask a question, if I can, to follow up on the -- right on the heels of that.

If I represent -- if I am -- it's my relative who is the subject of a case, and I am happy with the independent resolution, and the Department says, well, we don't care, we're not -- we don't agree with that, do I then, on behalf of my mother or my relative, have the right to go to court to -- to dispute the Department of Health's findings? Or would I simply revolve -- you know, resolve it by going and filing a civil suit for liability against the

facility? If I felt they had done something wrong, and the Department of Health disagreed and wouldn't -- there's no -- I don't see anything in the Bill that gives me the next step up to go to a judicial proceeding; to have someone -- have an even further independent review.

UNIDENTIFIED SPEAKER: While a resident of a nursing home or resident's responsible parties, family members don't have a formal role, we do, during survey, consult with residents, ask them questions, get their input. And we would never ignore anything we received from such a party.

Of course, the QIO, the independent informal dispute resolution agent serving in this capacity, whether or not they could accept that, we would work that through as we come up with the exact process.

But the Department surveys and the regulations are separate and apart from any standards for civil liability or for negligence. And so they -- a violation of a regulation, whether it exists or doesn't exist, doesn't necessarily establish whether there has or has not been negligence.

CHAIRMAN HENNESSEY: Okay. Thank you.

Chairman Curry, you had a question?

CHAIRMAN CURRY: No.

UNIDENTIFIED SPEAKER: Just in sidebars, when we were talking up here during your testimony, the question was raised, if a facility were to invoke the independent step, the second step of this process, or, perhaps, it could be the first step, if it decides to just ignore the Department-based IDR, who bears the cost of that? Does the -- Chairman Curry was concerned that perhaps the facility would then say, well, we've got a lot of time and effort involved in this, we're going to bill it to the patient who is the subject of this review. And it seems to me that the -- the facility, if it's trying to protect its own reputation or remove some finding that it had done something wrong, should absorb it as part of its own overhead and not charge it to a patient.

Do you find in your -- you know, your existing practice, that facilities absorb it, or do they try to pass the cost on to a particular patient?

MR. DATORRE: I think it's probably best if I -- but it costs, usually, for nursing home residents -- and certainly for Medicaid, there are certain things that are set in accordance with Medicaid rules, as to what is reimbursable and what is not. But it would not be altogether different than a

formal appeal, any formal challenges that they would take in hiring counsel and those matters. But I think either of the associations could answer.

MR. McDAID: I was going to say, very simply, Chairman Hennessey, that I think it's the cost of doing business. And that's how they would look at it. They would certainly not be invoicing a resident, saying, hey, I had the IDR survey that you were involved in, so you're going to bear the cost of this. It's the price of doing business, of clearing up a mark on the record, if you will, that they don't believe was -- was justifiably put on the record. And it's not something that they would be routinely charging back to residents. At least that -- nothing that I've ever heard would --

UNIDENTIFIED SPEAKER: I mean, under Medicare and Medicaid reimbursement policies, a facility would not be able to bill a particular resident for the cost of that IDR or IIDR. It would be simply swallowed up in their cost of overhead.

UNIDENTIFIED SPEAKER: Okay. There's nothing that we need to do to add to the Bill to ensure that that's the way it's going to be handled, because -- just because you can't get reimbursed doesn't mean, necessarily, that a facility might seek

to charge a patient --

For example, if I thought that my relative had been improperly treated, and I was the one that was pursuing, you know -- pushing that, saying that the facility was wrong, you finally get the Department of Health to come down on your side after the independent came down on your side, you know, you -- at that point you likely would be upset with me and, therefore, my patient -- or my relative. And I'm trying to figure out whether or not we need a clause in the Bill that says under no circumstances can you bill the patient for this kind of a quality review.

UNIDENTIFIED SPEAKER: You -- I mean, your reimbursement policies require that you have and disclose, anyone who's admitted into your facility, everything you can charge. And those charges do not include legal fees, administrative fees. It's simply, you know, medicines, room and board, those kinds of things.

So this kind of effort would be in your overhead at the facility. You could not -- there --

UNIDENTIFIED SPEAKER: So there is no mechanism to bill the patient.

UNIDENTIFIED SPEAKER: There is no mechanism

to bill the patient.

UNIDENTIFIED SPEAKER: Well, that seems to be the appropriate resolution to that. Because it seems to me that in this review process, it's the facility trying to protect its own name, its own reputation, not -- not acting on behalf of the patient, but, rather, acting on behalf of itself. So it seems to me that's the way it should be.

Representative Gingrich, do you have any kind of thoughts after hearing the questions that we've asked about your Bill?

REPRESENTATIVE GINGRICH: Absolutely. It reinforces our need to -- to consider this Bill. I really appreciated all the questions. And, certainly, the panel of people in the trenches -- Representative DeLissio, who brought to the table with no hesitation -- and I really appreciate that -- what it's really like to deal with these situations on a day-to-day basis. And her story resonates.

It's been my honor to work with this team of advocates, if I identify them, from the Department of Health, you know, to our providers, to our QIO's. Highly professional folks that we use throughout our health processes in Pennsylvania. All of us working towards the same goal, as everybody

around this meeting table here today for this hearing. And that's to enhance in any way we can the quality of care to our seniors.

So I thank again the Chairman, and I thank the testifiers, and for those of us who were able to hang in there to get their questions answered.

Thank you, Mr. Chairman.

CHAIRMAN HENNESSEY: Thank you.

I thought we were going to wrap up, but we do have one other question from Melissa. I had just asked whether you had a question, so I invited it. So please go ahead and ask your question, Melissa.

UNIDENTIFIED SPEAKER: Thank you, Mr. Chairman.

Just two quick questions. What are the -- and the Department of Health might know this best. What are the current training requirements for the surveyors that go in and look at these skilled nursing facilities?

DEPUTY SECRETARY WOLF: Nursing home surveyors are required to be -- licensed health care practitioners are either usually nurses or dieticians or social workers or nutritionists. Those are the four main categories.

In addition to that, they received federal training from the Centers for Medicare and Medicaid Services, both initially and ongoing, as they continue to be surveyors.

UNIDENTIFIED SPEAKER: And do they have to have any kind of experience of long-term care? Any former long-term care experience? I'm just going off of what Representative DeLissio had said about the folks coming into the facilities and looking and don't necessarily have any long-term care experience.

DEPUTY SECRETARY WOLF: No. Excuse me. No, they do not necessarily need to have that.

UNIDENTIFIED SPEAKER: I'm sorry; I just want to follow up, just with one more. I just want go back to your testimony, whenever you were talking about the federal guidelines and then with this informal dispute resolution process that we would have to implement through that.

Is that something you can do internally, just through the Department? Do you need legislation to go through in order to do that? Or because it's a CMS rule that's coming down upon you, you're just going to just implement it before January 1st, 2012?

DEPUTY SECRETARY WOLF: The point you raised

about it being a CMS rule would be the less applicable one.

And, also, I wanted to -- in my earlier testimony, I referenced and said we would get back to you with the number of surveys we've actually had since the date in question, and we're able to -- to get the answer to that question already for you.

Since January -- since January 2010, we've done about -- I think the exact number would be 7,792 surveys. So just to put it into perspective, that's the number of surveys we've done statewide, and to give you the perspective, again, of the number who have actually gone through the informal process first.

So just wanted to give the Committee a sense of what that number actually looked like.

UNIDENTIFIED SPEAKER: Thank you.

CHAIRMAN HENNESSEY: If there are no more questions, I want to thank you all for being here. (Inaudible.) -- Committee meetings this morning. So those of you who could stick around, I appreciate your sticking around till the end.

The -- it would be our intent to have our next Committee meeting on October 19th. And at that point, barring any unforeseen circumstances, I'll put House Bill 1720, the Uniform Guardianship proposal

that we discussed -- what, was that last week? Last Tuesday or Wednesday -- and also this Bill, House Bill 1052, on the voting schedule for next -- for our next meeting on October 19th.

There being nothing further, this meeting is adjourned. Thank you all for attending and for your input into the meeting.

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