

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 H. B. 4363

5
6 (By Delegates Perdue, Ferro, Diserio and Poore)

7 [Passed March 6, 2014; in effect ninety days from passage.]

8 **FISCAL**
9 **NOTE**

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §27-1A-12, relating
12 to creating an independent informal dispute resolution process
13 available to behavioral health providers licensed by the
14 Department of Health and Human Resources for orders or
15 citations of deficient practice; and providing that the
16 independent informal dispute resolution process does not
17 affect the ability of a licensee to seek administrative and
18 judicial review of an order or citation of deficient practice.

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

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new section, designated §27-1A-12, to read as
22 follows:

23 **ARTICLE 1A. DEPARTMENT OF HEALTH.**

24 **§27-1A-12. Independent Informal Dispute Resolution.**

25 (a) A behavioral health provider licensed by the Department of

1 Health and Human Resources adversely affected by an order or
2 citation of a deficient practice issued pursuant to this article or
3 pursuant to federal law may request to use the independent informal
4 dispute resolution process established by this section. A licensee
5 may contest a cited deficiency as contrary to rule, regulation or
6 law or unwarranted by the facts, or any combination thereof.

7 (b) The independent informal dispute resolution process is not
8 a formal evidentiary proceeding and utilization of the independent
9 informal dispute resolution process does not waive the right of the
10 licensee to request a formal hearing with the secretary.

11 (c) The independent informal dispute resolution process shall
12 consist of the following:

13 (1) The secretary shall transmit to the licensee a statement
14 of deficiencies attributed to the licensee and request that the
15 licensee submit a plan of correction addressing the cited
16 deficiencies no later than ten working days following the last day
17 of the survey or inspection, or no later than ten working days
18 following the last day of a complaint investigation. Notification
19 of the availability of the independent informal dispute resolution
20 process and an explanation of the independent informal dispute
21 resolution process shall be included in the transmittal.

22 (2) When the licensee returns its plan of correction to the
23 secretary, the licensee may request, in writing, to participate in
24 the independent informal dispute resolution process to protest or
25 refute all or part of the cited deficiencies within ten working
26 days. The secretary may not release the final report until all

1 dispute processes are resolved.

2 (3) The Secretary of the West Virginia Department of Health
3 and Human Resources (hereinafter "secretary") shall approve and
4 establish a panel of at least three independent review providers:
5 *Provided*, That in lieu of establishing a panel, the secretary may
6 use an existing panel of approved independent review providers.
7 The secretary shall contract with the independent review providers
8 to conduct the independent informal dispute resolution processes.
9 Each independent review provider shall be accredited by the
10 Utilization Review Accreditation Commission. When a licensee
11 requests an independent informal dispute resolution process, the
12 secretary shall choose one independent review provider from the
13 approved panel to conduct the process.

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

25 (5) The independent review provider shall hold an independent
26 informal dispute resolution conference, unless additional time is

1 requested by either the licensee, the Department of Health and
2 Human Resources or the independent review provider and approved by
3 the secretary, within ten working days of receipt of the written
4 request for the independent informal dispute resolution process
5 made by a licensee. The licensee or the Department of Health and
6 Human Resources may submit additional information before the
7 independent informal dispute resolution conference.

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

13 (A) A review of written information submitted by the licensee;

14 (B) A telephonic conference; or

15 (C) A face-to-face conference held at a mutually agreed upon
16 location.

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

22 (8) The independent review provider shall make a determination
23 within ten working days of receipt of any additional information as
24 provided in subdivision (7) of this section or the conclusion of
25 the independent informal dispute resolution conference, based upon
26 the facts and findings presented, and shall transmit a written

1 decision containing the rationale for its determination to the
2 secretary.

3 (9) If the secretary disagrees with the determination, the
4 secretary may reject the determination made by the independent
5 review provider and shall issue an order setting forth the
6 rationale for the reversal of the independent review provider's
7 decision to the licensee within ten working days of receiving the
8 independent review provider's determination.

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

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

19 (12) The licensee shall submit a revised plan to correct any
20 remaining deficiencies to the secretary within ten working days of
21 receipt of the secretary's order and the revised statement of
22 deficiencies.

23 (d) Under the following circumstances, the licensee is
24 responsible for certain costs of the independent informal dispute
25 resolution review, which shall be remitted to the secretary within
26 sixty days of the informal conference order:

1 (1) If the licensee requests a face-to-face conference, the
2 licensee shall pay any costs incurred by the independent review
3 provider that exceed the cost of a telephonic conference,
4 regardless of which party ultimately prevails;

5 (2) If the independent review provider's decision supports the
6 entirety of the originally written contested deficiency or adverse
7 action taken by the secretary, the licensee shall reimburse the
8 secretary for the cost charged by the independent review provider;
9 or

10 (3) If the independent review provider's decision supports
11 some of the originally written contested deficiencies, but not all
12 of them, the licensee shall reimburse the secretary for the cost
13 charged by the independent review provider on a pro-rata basis as
14 determined by the secretary.

15 (e) Establishment of the independent informal dispute
16 resolution process does not preclude licensees from utilizing other
17 informal dispute resolution processes provided by statute or rule
18 in lieu of the independent informal dispute resolution process.

19 (f) Administrative and judicial review of a decision rendered
20 through the independent informal dispute resolution process may be
21 made in accordance with article five, chapter twenty-nine-a of this
22 code.

23 (g) Any decision issued by the secretary as a result of the
24 independent informal dispute resolution process shall be made
25 effective from the date of issuance.

26 (h) The pendency of administrative or judicial review does not

1 prevent the secretary or a licensee from obtaining injunctive
2 relief as provided by statute or rule.