

Senate Bill No. 97

(By Senators Unger, Foster, Hall, Plymale and D. Facemire)

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[Introduced January 17, 2011; referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.]

**Interim
Bill**

A BILL to amend and reenact §16-5C-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-5C-12a, all relating to nursing home administrative appeals; complaint hearing procedures; establishing an independent disputes resolution process for nursing homes; clarifying the informal and formal review process; and clarifying the judicial review process.

Be it enacted by the Legislature of West Virginia:

That §16-5C-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-5C-12a, all to read as follows:

ARTICLE 5C. NURSING HOMES.

§16-5C-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article shall

1 ~~have the opportunity to~~ may request an informal hearing or the
2 independent informal dispute resolution process, if applicable, and
3 formal hearing at which the licensee or applicant may contest ~~such~~
4 the order as contrary to law or unwarranted by the facts or both.
5 All of the pertinent provisions of article five, chapter
6 twenty-nine-a of this code ~~shall~~ apply to and govern ~~such~~ a formal
7 hearing and the administrative procedures in connection with any
8 formal hearing.

9 The director may impose the following prior to or during the
10 pendency of ~~a~~ an informal hearing, of the independent informal
11 dispute resolution process or of a formal hearing:

12 (1) A reduction in the bed quota pursuant to section eleven of
13 this article; or

14 (2) Transfer of residents and a ban on new admissions pursuant
15 to section eleven of this article.

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

26 (c) If the applicant or licensee requested a formal hearing

1 only, the director and the licensee shall proceed in accordance
2 with the provisions of the Department of Health and Human Resources
3 rules of procedure for contested case hearings and declaratory
4 rulings. If the applicant or licensee also requested an informal
5 hearing or the independent informal dispute resolution process and
6 if the order is not favorable to the applicant or licensee, the
7 director shall notify the administrative hearing examiner of the
8 request for an appeal within five business days of issuing the
9 ~~informal hearing~~ order.

10 **§16-5C-12a. Independent informal dispute resolution process.**

11 (a) A facility or licensee adversely affected by an order or
12 citation of a deficient practice issued pursuant to this article or
13 by a citation issued for a deficient practice pursuant to federal
14 law may request the independent informal dispute resolution
15 process. A facility may contest a cited deficiency as contrary to
16 law or unwarranted by the facts or both.

17 (b) The director shall contract with at least five independent
18 review organizations to conduct an independent informal dispute
19 resolution process for facilities. The independent review
20 organization shall be accredited by the Utilization Review
21 Accreditation Commission.

22 (c) The independent informal dispute resolution process is not
23 a formal evidentiary proceeding and utilizing the independent
24 informal dispute resolution process does not waive the facility's
25 right to a formal hearing.

26 (d) The independent informal dispute resolution process

1 consists of the following:

2 (1) No later than ten working days following the last day of
3 the survey or inspection, or no later than twenty working days
4 following the last day of a complaint investigation, the director
5 shall transmit to the facility a statement of deficiencies
6 committed by the facility. Notification of the availability of the
7 independent informal dispute resolution process and an explanation
8 of the independent informal dispute resolution process shall be
9 included in the transmittal;

10 (2) When the facility returns its plan to correct the cited
11 deficiencies to the director, the facility may request in writing
12 the independent informal dispute resolution process to refute the
13 cited deficiencies;

14 (3) Within five working days of receipt of the written request
15 for the independent informal dispute resolution process made by a
16 facility, the director shall refer the request to an independent
17 review organization from the list of certified independent review
18 organizations approved by the state. The director shall vary the
19 selection of the independent review organization on a rotating
20 basis. The director shall acknowledge in writing to the facility
21 that the request for independent review has been received and
22 forwarded to an independent review organization for review. The
23 notice shall include the name and address of the independent review
24 organization.

25 (4) Within ten working days of receipt of the written request
26 for the independent informal dispute resolution process made by a

1 facility, the independent review organization shall hold an
2 independent informal dispute resolution conference unless
3 additional time is requested by the facility. Before the
4 independent informal dispute resolution conference, the facility
5 may submit additional information.

6 (5) The facility may not be accompanied by counsel during the
7 independent informal dispute resolution conference. The manner in
8 which the independent informal dispute resolution conference is
9 held is at the discretion of the facility, but is limited to:

10 (A) A desk review of written information submitted by the
11 facility; or

12 (B) A telephonic conference; or

13 (C) A face-to-face conference held at the facility or a
14 mutually agreed upon location.

15 (6) If the independent review organization determines the need
16 for additional information, clarification or discussion after
17 conclusion of the independent informal dispute resolution
18 conference, the director and the facility shall present the
19 requested information.

20 (7) Within ten calendar days of the independent informal
21 dispute resolution conference, the independent review organization
22 shall provide and make a determination, based upon the facts and
23 findings presented, and shall transmit a written decision
24 containing the rationale for its determination to the facility and
25 the director.

26 (8) If the director disagrees with the determination, the

1 director may reject the determination made by the independent
2 review organization and shall issue an order setting forth the
3 rationale for the reversal of the independent review organization's
4 decision to the facility within ten calendar days of receiving the
5 independent review organization's determination.

6 (9) If the director accepts the determination, the director
7 shall issue an order affirming the independent review
8 organization's determination within ten calendar days of receiving
9 the independent review organization's determination.

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

17 (11) Within ten calendar days of receipt of the director's
18 order and the revised statement of deficiencies, the facility shall
19 submit a revised plan to correct any remaining deficiencies to the
20 director.

21 (e) A facility has ten calendar days after receipt of the
22 director's order to request a formal hearing for any deficient
23 practice cited under this article. If the facility requests a
24 formal hearing, the director and the facility shall proceed in
25 accordance with the provisions of article five, chapter
26 twenty-nine-a of this code.

1 (f) The facility is responsible for certain costs of the
2 independent informal dispute resolution review under the following
3 circumstances:

4 (1) If the facility requests a face-to-face conference, the
5 facility shall pay any costs incurred by the independent review
6 organization that exceed the cost of a telephonic conference,
7 regardless of which party ultimately prevails.

8 (2) If the independent review organization's decision supports
9 the originally written contested deficiency or adverse action taken
10 by the director, the facility shall reimburse the director for the
11 cost charged by the independent review organization.

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.

§16-5C-12a is new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislature by the Select Committee on PEIA, Seniors and Long Term Care.