

1 **H. B. 2427**

2
3 (By Delegates Williams, Morgan, Ennis, Moye,
4 C. Miller and Rowan)

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6 [Introduced January 12, 2011; referred to the
7 Committee on Senior Citizen Issues then the Judiciary.]

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10 A BILL to amend and reenact §16-5C-12 and §16-5C-13 of the Code of
11 West Virginia, 1931, as amended, all relating to nursing
12 homes; administrative appeals; complaint hearing procedures;
13 establishing an independent disputes resolution process for
14 nursing homes; clarifying the informal and formal review
15 process; and clarifying the judicial review process.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §16-5C-12 and §16-5C-13 of the Code of West Virginia,
18 1931, as amended, be amended and reenacted, all to read as follows:

19 **ARTICLE 5C. NURSING HOMES.**

20 **§16-5C-12. Administrative appeals.**

21 ~~(a) Any licensee or applicant aggrieved by an order issued~~
22 ~~pursuant to sections five, six, ten or eleven of this article shall~~
23 ~~have the opportunity to request an informal and formal hearing at~~
24 ~~which the licensee or applicant may contest such order as contrary~~
25 ~~to law or unwarranted by the facts or both. All of the pertinent~~

1 ~~provisions of article five, chapter twenty-nine a of this code~~
2 ~~shall apply to and govern such hearing and the administrative~~
3 ~~procedures in connection with any formal hearing.~~

4 ~~The director may impose the following prior to or during the~~
5 ~~pendency of a hearing:~~

6 ~~(1) A reduction in the bed quota pursuant to section eleven of~~
7 ~~this article;~~

8 ~~(2) Transfer of residents and a ban on new admissions pursuant~~
9 ~~to section eleven of this article.~~

10 ~~(b) Informal hearings shall be held within twenty working days~~
11 ~~of the director's receipt of timely request for appeal, unless the~~
12 ~~licensee or applicant aggrieved by the order consents to a~~
13 ~~postponement or continuance. In no event may the informal hearing~~
14 ~~occur more than thirty business days after the director receives~~
15 ~~timely request for appeal. At the informal hearing, neither the~~
16 ~~licensee or applicant nor the director may be represented by an~~
17 ~~attorney. Within ten days of the conclusion of the informal~~
18 ~~hearing, the director shall issue an informal hearing order,~~
19 ~~including a basis for the decision.~~

20 ~~(c) If the applicant or licensee requested a formal hearing~~
21 ~~only, the director and the licensee shall proceed in accordance~~
22 ~~with the provisions of the department of health rules of procedure~~
23 ~~for contested case hearings and declaratory rulings. If the~~
24 ~~applicant or licensee also requested an informal hearing and if the~~

1 ~~order is not favorable to the applicant or licensee, the director~~
2 ~~shall notify the administrative hearing examiner of the request for~~
3 ~~an appeal within five business days of issuing the informal hearing~~
4 ~~order.~~

5 (a) Any licensee or applicant adversely affected by a cited
6 deficiency or denial of an application may request an informal and
7 formal hearing. The licensee or applicant may contest a cited
8 deficiency or denial of an application as contrary to law or
9 unwarranted by the facts or both.

10 (b) The director shall contract with an independent third
11 party to conduct informal dispute resolution (IDR) for facilities
12 licensed under this article. This independent third party shall be
13 accredited by the Utilization Review Accreditation Commission.

14 (c) The informal dispute resolution process, including
15 conferences, constitutes an informal administrative process and is
16 not a formal evidentiary hearing. Use of informal dispute
17 resolution does not waive the applicant's or facility's right to a
18 formal hearing.

19 (d) The informal dispute resolution process consists of the
20 following:

21 (1) No later than ten working days following the last day of
22 the survey, inspection or complaint investigation, the director
23 shall by certified mail transmit to the facility a statement of
24 deficiencies committed by the facility. Notification of the

1 availability of an informal dispute resolution and an explanation
2 of the informal dispute resolution process shall be included in the
3 transmittal;

4 (2) Within ten calendar days of receipt of the statement of
5 deficiencies, the facility shall return a plan of correction to the
6 director. Within the ten-day period, the facility may request in
7 writing an informal dispute resolution conference to refute the
8 deficiencies cited in the statement of deficiencies;

9 (3) Within ten working days of receipt of the written request
10 for a request for an informal dispute resolution conference or
11 formal hearing made by a facility, the independent third party
12 shall hold an informal dispute resolution conference unless
13 otherwise requested by the facility. The informal dispute
14 resolution conference provides the facility with an opportunity to
15 provide additional information or clarification in support of the
16 facility's contention that the deficiencies were erroneously cited.

17 (4) The facility may be accompanied by counsel during the IDR
18 conference. The type of informal dispute resolution held is at the
19 discretion of the facility, but is limited to:

20 (A) A desk review of written information submitted by the
21 facility; or

22 (B) A telephonic conference; or

23 (C) A face-to-face conference held at the facility.

24 (5) If the independent third party determines the need for

1 additional information, clarification, or discussion after
2 conclusion of the informal dispute resolution conference, the
3 division and the facility shall present requested information or
4 shall be present.

5 (6) Within ten days of the informal dispute resolution
6 conference, the independent third party shall provide or make a
7 determination, based upon the facts and findings presented, and
8 shall transmit the decision and rationale for the outcome in
9 writing to the facility and the division.

10 (7) If the director disagrees with the determination, the
11 director shall reject the determination made by the third party
12 then transmit the director's decision and rationale for the
13 reversal of the independent third party's decision to the facility
14 within ten calendar days of receiving the independent third party's
15 decision.

16 (8) If the independent third party determines that the
17 original statement of deficiencies should be changed as a result of
18 the informal dispute resolution conference and the director
19 supports the determination, the director shall transmit a revised
20 statement of deficiencies to the facility with the notification of
21 the determination within ten calendar days of the decision to
22 change the statement of deficiencies.

23 (9) Within ten calendar days of receipt of the determination
24 made by the independent third party and the revised statement of

1 deficiencies, the facility shall submit a revised plan of
2 correction to the division.

3 (10) The division may not post on its web site or enter data
4 into the Centers for Medicare & Medicaid Services Online Survey,
5 Certification and Reporting System, or report to any other agency,
6 any information about the deficiencies which are in dispute unless
7 the dispute determination is made and the facility has responded
8 with a revised plan of correction, if needed.

9 (f) If the applicant or licensee requests a formal hearing,
10 the director and the licensee shall proceed in accordance with the
11 provisions of article five, chapter twenty-nine-a of this code.

12 (g) If the applicant or licensee also requested an informal
13 hearing and if the order is not favorable to the applicant or
14 licensee, the director shall notify the administrative hearing
15 examiner of the request for an appeal within five business days of
16 issuing the informal hearing order.

17 **§16-5C-13. Judicial review.**

18 ~~Any licensee adversely affected by an order of the director~~
19 ~~rendered after a hearing held in accordance with the provisions of~~
20 ~~section twelve of this article is entitled to judicial review~~
21 ~~thereof. All of the pertinent provisions of section four, article~~
22 ~~five, chapter twenty-nine-a of this code shall apply to and govern~~
23 ~~with like effect as if the provisions of said section four were set~~
24 ~~forth in extenso in this section.~~

1 ~~The judgment of the circuit court shall be final unless~~
2 ~~reversed, vacated or modified on appeal to the Supreme Court of~~
3 ~~Appeals in accordance with the provisions of section one, article~~
4 ~~six, chapter twenty-nine-a of this code.~~

5 Any licensee or applicant adversely affected by a decision of
6 the director entered after a hearing may obtain judicial review of
7 the decision in accordance with the provisions of section four,
8 article five, chapter twenty-nine-a of this code, and may appeal
9 any ruling resulting from judicial review in accordance with the
10 provisions of article six, chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is to establish an independent dispute resolution process for nursing homes.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.