



1 issued pursuant to this article or pursuant to federal law may  
2 request to use the independent informal dispute resolution process.  
3 A provider or licensee may contest a cited deficiency as contrary  
4 to rule, regulation or law or unwarranted by the facts.

5 (b) The secretary shall establish a panel of at least three  
6 approved independent review providers. The secretary shall  
7 contract with the independent review providers to conduct the  
8 informal dispute resolution processes. Each independent review  
9 provider shall be accredited by the Utilization Review  
10 Accreditation Commission. When a provider or licensee requests an  
11 informal dispute resolution process, the secretary shall choose one  
12 independent review provider from the approved panel to conduct the  
13 process.

14 (c) The independent informal dispute resolution process is not  
15 a formal evidentiary proceeding and utilization of the independent  
16 informal dispute resolution process does not waive the right of the  
17 provider or licensee to request a formal hearing.

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

20 (1) The secretary shall transmit to the provider or licensee  
21 a statement of deficiencies committed by the provider or licensee  
22 and request that the provider or licensee submit a plan of  
23 correction addressing the cited deficiencies no later than ten  
24 working days following the last day of the survey or inspection, or

1 no later than twenty working days following the last day of a  
2 complaint investigation. Notification of the availability of the  
3 independent informal dispute resolution process and an explanation  
4 of the independent informal dispute resolution process shall be  
5 included in the transmittal.

6 (2) When the provider or licensee returns its plan of  
7 correction to the secretary, the provider or licensee may request,  
8 in writing, to participate in the independent informal dispute  
9 resolution process to protest or refuse all or part of the cited  
10 deficiencies within ten working days. If only certain citations or  
11 the entire report are disputed using the informal dispute  
12 resolution process, no plan of correction is required for citations  
13 under appeal. The secretary may not release the final report until  
14 the appealed citations are resolved.

15 (3) The secretary shall refer the request to an independent  
16 review provider from the panel of certified independent review  
17 providers approved by the department within five working days of  
18 receipt of the written request for the independent informal dispute  
19 resolution process made by a provider or licensee. The secretary  
20 shall vary the selection of the independent review providers on a  
21 rotating basis. The secretary shall acknowledge in writing to the  
22 provider or licensee that the request for independent review has  
23 been received and forwarded to the independent review provider.  
24 The notice shall include the name and address of the independent

1 review provider.

2 (4) The independent review provider shall hold an independent  
3 informal dispute resolution conference unless additional time is  
4 requested by the provider within ten working days of receipt of the  
5 written request for the independent informal dispute resolution  
6 process made by a provider or licensee. The provider or licensee  
7 may submit additional information before the independent informal  
8 dispute resolution conference.

9 (5) Neither the secretary nor the provider or licensee may be  
10 accompanied by counsel during the independent informal dispute  
11 resolution conference. The manner in which the independent  
12 informal dispute resolution conference is held is at the discretion  
13 of the provider, but is limited to:

14 (A) A desk review of written information submitted by the  
15 provider or licensee; or

16 (B) A telephonic conference; or

17 (C) A face-to-face conference held at the location of the  
18 provider or licensee or a mutually agreed upon location.

19 (6) If the independent review provider determines the need for  
20 additional information, clarification or discussion after  
21 conclusion of the independent informal dispute resolution  
22 conference, the secretary and the provider or licensee shall  
23 present the requested information.

24 (7) The independent review provider shall make a determination

1 within ten working days of the independent informal dispute  
2 resolution conference, based upon the facts and findings presented,  
3 and shall transmit a written decision containing the rationale for  
4 its determination to the provider or licensee and to the secretary.

5 (8) If the secretary disagrees with the determination, the  
6 secretary may reject the determination made by the independent  
7 review provider and shall issue an order setting forth the  
8 rationale for the reversal of the independent review provider's  
9 decision to the provider or licensee within ten working days of  
10 receiving the independent review provider's determination. The  
11 secretary may not assign review of the rejection to a designee.

12 (9) If the secretary accepts the determination, the secretary  
13 shall issue an order affirming the independent review provider's  
14 determination within ten working days of receiving the independent  
15 review provider's determination.

16 (10) If the independent review provider determines that the  
17 original statement of deficiencies should be changed as a result of  
18 the independent informal dispute resolution process and the  
19 secretary accepts the determination, the secretary shall transmit  
20 a revised statement of deficiencies to the provider or licensee  
21 within ten working days of the independent review provider's  
22 determination.

23 (11) The provider or licensee shall submit a revised plan to  
24 correct any remaining deficiencies to the secretary within ten

1 working days of receipt of the secretary's order and the revised  
2 statement of deficiencies.

3 (e) Under the following circumstances, the provider or  
4 licensee is responsible for certain costs of the independent  
5 information dispute resolution review, which shall be remitted to  
6 the secretary within sixty days of the informal conference order:

7 (1) If the provider or licensee requests a face-to-face  
8 conference, the provider or licensee shall pay any costs incurred  
9 by the independent review provider that exceed the cost of a  
10 telephonic conference, regardless of which party ultimately  
11 prevails.

12 (2) If the independent review provider's decision supports the  
13 entirety of the originally-written contested deficiency or adverse  
14 action taken by the secretary, the provider or licensee shall  
15 reimburse the secretary for the cost charged by the independent  
16 review provider. If the independent review provider's decision  
17 supports some of the originally-written contested deficiencies, but  
18 not all of them, the independent review provider shall rule as to  
19 approximate portions of the expense to be paid by each party.

20 (f) Any provider or licensee aggrieved by a decision of the  
21 secretary made pursuant to this rule may contest the decision upon  
22 making a request for an informal dispute resolution within ten  
23 working days of receipt of the notice of the decision.

24 (g) Administrative and judicial review may be made in

1 accordance with the provisions of article five, chapter  
2 twenty-nine-a of the State Code of West Virginia.

3 (h) Any decision issued by the secretary shall be made  
4 effective from the date of issuance.

5 (i) Immediate relief may be obtained by the provider or  
6 licensee upon a showing of good cause made by a verified petition  
7 to the circuit court of Kanawha County.

8 (j) The pendency of administrative or judicial review does not  
9 prevent the secretary or a provider from obtaining injunctive  
10 relief as provider or licensee for in this statute.

NOTE: The purpose of this bill is to create an informal  
dispute resolution process available to providers or licensees of  
the Department of Health and Human Resources.

§27-1A-12 is new; therefore, strike-throughs and underscoring  
have been omitted.