

1 **H. B. 4363**

2
3 (By Delegates Perdue, Ferro, Diserio and Poore)
4 [Introduced January 28, 2014; referred to the
5 Committee on Health & Human Resources then the
6 Judiciary.]

**FISCAL
NOTE**

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8
9 A BILL to amend the Code of West Virginia, 1931, as amended, by
10 adding thereto a new section, designated §27-1A-12, relating
11 to creating an informal dispute resolution process available
12 to behavioral health providers licensed by the Department of
13 Health and Human Resources for orders or citations of
14 deficient practice; and providing that the informal dispute
15 resolution process does not affect the ability of a licensee
16 to seek administrative and judicial review of an order or
17 citation of deficient practice.

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

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

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

23 **§27-1A-12. Informal Dispute Resolution.**

1 (a) A behavioral health provider licensed by the Department of
2 Health and Human Resources adversely affected by an order or
3 citation of a deficient practice issued pursuant to this article or
4 pursuant to federal law may request to use the independent informal
5 dispute resolution process. A licensee may contest a cited
6 deficiency as contrary to rule, regulation or law or unwarranted by
7 the facts.

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

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

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

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

1 include the name and address of the independent review provider.

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

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

15 (A) A desk review of written information submitted by the
16 licensee;

17 (B) A telephonic conference; or

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

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

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

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

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 licensee within ten
21 working days of the independent review provider's determination.

22 (11) The licensee shall submit a revised plan to correct any
23 remaining deficiencies to the secretary within ten working days of
24 receipt of the secretary's order and the revised statement of

1 deficiencies.

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

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

11 (2) If the independent review provider's decision supports the
12 entirety of the originally written contested deficiency or adverse
13 action taken by the secretary, the licensee shall reimburse the
14 secretary for the cost charged by the independent review provider.
15 If the independent review provider's decision supports some of the
16 originally written contested deficiencies, but not all of them, the
17 licensee shall reimburse the secretary for the cost charged by the
18 independent review provider on a pro-rata basis.

19 (f) Establishment of the independent informal dispute
20 resolution process does not preclude licensees from utilizing other
21 informal dispute resolution process provided by statute or rule in
22 lieu of the independent informal dispute resolution process.

23 (g) Administrative and judicial review of a decision rendered
24 through the informal dispute resolution process may be made in

1 accordance with article five, chapter twenty-nine-a of this code.

2 (h) Any decision issued by the secretary as a result of the
3 independent informal dispute resolution process 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.

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

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. The bill provides for review.

§27-1A-12 is new; therefore, it has been completely underscored.