WEST VIRGINIA CODE: §16b-4-12A

§16B-4-12a. Independent informal dispute resolution.

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

(b) The director shall contract with up to three independent review organizations to conduct an independent informal dispute resolution process for facilities. The independent review organization shall be accredited by the Utilization Review Accreditation Commission.

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

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

(1) No later than 10 working days following the last day of the survey or inspection, or no later than 20 working days following the last day of a complaint investigation, the director shall transmit to the facility a statement of deficiencies committed by the facility. Notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal;

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

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

(4) Within 10 working days of receipt of the written request for the independent informal dispute resolution process made by a facility, the independent review organization shall hold an independent informal dispute resolution conference unless additional time is requested by the facility. Before the independent informal dispute resolution conference, the facility may submit additional information.

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

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

(B) A telephonic conference; or

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

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

(7) Within 10 calendar days of the independent informal dispute resolution conference, the independent review organization shall provide and make a determination, based upon the facts and findings presented, and shall transmit a written decision containing the rationale for its determination to the facility and the director.

(8) If the director disagrees with the determination, the director may reject the determination made by the independent review organization and shall issue an order setting forth the rationale for the reversal of the independent review organization's decision to the facility within 10 calendar days of receiving the independent review organization's determination.

(9) If the director accepts the determination, the director shall issue an order affirming the independent review organization's determination within 10 calendar days of receiving the independent review organization's determination.

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

(11) Within 10 calendar days of receipt of the director’s order and the revised statement of deficiencies, the facility shall submit a revised plan to correct any remaining deficiencies to the director.

(e) A facility has 10 calendar days after receipt of the director’s order to request a formal hearing for any deficient practice cited under this article. If the facility requests a formal hearing, the director and the facility shall proceed in accordance with the provisions of §29A-5-1 *et seq*. of this code.

(f) Under the following circumstances, the facility is responsible for certain costs of the independent informal dispute resolution review, which shall be remitted to the director

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within 60 days of the informal hearing order:

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

(2) If the independent review organization's decision supports the originally written contested deficiency or adverse action taken by the director, the facility shall reimburse the director for the cost charged by the independent review organization. If the independent review organization's decision supports some of the originally written contested deficiencies, but not all of them, the facility shall reimburse the director for the cost charged by the independent review organization on a pro rata basis.

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