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## Surveys — Licensure and Enforcement

**JUDITH S. SHERWIN**  
**KATHLEEN F. HOWLETT**  
Shesky & Froelich, Ltd.  
Chicago

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## I. [2.1] SCOPE OF CHAPTER

According to the Web site of the Illinois Department of Public Health (IDPH), [www.idph.state.il.us/healthca/nursinghometestjava.htm](http://www.idph.state.il.us/healthca/nursinghometestjava.htm), Illinois has approximately 1,200 long-term care facilities serving more than 100,000 residents, from the young to the elderly. Each of these facilities is licensed, regulated, and inspected annually by the IDPH. The IDPH also assists the Centers for Medicare and Medicaid Services (CMS) with certifying these facilities for participation in federal payment reimbursement programs. Under a cooperative agreement with CMS, the IDPH conducts certification surveys to ensure that facilities receiving federal healthcare dollars (Medicare or Medicaid money) abide by applicable federal regulations. The Nursing Home Care Act, 210 ILCS 45/1-101, *et seq.*, and the Skilled Nursing and Intermediate Care Facilities Code, 77 Ill.Admin. Code pt. 300, govern the survey process in Illinois. Through its Division of Long-Term Care Quality Assurance, the IDPH is responsible for regulating and enforcing these laws. The IDPH and CMS have separate, but sometimes overlapping, jurisdiction. State licensure is required to operate a long-term care facility in Illinois. 210 ILCS 45/3-102. Federal certification is necessary to participate in the Medicare and Medicaid programs. The IDPH is the state survey agency for purposes of Medicare and Medicaid. 210 ILCS 45/3A-101. It is also the state licensure agency. As such, IDPH surveys are frequently dual in nature. Surveyors check to see that long-term care facilities meet both state licensure standards and federal regulations.

A survey is an overall examination of compliance with the applicable statutes and regulations for the type of license that a facility holds or for which it has applied. 210 ILCS 45/3-212. Each year, IDPH surveyors conduct approximately 1,300 full, on-site licensure inspections of nursing homes and respond to approximately 6,000 complaints. These inspections, called surveys, are conducted to evaluate the fitness and adequacy of the nursing home and its equipment, staff, policies, procedures, and finances. The surveys are conducted annually (*e.g.*, a licensure inspection). Each survey is actually two surveys, one for certification and one for licensure. Certain deficiencies end up as license violations, but not all. The IDPH may inspect more often if a complaint is filed or if the IDPH determines that a follow-up inspection is needed. (The authors' experience is that the surveys generally occur between 12 and 16 months at each facility.)

Generally, there are four types of surveys conducted by the IDPH: (a) annual; (b) complaint investigation; (c) incident report investigation; and (d) follow-up. The IDPH has a 24-hour hotline that allows staff to respond to complaints from the public about long-term care facilities, which is how many surveys are initiated. On average, the annual survey process will take approximately four days and will conclude with an exit interview. Nursing home inspections, whether standard or in response to complaints, are conducted without notice to the facility. Long-term care surveys are typically conducted on weekdays although survey teams can and have conducted inspections at night, on weekends, and during holidays. The inspection teams evaluate all aspects of resident care and nursing home procedures and practices, assessing facility compliance with more than 1,500 specific state and federal standards. Teams consist of a registered professional nurse, a nutritionist, and an environmental health practitioner. On some inspections, the teams may be joined by other professionals, such as Life Safety Code experts. Complaint surveys are conducted by surveyors with expertise in the area involved in the allegations of the complaint. Samples of

specific areas of care reviewed include resident rights, access to care, activities, assessment and care plans, health care and dietary services, housekeeping, staffing, and quality of care and quality assurance.

In addition to inspections by the state, some Illinois nursing homes are members of national accrediting organizations, such as the Joint Commission ([www.jointcommission.org](http://www.jointcommission.org)), which independently inspects member facilities to assess performance. Watchdog groups exist to monitor nursing home services and often assist residents with nursing home issues. One such nursing home watchdog group is Equip for Equality (E4E) ([www.equipforequality.org](http://www.equipforequality.org)).

At the conclusion of each inspection, the IDPH's findings are shared with nursing home administrative staff in an exit interview and are included in a survey report that is forwarded to the facility. If the IDPH has determined that the nursing home failed to comply with all applicable state and federal licensure standards, the facility will be cited for deficiencies.

A deficiency is a determination by the IDPH that a nursing home has violated one or more specific licensure or certification regulations. Deficiencies range in scope and severity from isolated violations with no actual harm to residents, to widespread violations that cause injuries and put residents in immediate jeopardy of harm. Deficiencies may be cited as a result of an on-site inspection or evaluation of written reports or documentation. See Form CMS-2567, Statement of Deficiencies and Plan of Correction, available at [www.cms.hhs.gov/cmsforms/downloads/cms2567.pdf](http://www.cms.hhs.gov/cmsforms/downloads/cms2567.pdf).

When deficiencies are alleged, the facility is given an opportunity to rebut the deficiencies. The deficiencies can be certification deficiencies or licensure deficiencies or both — the certification deficiencies first, the licensure deficiencies second. If deficiencies are cited, the IDPH requires the nursing home to submit a written plan of correction (PoC) within ten days detailing how and when each deficiency will be corrected. In some cases, the IDPH will direct specific corrective measures that must be implemented. If the conditions at the facility pose a serious risk to the health and safety of residents or staff, the IDPH can demand or initiate immediate corrective actions. One such example would be citing a serious violation that the IDPH calls an "immediate jeopardy." This can result in a fine of \$3,500 per day and, if not corrected, can lead to other serious action by the IDPH, including eventual closure of the facility.

On the certification side, the IDPH may also impose fines, curtail admissions, and recommend termination of the provider agreement. On the licensure side, when a nursing home is cited for a serious certification, this same deficiency could also be the basis for a licensure fine, suspension or revocation of a license, or placement on a provisional license.

Nursing homes have the opportunity to dispute survey findings and penalties imposed. Facilities may ask to discuss the accuracy of survey findings during the course of a survey or during the exit interview. It may be advisable for an attorney to attend the exit interview with his or her client so that the facility can discuss disputes before the IDPH writes up its findings. On the certification side, there is an informal dispute resolution process and alternative hearing rights. On the licensure side, there are rights to request a hearing and contest violations, fees, and plans of correction.

This chapter outlines the survey process and shows, from a practical, experience-based perspective, what a long-term care facility may expect when the IDPH conducts a survey and how an attorney representing a facility can advise and guide his or her client through the process.

## II. [2.2] LICENSURE

Any person seeking to operate a long-term care facility must be licensed. 210 ILCS 45/3-102. Illinois law provides for various licenses for long-term care facilities. Each depends on the nature of the services the facility provides. 210 ILCS 45/3-101. A facility may be licensed as a skilled nursing facility (77 Ill.Admin. Code pt. 300), an intermediate care facility (*id.*), a sheltered care facility (77 Ill.Admin. Code pt. 330), an Illinois veterans' home (77 Ill.Admin. Code pt. 340), an intermediate care facility for the developmentally disabled (77 Ill.Admin. Code pt. 350), or a long-term care facility for under age 22 (77 Ill.Admin. Code pt. 390).

In order to apply for a long-term care facility license, the applicant must send an annual fee of \$995 together with the application to the Illinois Department of Public Health. The IDPH also authorizes two-year licenses under certain circumstances, for which a fee of \$1,990 must be included with the application. The application form includes such items as the owners of the facility, the name of the facility management, the number and type of residents who will be provided care, and financial statements. 210 ILCS 45/3-110, 45/3-103; 77 Ill.Admin. Code §§300.110, 300.120. In addition, an operator's application will not be considered if the operator has not obtained the required permit from the Illinois Health Facilities Planning Board. 77 Ill.Admin. Code §300.110(f). These permits are called a "certificate of need" or "certificate of exemption." See generally 77 Ill.Admin. Code pts. 1100 – 1270.

Under the Nursing Home Care Act, a "long-term care facility" is any place where personal, sheltered, or nursing care is provided to three or more unrelated persons. 210 ILCS 45/1-113. The Act defines "personal care" as the following:

**"Personal care" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual, who is incapable of maintaining a private, independent residence or who is incapable of managing his person whether or not a guardian has been appointed for such individual.** 210 ILCS 45/1-120.

"Sheltered care" means "maintenance and personal care." 210 ILCS 45/1-124. "Maintenance" means "food, shelter and laundry services." 210 ILCS 45/1-116. Further, "nursing care" is defined as "a complex of activities which carries out the diagnostic, therapeutic, and rehabilitative plan as prescribed by the physician; care for the resident's environment; observing symptoms and reactions and taking necessary measures to carry out nursing procedures involving understanding of cause and effect in order to safeguard life and health." 77 Ill.Admin. Code §300.330.

The IDPH and the Attorney General's Office jointly pursue actions against individuals operating unlicensed long-term care facilities. In *People ex rel. Lumpkin v. Frantz*, 306 Ill.App.3d 267, 714 N.E.2d 1068, 239 Ill.Dec. 771 (3d Dist. 1999), the court held that an unlicensed facility

that is not providing nursing or personal care but allows the residents to contract with a variety of home healthcare providers does not violate the Nursing Home Care Act. The court specifically mentioned that had the facility in question continued to require a single home healthcare provider, the decision might have been different. 714 N.E.2d at 1071. In an interesting dissent, Justice Breslin disagreed, stating:

**In this case, personal care, sheltered care and nursing services are provided ‘through’ Peggy Frantz, whose agent, RHC, arranges for such services with home health care providers. Therefore, I believe Lake Manor is governed by the Nursing Act and must be licensed thereunder.** 714 N.E.2d at 1072.

When advising a client nursing home, it is important to make the client understand that if the facility is providing more than food, shelter, and laundry services, it must be licensed by the state.

In all instances, once the application for a license is filed, a probationary license is issued, and within 120 days a survey will be conducted to determine whether a full and unrestricted license will be issued.

### III. [2.3] TYPES OF SURVEYS

A survey is an overall examination of compliance with the applicable statutes and regulations for the type of license that a facility holds or for which it has applied. 210 ILCS 45/3-212. In addition, when a long-term care facility is licensed by the Illinois Department of Public Health or appears to be operating without a license, the IDPH or its designee is authorized to conduct a survey. 210 ILCS 45/3-102, 45/3-102.1. The long-term care facility must grant surveyors access and entry to the facility so that they may obtain the necessary information to carry out the provisions of the Nursing Home Care Act and the Skilled Nursing and Intermediate Care Facilities Code. 210 ILCS 45/3-212, 45/3-213; 77 Ill.Admin. Code §300.200(a). Refusal to allow a survey of the facility by the IDPH may result in an adverse licensure action being taken, such as license revocation. 77 Ill.Admin. Code §300.165(b)(9).

As mentioned in §2.1 above, there are four types of surveys conducted by the IDPH: (a) annual; (b) complaint investigation; (c) incident report investigation; and (d) follow-up. At times, these different types of surveys may be combined so as to eliminate multiple visits to one facility during a short period of time. 210 ILCS 45/3-702(d-1). Each type of survey is described in detail in §§2.4 – 2.7 below, but the surveys are conducted using largely similar processes.

#### A. [2.4] Initial License and Annual Survey

An annual survey is a survey conducted once a year to determine compliance with the Nursing Home Care Act and the accompanying regulations. It is the most extensive of the four surveys. There is no prior notification of an annual survey. 210 ILCS 45/3-212(a). Further, if prior notification is given by anyone inspecting the facility, then this person may also be charged with a Class A misdemeanor. 210 ILCS 45/3-212(a-1). The survey team is largest for this type of survey and usually consists of individuals representing multiple disciplines.

An annual survey may include reviewing resident records; interviewing residents, family members, and facility staff; reviewing the physical plant of the facility; observing kitchen and food service procedures; performing a quality of life assessment; observing a medication pass; reviewing the facility's quality assessment and assurance review policy; and reviewing the facility's abuse prevention policies and procedures. The facility administrator is involved throughout the survey, from assisting in document production to arranging resident interviews, and is kept apprised of the surveyors' findings and concerns in daily status meetings. See Chapter 7 of the STATE OPERATIONS MANUAL (CMS Pub. #100-07), available at [www.cms.hhs.gov/manuals/iom](http://www.cms.hhs.gov/manuals/iom).

### **B. [2.5] Complaint Investigation Survey**

A complaint investigation survey arises from a complaint filed with the Illinois Department of Public Health, submitted either in writing or by phone call to the IDPH hotline. 210 ILCS 30/13. The complaint is then forwarded to the appropriate regional office to conduct a survey within 30 days. This type of survey is usually narrower in scope than an annual survey. Depending on the complexity of the issues raised in the complaint, this type of survey may last a few hours or a few days.

Upon entering a facility to conduct a complaint investigation, a surveyor will notify the facility and state the purpose for being at the facility. Every effort is made not to reveal the identity of the complainant. 210 ILCS 45/3-702(c); 77 Ill.Admin. Code §400.120(e). The surveyor will give the facility administrator a "nature of complaint" form on which he or she has checked the appropriate categories, identifying the generic issues raised in the complaint. This survey will still likely include a tour of the facility. The record review, any interviews conducted, and observations will be focused on the allegations in the complaint. If a resident is identified in the complaint, additional resident records will be reviewed so as to maintain the privacy of the complainant and the resident. At the conclusion of the survey, the surveyors will conduct an interview.

### **C. [2.6] Incident Report Investigation Survey**

An incident report investigation (IRI) survey is the narrowest of the four survey types. It is initiated from reports submitted to the Illinois Department of Public Health by the facility. A facility is required to notify the IDPH within 24 hours of any incident or accident that has, or is likely to have, a significant effect on the health, safety, or welfare of a resident or residents. A written summary of each incident or accident shall be provided to the IDPH within seven days of the occurrence. 77 Ill.Admin. Code §300.690(a). If after reviewing the report the IDPH determines that it is necessary to conduct its own investigation of the incident or accident, an IRI survey will be requested from the appropriate regional office.

Unlike the complaint investigation, there is no need to maintain confidentiality as the facility submitted the incident report to the IDPH. Therefore, this survey is narrow, focusing only on the incident at issue. There will still be a tour of the facility, record review, interviews, and review of facility policies and procedures as applicable. The length of this type of survey depends on the severity of the incident at issue. An exit conference is conducted to inform the facility of the surveyors' findings and results.

#### D. [2.7] Follow-Up Survey

Follow-up surveys are conducted primarily under the federal certification process. They focus on issues found in the initial complaint, incident, or annual survey that resulted in deficiencies at the federal level requiring follow-up. These surveys often are relied on to ensure continuing compliance. In order to have a follow-up survey, the facility must file an acceptable plan of correction or report of correction along with its credible allegation of compliance. A “credible allegation” has been defined as a statement of compliance by a provider with a history of substantial compliance on which the Illinois Department of Public Health can rely. 42 C.F.R. §493.2 (CMS standards and certification for laboratory requirements).

With regard to nursing homes, a June 30, 1995, memorandum from Judy Fryback, then Director of the Bureau of Quality Compliance of the Wisconsin Department of Health & Family Services, explains an “allegation of compliance” as follows:

**When the facility has corrected, or believes they will have the deficiency corrected, they may make, in writing, an *allegation of compliance*. This should include the action they have taken, or will take, to correct the deficiency, and the date in which they have, or will return to substantial compliance.**

**The allegation of compliance can be included in a plan of correction. According to 42 CFR 488.402(d), nursing facilities are required to submit a plan of correction (PoC) for each citation, except when a facility has isolated deficiencies that constitute no actual harm with potential for no more than minimal harm. . . .**

**The State Agency will determine if the allegation is credible, and send notice to the provider. If the State Agency accepts the allegation, a revisit is scheduled for verification of compliance. If the deficiency is not corrected at the revisit, remedies will be recommended. If the allegation is not accepted, the State Agency will recommend going forward with the required remedies. [Emphasis in original.]** [www.dhfs.state.wi.us/rl\\_dsl/publications/pdfmemos/95029.pdf](http://www.dhfs.state.wi.us/rl_dsl/publications/pdfmemos/95029.pdf).

#### IV. [2.8] SURVEY PROCEDURES

Surveys are generally conducted according to the procedures in Chapter 7 of the STATE OPERATIONS MANUAL (CMS Pub. #100-07), which, as noted in §2.4 above, is available at [www.cms.hhs.gov/manuals/iom](http://www.cms.hhs.gov/manuals/iom).

The survey team members will arrive at the facility, identify themselves, and state the purpose of their visit. The team leader will usually request to speak to the administrator or the individual in charge. Most surveys start with a tour of the facility, during which the survey team will be making observations. After the initial meeting and tour, the survey team may then review records, policies, and procedures, conduct resident and staff interviews, observe the physical plant, and perhaps watch a medication pass or “med pass.” The Nursing Home Care Act prohibits

retaliation against employees for cooperating with the Illinois Department of Public Health. 210 ILCS 45/3-608. The Illinois Supreme Court has ruled, however, that no private cause of action for retaliation rests with the employees. *Fisher v. Lexington Health Care, Inc.*, 188 Ill.2d 455, 722 N.E.2d 1115, 243 Ill.Dec. 46 (1999). *But see King v. Senior Services Associates, Inc.*, 341 Ill.App.3d 264, 792 N.E.2d 412, 275 Ill.Dec. 181 (2d Dist. 2003) (court concluded that private right of action for retaliatory discharge is implied for employees of provider agencies).

## V. [2.9] SURVEY RESULTS

Survey results are generally summarized on what is commonly referred to as a “2567.” The 2567 is Form CMS-2567, Statement of Deficiencies and Plan of Correction, available at [www.cms.hhs.gov/cmsforms/downloads/cms2567.pdf](http://www.cms.hhs.gov/cmsforms/downloads/cms2567.pdf). This form is sent to the Centers for Medicare and Medicaid Services when the facility is Medicare-certified. There is generally a 45-day period for the facility to correct these deficiencies and request a follow-up survey. See Form CMS-2567B, Post-Certification Revisit Report, available at [www.cms.hhs.gov/cmsforms/downloads/cms2567b.pdf](http://www.cms.hhs.gov/cmsforms/downloads/cms2567b.pdf).

### A. [2.10] Violations

In addition to certification deficiencies, the Illinois Department of Public Health can also find that the same set of facts is also a failure to comply with the requirements of the Nursing Home Care Act or its regulations. This can be cited as a licensure violation that may carry administrative penalties. The survey is the primary method for gathering evidence of compliance with the Act and its accompanying regulations.

### B. [2.11] Types of Violations

A Type A violation is the most serious state licensure violation and is defined as a violation that “creates a condition or occurrence relating to the operation and maintenance of a facility presenting a substantial probability that death or serious mental or physical harm to a resident will result therefrom.” 210 ILCS 45/1-129. An example of a Type A violation might be a situation in which a resident of a facility “elopes” from the facility unescorted.

A Type B violation is a violation of a statute or rule that “creates a condition or occurrence relating to the operation and maintenance of a facility directly threatening to the health, safety or welfare of a resident.” 210 ILCS 45/1-130.

An administrative warning is the least serious violation and may result in a fine of not less than \$500. An administrative warning is issued when the survey findings constitute a violation but do not directly threaten the health, safety, or welfare of a resident. 210 ILCS 45/3-303.2(a); 77 Ill.Admin. Code §§300.272, 300.277. The issuance of 10 or more administrative warnings within the 24 months preceding relicensure also will prevent a facility from receiving a 2-year license renewal. 210 ILCS 45/3-110(b)(3).

### **C. [2.12] Determining the Level of Violation**

The level of violation is determined by a reviewer from the Illinois Department of Public Health who is not part of the survey team, although the surveyors may denote a recommendation as to the level of violation. 77 Ill.Admin. Code 300.274. Several factors determine whether the issuance of a violation is warranted. These factors include the degree of danger to the residents posed by the condition or occurrence and the directness or imminence of the danger. The degree of danger is assessed by considering the ability of the residents to protect themselves, access to the area by the residents, whether the condition or occurrence was the result of inherently hazardous activities or negligence, and whether the residents were promptly notified of the condition or occurrence. 77 Ill.Admin. Code §300.274(c)(2). The imminence of the danger is assessed by considering whether actual harm occurred, whether other facilities have had the same conditions, whether professional opinions indicate that direct and imminent danger will occur, whether exposure was limited or widespread, and what the condition of the residents is. 77 Ill.Admin. Code §300.274(c)(3). The level of violation may be an issue for negotiation during the administrative hearing process. For example, a long-term care facility may try to negotiate a settlement with the IDPH by presenting evidence that the violation and fine should be reduced. The facility may try to settle with the IDPH for a Type B violation instead of a Type A violation or to have the fine reduced from \$10,000 to \$5,000. The facility will have to decide whether it should just pay the fine and take the Type A violation or it should go to a hearing. In reality, though, it is almost impossible to reduce the violation or the fine without going to a hearing.

Generally, settlement discussions with the IDPH may result in no more than a 35-percent reduction in the fine, and the IDPH will usually make no reduction in the type of violation. They may be willing to withdraw the conditional license and reinstate full license as part of a settlement.

## **VI. [2.13] NOTICE OF VIOLATION**

Licensure violations are to be determined within 60 days of the survey exit conference. 210 ILCS 45/3-212(c). A notice of violation must be in writing and must contain the nature of the violation, legal authority for the violation, the level of the violation being cited, requirements for corrective action, and a notice of appeal rights. 210 ILCS 45/3-301; 77 Ill.Admin. Code §300.276(a). Note that challenges have been made from time-to-time on the 60-day rule but have generally been unavailing.

## **VII. [2.14] PLAN OF CORRECTION**

A plan of correction may be submitted or imposed. A submitted PoC is a statement by the facility outlining how the facility will come into compliance with the provisions of the Nursing Home Care Act and its accompanying regulations that were found to have been violated in the notice of violations. A facility has ten days from the notice of violations to submit a PoC. 210 ILCS 45/3-303(b); 77 Ill.Admin. Code §300.276(a)(4)(B). An imposed PoC can occur with a Type A violation or when the facility fails to implement a submitted PoC. 210 ILCS 45/3-303(a);

77 Ill.Admin. Code §300.276(a)(4)(A). A PoC may contain such items as training of staff, assessment of a resident, or repair of mechanical systems. If the violation is corrected within ten days, a report of correction may be filed with the Illinois Department of Public Health indicating that the violation has been remedied. 210 ILCS 45/3-303(c); 77 Ill.Admin. Code §300.280.

## VIII. [2.15] FINES

Fines for a Type A licensure violation are not less than \$5,000. In addition, the fine for a Type A violation may be \$10,000 or more should “death, serious mental or physical harm, permanent disability, or disfigurement” result from the facility deficiency. 210 ILCS 45/3-305(1). A Type B violation may result in a fine of not less than \$500. 210 ILCS 45/3-305(2). An administrative warning is the least serious violation and also may result in a fine of not less than \$500. *Id.* As a separate matter, the same violation can also result in federal civil monetary penalties (on the certification side) that can run in the hundreds of thousands of dollars. See generally 42 C.F.R. pt. 483.

A fine can also occur if the facility violates the resident rights found in Article II of the Nursing Home Care Act. An Article II fine can be equal to reimbursement to the resident or \$100, whichever is greater. 210 ILCS 45/3-305(6).

A conditional license may be imposed for a period up to one year for a Type A or a Type B violation. 210 ILCS 45/3-311. Prior to imposing a conditional license, the Illinois Department of Public Health must approve a written plan of correction that outlines the violations preventing full licensure and a timetable for correction. 210 ILCS 45/3-312. Notice of the IDPH’s intent to impose a conditional license is sent to the facility with the notice of violations. 210 ILCS 45/3-313. A facility has ten days to request a hearing to contest the basis for issuance of a conditional license. 210 ILCS 45/3-315. The conditional license is stayed during the administrative hearing process. 77 Ill.Admin. Code §§300.260(d), 300.260(e).

## IX. [2.16] QUARTERLY LIST OF VIOLATORS AND PUBLIC INFORMATION

A quarterly list of violators is published by the Illinois Department of Public Health pursuant to 210 ILCS 45/3-304. This list is available to the public without charge (210 ILCS 45/3-304(c)) and can be viewed at the IDPH Web site at [www.idph.state.il.us/healthca/nursinghometestjava.htm](http://www.idph.state.il.us/healthca/nursinghometestjava.htm). The IDPH Web site also contains information about nursing home compliance. See 210 ILCS 45/3-304.1. Nursing home surveys can be obtained via the Freedom of Information Act, 5 ILCS 140/1, *et seq.*; however, fees may be charged, and all surveys are redacted to protect the medical information of the residents and the identity of any complainants.

## **X. [2.17] MONITOR AND RECEIVERSHIP**

A monitor is an employee or agent of the Illinois Department of Public Health placed in a facility under certain circumstances. A receiver is a court-appointed agent. A monitor may be placed in the facility or a petition filed in circuit court for a receiver when any of the following conditions exist:

- a. The facility is operating without a license.
- b. The IDPH has suspended, revoked, or refused to renew the existing license.
- c. The facility intends to close, and adequate arrangements for relocation of the residents have not been made more than 30 days before the closure.
- d. An emergency exists that the facility is unwilling or unable to remedy.
- e. The facility is terminated from Medicare or Medicaid. 210 ILCS 45/3-501.

The court shall hold a hearing within 5 days of the filing of a petition. 210 ILCS 45/3-504. A receiver can be appointed for a maximum of 180 days. *Id.* In reality, when a receiver is sought or appointed, it is likely that the facility will close or be sold. A receiver obtains all the rights of the owner and reports actions taken to the court. 210 ILCS 45/3-508. Compensation of the receiver is set by the court. 210 ILCS 45/3-512. A final report is given to the court 30 days following the termination of the receiver that accounts for all funds received and all expenses of the receivership. 210 ILCS 45/3-516.

## **XI. [2.18] LICENSE REVOCATION**

License revocation is the most serious penalty that can be imposed. The effect of a license revocation is closure of the long-term care facility. License revocation may be initiated for a variety of reasons that are outlined in 210 ILCS 45/3-119, including substantial failure to comply with the Nursing Home Care Act and rules, insufficient personnel, lack of financial resources, lack of a qualified administrator, and other serious omissions. A facility has ten days from receipt of a license revocation action to request a hearing. If no hearing is requested, the revocation is effective on the date specified by the Illinois Department of Public Health in the notice. *Id.*

## **XII. [2.19] HEARINGS**

A hearing request must be made in writing to the Illinois Department of Public Health. 210 ILCS 45/3-704(a). The request must be made within ten days after receipt of the notice from the IDPH. 210 ILCS 45/3-315. At the time of the request, the case is assigned to an administrative law judge (ALJ) for hearing. 210 ILCS 45/3-704(a). An IDPH staff attorney is also assigned to litigate the matter after receipt of the hearing request. See the sample form of a hearing request letter in §2.24 below. If a hearing is requested, all fines, penalties, violations, imposed plans of

correction, and renewal licenses are stayed pending resolution at hearing or by settlement. But, regardless of the stay, the facility is still listed on the IDPH's quarterly list of violations, with a notation that a hearing has been requested.

The IDPH hearing process is unique in that it also provides in a complaint investigation situation that a dissatisfied complainant can request a hearing if the complainant wishes to contest the IDPH investigation. 210 ILCS 45/3-702(g). The facility is given notice and entitled to participate in any such hearing as a party. *Id.* The only issues allowed at such a hearing are the adequacy of the IDPH investigation, whether the complaint was valid, invalid, or undetermined, and whether the IDPH decided to issue citations. 77 Ill.Admin. Code §100.6(d). The hearing process at the IDPH is governed by the Rules of Practice and Procedure in Administrative Hearings found in 77 Ill.Admin. Code pt. 100, by the Nursing Home Care Act, and by the Illinois Administrative Procedure Act, 5 ILCS 100/1-1, *et seq.*

### **XIII. [2.20] PREHEARING PROCESS**

All hearings conducted under the Nursing Home Care Act must be commenced within 30 days of the request for hearing. 210 ILCS 45/3-702(d). The commencement of the hearing is achieved by the scheduling and holding of a prehearing conference. This conference is usually conducted by phone and is of short duration. The purpose of a prehearing conference is to simplify the issues, amend any pleadings, consider the possibility of obtaining admissions of fact and documents, limit the number of expert witnesses, and consider any other matters that may aid in the disposition of the hearing. 77 Ill.Admin. Code §100.11(a). Additional prehearing conferences may be scheduled. 77 Ill.Admin. Code §100.11(e).

Hearings with the Illinois Department of Public Health allow for limited discovery. Counsel for the IDPH turn over their entire investigative files as provided by the program staff with any confidential information, such as a complainant's name, redacted. 77 Ill.Admin. Code §100.12(a). A list of witnesses and documents to be entered into evidence must be provided 21 days prior to the hearing. 77 Ill.Admin. Code §§100.12(b), 100.12(c). No depositions or interrogatories are allowed except as agreed to by the parties. 77 Ill.Admin. Code §100.12(g).

IDPH hearings under the Nursing Home Care Act are conducted by an administrative law judge designated by the director. 77 Ill.Admin. Code §100.13(b). Hearsay evidence is allowed under certain circumstances as determined by the ALJ. 77 Ill.Admin. Code §§100.13(h), 100.13(j). A certified stenographic reporter transcribes all hearings. 77 Ill.Admin. Code §100.13(m). Witnesses may be excluded at the request of either party. 77 Ill.Admin. Code §100.13(q). The ALJ has powers similar to those of a judge in circuit court, including the right to order removal of any person disrupting the hearing. 77 Ill.Admin. Code §100.13(p). The ALJ may issue subpoenas to command the appearance of any person or production of any document at the hearing. 77 Ill.Admin. Code §100.14. Witnesses' fees are identical to those of the circuit court. Subpoenas may be enforced as in circuit courts. *Id.* Ex parte communication with the ALJ is prohibited. 77 Ill.Admin. Code §100.19(a).

A facility may wish to challenge the IDPH's statement of deficiencies on various grounds, including the following:

- a. A facility could file a motion to strike, arguing that the IDPH filed improper pleadings because the statement of violations is required to be, and may not have been, clear and concise.
- b. A facility could argue that the violation does not properly state a claim.
- c. A facility could argue that the fine determined by the IDPH is arbitrary and does not follow those provided for in the Nursing Home Care Act.
- d. A facility could file a motion for summary judgment arguing that no genuine issue of material fact exists.
- e. A facility could file a motion to dismiss arguing that no claim is made on which relief can be granted.

The motions referred to above are handled in the same manner as motions under the Illinois rules of civil procedure, including oral arguments before the ALJ, who then will generally issue a written opinion.

In summary, a facility may challenge the IDPH and defend in all ways that are available in any litigation, except that it must use the administrative hearing rules.

#### **XIV. [2.21] ADMINISTRATIVE DECISIONS**

Following an oral argument (on a motion) or an evidentiary hearing, the administrative law judge makes a written report of all hearings for review by the Director of the Illinois Department of Public Health or his or her designee. The report includes findings of fact, conclusions of law, and any recommendations to the director. 77 Ill.Admin. Code §100.15. A final order is issued after review of the transcript by the director or his or her designee. 77 Ill.Admin. Code §100.17. A final order is to be issued no later than 120 days from the conclusion of the hearing. 210 ILCS 45/3-707. In *Frances House, Inc. v. Illinois Department of Public Health*, 269 Ill.App.3d 426, 645 N.E.2d 1009, 206 Ill.Dec. 757 (3d Dist. 1995), the court held that the statutory deadline was mandatory, not directive, and reversed the findings made in a decision issued 208 days after conclusion of the hearing. *See also Lincoln Manor, Inc. v. Department of Public Health, State of Illinois*, 358 Ill.App.3d 1116, 832 N.E.2d 956, 295 Ill.Dec. 506 (4th Dist. 2005).

#### **XV. [2.22] JUDICIAL REVIEW**

All administrative decisions by the Illinois Department of Public Health under the Nursing Home Care Act may be appealed to circuit court in accordance with the Administrative Review Law, 735 ILCS 5/3-101, *et seq.* 210 ILCS 45/3-713. Practitioners should note, however, that any petition for judicial review must be filed within 15 days after receipt of the director's decision. *Id.*

A facility must follow the IDPH's rules of practice and procedure and the Administrative Review Law when challenging an adverse decision by the IDPH and preparing its petition for judicial review. The petition must allege that the director's decision was arbitrary and capricious based on the evidence presented at the hearing.

**XVI. [2.23] INFORMAL DISPUTE RESOLUTION**

Facilities have another option if they wish to dispute a deficiency with the Illinois Department of Public Health. The IDPH has contracted with the Michigan Peer Review Organization (MPRO) to help meet Illinois provider's independent review needs for Illinois nursing facilities. MPRO, based in Farmington Hills, Michigan, is a healthcare quality improvement company that contracts with state agencies for the purposes of informal dispute resolution (IDR). MPRO agrees to act as an impartial, third-party reviewer for the second-level IDR appeal based on the facility's request. For example, a facility may believe that the incident in question, for which it has been cited, does not support any violation under the listed tag. The facility may use IDR for an independent review. Each IDR review is completed by a professional reviewer, and then a determination is submitted to the IDPH within 20 days of the receipt of the case file from the IDPH and the signed service agreement. Citations of substandard quality of care or immediate jeopardy are reviewed by two professional reviewers for a consensus decision. MPRO agrees to treat all information received in the course of its review activities as confidential. MPRO has an IDR request form that may be mailed to IDPH. For more information, see the MPRO Web site at [www.mpro.org/idr](http://www.mpro.org/idr) or call MPRO at 248/465-7419.

**XVII. [2.24] SAMPLE FORM OF HEARING REQUEST LETTER**

[Name] \_\_\_\_\_, 20\_\_  
 [Title]

**Illinois Department of Public Health  
 Division of Long-Term Care Quality Assurance  
 525 W. Jefferson St., 5th Fl.  
 Springfield, IL 62761**

Re: \_\_\_\_\_

Dear [Mr.] [Ms.] \_\_\_\_\_:

The undersigned represents \_\_\_\_\_.

Pursuant to Sections 3-301, 3-303(e), 3-311, 3-315, and 3-703 of the Nursing Home Care Act, we do hereby request a hearing to contest the Notice of Type "A" Violation(s), Notice of Conditional License, Notice of Fine Assessment, Notice of Placement on Quarterly List of Violators, and any other violations related thereto in the Notice received by my client on \_\_\_\_\_, 20\_\_.

Please contact the undersigned to advise of the date and time of the requested hearing.

Very truly yours,

\_\_\_\_\_

