**Section 390.185 Designation of Distressed Facilities**

a) *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 received a written notice of violations, pursuant to Section 390.276, for a failure to comply with the Act or this Part 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 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 that resulted in harm to a resident will be included in the quarterly list of distressed facilities. *The Department* will, by registered mail, *notify each facility and licensee of its distressed designation and of the calculation on which it is based*. (Section 3-304.2(b) of the Act)

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 immediately 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. If the distressed facility does not seek the assistance of an independent consultant, the Department* will *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(c) of the Act)

c) The purpose of a contract between a facility and an independent consultant shall be *to develop and assist in the implementation of a plan of improvement to bring and keep the facility in compliance with the Act and, if applicable, with federal certification requirements*. (Section 3-304.2(d) of the Act)

d) 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 Section, *"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 in, or be employed by, another facility on the most recent quarterly list of distressed facilities. This provision is not intended to prevent an independent consultant from providing consultation to more than one distressed facility.

e) *A facility that contracts with an independent consultant shall have 90 days to develop a plan of improvement and demonstrate a good faith effort at implementation, and another 90 days to achieve compliance and take whatever additional actions are called for in the improvement plan to maintain compliance* with the Act and this Part. (Section 3-304.2(d) of the Act)

f) *A distressed facility that does not contract with a consultant shall be assigned a monitor or a temporary manager at the Department's discretion. The cost of the temporary manager* will *be paid by the Department*. (Section 3-304.2(e) of the Act) The Department’s decision whether to place a monitor or temporary manager in a facility will be based on the following factors:

1) The severity of violations cited against the facility;

2) Whether the 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.

g) A monitor or temporary manager placed in a facility by the Department shall have the same authority as an independent consultant would have, if contracted with a facility.

h) *If a distressed facility that contracts with an independent consultant does not, in a timely manner, develop an adequate plan of improvement or comply with the plan of improvement, then the Department may place a monitor in the facility*. (Section 3-304.2(e) of the Act)

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

j) To be removed from the distressed facilities list, a facility shall not, for a period that includes at least two consecutive annual surveys and any intervening complaint investigations or other surveys, receive any:

1) Type "AA" violations;

2) Type "A" violations with harm; and

3) Combination of violations that harmed residents or that equals or exceeds 100 points as determined by the point values in this Section.

(Source: Added at 46 Ill. Reg. 8192, effective May 6, 2022)