**Section 350.185 Designation of Distressed Facilities**

a) The Department will publish a quarterly list of distressed facilities. *No facility shall be identified as a distressed facility unless it has committed violations or deficiencies that have actually harmed residents*. (Section 3-304.2(a) of the Act) Facilities that have committed violations or deficiencies that resulted in harm to a resident will be added to the quarterly list of distressed facilities using the following methodology:

1) Facility histories will be reviewed for the preceding 24 months. Violations will be assigned a point value as follows:

A) Type B violation: 10 points;

B) Repeat Type B violation: 20 points;

C) Type A violation: 35 points;

D) Repeat Type A violation: 50 points;

E) Type AA violation: 50 points: and

F) Repeat Type AA violation: 75 points.

2) The Department will review all facilities on a quarterly basis. The points assigned to a facility by the Department will be calculated on the last day of every quarter in a calendar year. Violations from the 24 months prior to the current quarter will be scored based on the criteria in subsection (a)(1).

3) Any facility with a total score of 100 points or above and that has committed violations or deficiencies that resulted in harm to a resident will be included in the quarterly list of distressed facilities.

4) For the purposes of this Section, facilities will not accrue points for harm to a resident while the resident is at a day training program or other entity or activity outside the facility that is not under the control or supervision of the facility. Facilities shall notify the Department and the Department of Human Services – Division of Developmental Disabilities when a resident is injured, or is subject to alleged abuse or neglect, at a day training program.

b) *A distressed facility may contract with an independent consultant meeting criteria established by the Department. If the distressed facility does not seek the assistance of an independent consultant, the Department shall place a monitor or a temporary manager in the facility, depending on the Department's assessment of the condition of the facility*. (Section 3-304.2(e) of the Act) An independent consultant contracted by the facility shall:

1) Possess a baccalaureate degree, a nursing license or a nursing home administrator’s license, and a minimum of two years of full-time work experience in the long-term care industry, including one year of experience working directly with individuals with a developmental disability diagnosis, or shall have a professional background that best meets the needs of the facility;

2) Have *no professional or financial relationship with the facility,* or have *any reportable ownership interest in the facility, or any related parties. In this subsection, "related parties" has the meaning attributed to it in the instructions for completing Medicaid cost reports*. (Section 3-304.2(d) of the Act); and

3) Have no ownership interest, or be employed by, another facility on the quarterly list of distressed facilities. This provision is not intended to prevent an independent consultant from providing consultation to more than one distressed facility.

c) If a facility elects to not contract with a qualified independent contractor, the Department may place a temporary manager or monitor in the facility based on the following factors:

1) The severity of deficiencies and violations cited against the facility;

2) Whether the deficiencies and violations show a pattern of non-compliance or demonstrate an impact on a number of facility systems; and

3) Whether the facility was issued a notice of any high risk violations in the prior 12 months.

d) In addition to any other sanctions in the Act and this Part, facilities not in compliance with the Act and this Part shall be subject to a ban on new admissions until they implement the plan of correction, as certified by a follow-up visit from the Department.

e) To be removed from the distressed facilities list, a facility shall not receive any Type AA violations, or any A violations with harm, and shall not have received any combination of violations, that harmed residents, that equals or exceeds 100 points as determined by the point values in Section 350.185 (a)(1)(A) through (F) for a period that includes at least two consecutive annual surveys and any intervening complaint investigations or other surveys.

(Source: Added at 46 Ill. Reg. 10519, effective June 2, 2022)