

1 Committee Substitute

2 for

3 **H. B. 4363**

4  
5 (By Delegates Perdue, Ferro, Diserio and Poore)

6 (Originating in the Committee on the Judiciary)

7  
8 [February 17, 2014]

**FISCAL  
NOTE**

9  
10 A BILL 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. A licensee may contest a cited  
5 deficiency as contrary to rule, regulation or law or unwarranted by  
6 the facts, or any combination thereof.

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

19 (c) The independent informal dispute resolution process is not  
20 a formal evidentiary proceeding and utilization of the independent  
21 informal dispute resolution process does not waive the right of the  
22 licensee to request a formal hearing.

23 (d) The independent informal dispute resolution process  
24 consists of the following:

25 (1) The secretary shall transmit to the licensee a statement  
26 of deficiencies attributed to the licensee and request that the

1 licensee submit a plan of correction addressing the cited  
2 deficiencies no later than ten working days following the last day  
3 of the survey or inspection, or no later than ten working days  
4 following the last day of a complaint investigation. Notification  
5 of the availability of the independent informal dispute resolution  
6 process and an explanation of the independent informal dispute  
7 resolution process shall be included in the transmittal.

8       (2) When the licensee returns its plan of correction to the  
9 secretary, the licensee may request, in writing, to participate in  
10 the independent informal dispute resolution process to protest or  
11 refute all or part of the cited deficiencies within ten working  
12 days. The secretary may not release the final report until the  
13 appealed citations are resolved.

14       (3) 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       (4) The independent review provider shall hold an independent  
26 informal dispute resolution conference, unless additional time is

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

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

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

14 (B) A telephonic conference; or

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

17 (6) 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 (7) The independent review provider shall make a determination  
23 within ten working days of the independent informal dispute  
24 resolution conference, based upon the facts and findings presented,  
25 and shall transmit a written decision containing the rationale for  
26 its determination to the secretary.

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

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

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

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

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

25 (1) If the licensee requests a face-to-face conference, the  
26 licensee shall pay any costs incurred by the independent review

1 provider that exceed the cost of a telephonic conference,  
2 regardless of which party ultimately prevails;

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

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

12 (f) Establishment of the independent informal dispute  
13 resolution process does not preclude licensees from utilizing other  
14 informal dispute resolution processes provided by statute or rule  
15 in lieu of the independent informal dispute resolution process.

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

20 (h) Any decision issued by the secretary as a result of the  
21 independent informal dispute resolution process shall be made  
22 effective from the date of issuance.