

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 46**

4 (By Senator Tucker)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported February 4, 2014.]

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9 **FISCAL**
10 **NOTE**

11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new section, designated §27-1A-13, relating
13 to creating an informal dispute resolution process available
14 to a behavioral health provider licensed by the Department of
15 Health and Human Resources for orders or citations issued by
16 the secretary for deficient practice; setting forth how the
17 process is to function; providing for independent review
18 providers; setting forth how certain costs are to be handled;
19 providing that a licensee is not precluded from utilizing
20 other informal dispute resolution processes provided for by
21 statute or rule; providing that the informal dispute
22 resolution process does not affect the ability of a licensee
23 to seek administrative and judicial review; providing for an
24 effective date of any decision issued by the secretary; and

1 permitting injunctive relief.

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

3 That the Code of West Virginia, 1931, as amended, be amended
4 by adding thereto a new section, designated §27-1A-13, to read as
5 follows:

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

7 **§27-1A-13. Informal dispute resolution.**

8 (a) A behavioral health provider licensed by the Department of
9 Health and Human Resources adversely affected by an order or
10 citation of a deficient practice issued pursuant to this article or
11 pursuant to federal law may request to use an independent informal
12 dispute resolution process. A licensee may contest a cited
13 deficiency as contrary to rule, regulation or law or unwarranted by
14 the facts.

15 (b) The secretary shall establish a panel of at least three
16 approved independent review providers: *Provided*, That in lieu of
17 establishing a panel, the secretary may use an existing panel of
18 approved independent review providers. The secretary shall
19 contract with the independent review providers to conduct the
20 informal dispute resolution processes. Each independent review
21 provider shall be accredited by the Utilization Review
22 Accreditation Commission. When a licensee requests an informal
23 dispute resolution process, the secretary shall choose one
24 independent review provider from the approved panel to conduct the

1 process.

2 (c) The independent informal dispute resolution process is not
3 a formal evidentiary proceeding and utilization of the independent
4 informal dispute resolution process does not waive the right of the
5 licensee to request a formal hearing.

6 (d) The independent informal dispute resolution process
7 consists of the following:

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

17 (2) When the licensee returns its plan of correction to the
18 secretary, the licensee may request, in writing, to participate in
19 the independent informal dispute resolution process to protest or
20 refuse all or part of the cited deficiencies within ten working
21 days. The secretary may not release the final report until the
22 appealed citations are resolved.

23 (3) The secretary shall refer the request to an independent
24 review provider from the panel of certified independent review

1 providers approved by the department within five working days of
2 receipt of the written request for the independent informal dispute
3 resolution process made by a licensee. The secretary shall vary
4 the selection of the independent review providers on a rotating
5 basis. The secretary shall acknowledge in writing to the licensee
6 that the request for independent review has been received and
7 forwarded to the independent review provider. The notice shall
8 include the name and address of the independent review provider.

9 (4) The independent review provider shall hold an independent
10 informal dispute resolution conference unless additional time is
11 requested by either party or the independent review provider and
12 approved by the secretary within ten working days of receipt of the
13 written request for the independent informal dispute resolution
14 process made by a licensee. The licensee may submit additional
15 information before the independent informal dispute resolution
16 conference.

17 (5) Neither the secretary nor the licensee may be accompanied
18 by counsel during the independent informal dispute resolution
19 conference. The manner in which the independent informal dispute
20 resolution conference is held is at the discretion of the provider,
21 but is limited to:

22 (A) A desk review of written information submitted by the
23 licensee;

24 (B) A telephonic conference; or

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

3 (6) If the independent review provider determines the need for
4 additional information, clarification or discussion after
5 conclusion of the independent informal dispute resolution
6 conference, the secretary and the licensee shall present the
7 requested information.

8 (7) The independent review provider shall make a determination
9 within ten working days of the independent informal dispute
10 resolution conference, based upon the facts and findings presented,
11 and shall transmit a written decision containing the rationale for
12 its determination to the secretary.

13 (8) If the secretary disagrees with the determination, the
14 secretary may reject the determination made by the independent
15 review provider and shall issue an order setting forth the
16 rationale for the reversal of the independent review provider's
17 decision to the licensee within ten working days of receiving the
18 independent review provider's determination.

19 (9) If the secretary accepts the determination, the secretary
20 shall issue an order affirming the independent review provider's
21 determination within ten working days of receiving the independent
22 review provider's determination.

23 (10) If the independent review provider determines that the
24 original statement of deficiencies should be changed as a result of

1 the independent informal dispute resolution process and the
2 secretary accepts the determination, the secretary shall transmit
3 a revised statement of deficiencies to the licensee within ten
4 working days of the independent review provider's determination.

5 (11) The licensee shall submit a revised plan to correct any
6 remaining deficiencies to the secretary within ten working days of
7 receipt of the secretary's order and the revised statement of
8 deficiencies.

9 (e) Under the following circumstances, the licensee is
10 responsible for certain costs of the independent information
11 dispute resolution review, which shall be remitted to the secretary
12 within sixty days of the informal conference order:

13 (1) If the provider or licensee requests a face-to-face
14 conference, the provider or licensee shall pay any costs incurred
15 by the independent review provider that exceed the cost of a
16 telephonic conference, regardless of which party ultimately
17 prevails.

18 (2) If the independent review provider's decision supports the
19 entirety of the originally written contested deficiency or adverse
20 action taken by the secretary, the licensee shall reimburse the
21 secretary for the cost charged by the independent review provider.
22 If the independent review provider's decision supports some of the
23 originally written contested deficiencies, but not all of them, the
24 licensee shall reimburse the secretary for the cost charged by the

1 independent review provider on a pro-rata basis.

2 (f) Establishment of the independent informal dispute
3 resolution process does not preclude a licensee from utilizing any
4 other informal dispute resolution process provided by statute or
5 rule in lieu of the independent informal dispute resolution process
6 provided for in this section.

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

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

13 (I) Immediate relief may be obtained by the provider or
14 licensee upon a showing of good cause made by a verified petition
15 to the circuit court.

16 (j) The pendency of administrative or judicial review does not
17 prevent the secretary or a licensee from obtaining injunctive
18 relief as provided by statute or rule.

NOTE: The purpose of this bill is to create an informal dispute resolution process available to behavioral health providers licensed by the Department of Health and Human Resources for orders or citations of deficient practice. The bill sets forth how the process is to function. The bill provides for independent review providers. The bill sets forth how certain costs are to be handled. The bill provides that the informal dispute resolution process does not affect the ability of a licensee to seek administrative and judicial review, nor does it prevent injunctive

relief from being sought.

This section is new; therefore, strike-throughs and underscoring have been omitted.