

HB 4363

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2014 MAR 26 A 10:09

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2014



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4363**

(By Delegates Perdue, Ferro,  
Diserio and Poore)



Passed March 7, 2014

In effect ninety days from passage.

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[Passed March 7, 2014; in effect ninety days from passage.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-1A-12, relating to creating an independent 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; and providing that the independent informal dispute resolution process does not affect the ability of a licensee to seek administrative and judicial review of an order or citation of deficient practice.

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

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

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ARTICLE 1A. DEPARTMENT OF HEALTH.

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§27-1A-12. Independent Informal Dispute Resolution.

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

9 (b) The independent informal dispute resolution process is  
10 not a formal evidentiary proceeding and utilization of the  
11 independent informal dispute resolution process does not waive  
12 the right of the licensee to request a formal hearing with the  
13 secretary.

14 (c) The independent informal dispute resolution process  
15 shall consist of the following:

16 (1) The secretary shall transmit to the licensee a statement of  
17 deficiencies attributed to the licensee and request that the  
18 licensee submit a plan of correction addressing the cited  
19 deficiencies no later than ten working days following the last day  
20 of the survey or inspection, or no later than ten working days  
21 following the last day of a complaint investigation. Notification  
22 of the availability of the independent informal dispute resolution  
23 process and an explanation of the independent informal dispute  
24 resolution process shall be included in the transmittal.

25 (2) When the licensee returns its plan of correction to the  
26 secretary, the licensee may request, in writing, to participate in  
27 the independent informal dispute resolution process to protest or  
28 refute all or part of the cited deficiencies within ten working  
29 days. The secretary may not release the final report until all  
30 dispute processes are resolved.

31           (3) The Secretary of the West Virginia Department of Health  
32 and Human Resources (hereinafter "secretary") shall approve  
33 and establish a panel of at least three independent review  
34 providers: *Provided*, That in lieu of establishing a panel, the  
35 secretary may use an existing panel of approved independent  
36 review providers. The secretary shall contract with the  
37 independent review providers to conduct the independent  
38 informal dispute resolution processes. Each independent review  
39 provider shall be accredited by the Utilization Review  
40 Accreditation Commission. When a licensee requests an  
41 independent informal dispute resolution process, the secretary  
42 shall choose one independent review provider from the approved  
43 panel to conduct the process.

44           (4) The secretary shall refer the request to an independent  
45 review provider from the panel of certified independent review  
46 providers approved by the department within five working days  
47 of receipt of the written request for the independent informal  
48 dispute resolution process made by a licensee. The secretary  
49 shall vary the selection of the independent review providers on  
50 a rotating basis. The secretary shall acknowledge in writing to  
51 the licensee that the request for independent review has been  
52 received and forwarded to the independent review provider. The  
53 notice shall include the name and professional address of the  
54 independent review provider.

55           (5) The independent review provider shall hold an  
56 independent informal dispute resolution conference, unless  
57 additional time is requested by either the licensee, the  
58 Department of Health and Human Resources or the independent  
59 review provider and approved by the secretary, within ten  
60 working days of receipt of the written request for the  
61 independent informal dispute resolution process made by a  
62 licensee. The licensee or the Department of Health and Human  
63 Resources may submit additional information before the  
64 independent informal dispute resolution conference.

65 (6) Neither the secretary nor the licensee may be  
66 accompanied by counsel during the independent informal dispute  
67 resolution conference. The manner in which the independent  
68 informal dispute resolution conference is held is at the discretion  
69 of the licensee, but is limited to:

70 (A) A review of written information submitted by the  
71 licensee;

72 (B) A telephonic conference; or

73 (C) A face-to-face conference held at a mutually agreed  
74 upon location.

75 (7) If the independent review provider determines the need  
76 for additional information, clarification or discussion at the  
77 conclusion of the independent informal dispute resolution  
78 conference, the secretary and the licensee shall present the  
79 requested information.

80 (8) The independent review provider shall make a  
81 determination within ten working days of receipt of any  
82 additional information as provided in subdivision (7) of this  
83 section or the conclusion of the independent informal dispute  
84 resolution conference, based upon the facts and findings  
85 presented, and shall transmit a written decision containing the  
86 rationale for its determination to the secretary.

87 (9) If the secretary disagrees with the determination, the  
88 secretary may reject the determination made by the independent  
89 review provider and shall issue an order setting forth the  
90 rationale for the reversal of the independent review provider's  
91 decision to the licensee within ten working days of receiving the  
92 independent review provider's determination.

93 (10) If the secretary accepts the determination, the secretary  
94 shall issue an order affirming the independent review provider's  
95 determination within ten working days of receiving the  
96 independent review provider's determination.

97 (11) If the independent review provider determines that the  
98 original statement of deficiencies should be changed as a result  
99 of the independent informal dispute resolution process and the  
100 secretary accepts the determination, the secretary shall transmit  
101 a revised statement of deficiencies to the licensee within ten  
102 working days of the independent review provider's  
103 determination.

104 (12) The licensee shall submit a revised plan to correct any  
105 remaining deficiencies to the secretary within ten working days  
106 of receipt of the secretary's order and the revised statement of  
107 deficiencies.

108 (d) Under the following circumstances, the licensee is  
109 responsible for certain costs of the independent informal dispute  
110 resolution review, which shall be remitted to the secretary within  
111 sixty days of the informal conference order:

112 (1) If the licensee requests a face-to-face conference, the  
113 licensee shall pay any costs incurred by the independent review  
114 provider that exceed the cost of a telephonic conference,  
115 regardless of which party ultimately prevails;

116 (2) If the independent review provider's decision supports  
117 the entirety of the originally written contested deficiency or  
118 adverse action taken by the secretary, the licensee shall  
119 reimburse the secretary for the cost charged by the independent  
120 review provider; or

121 (3) If the independent review provider's decision supports  
122 some of the originally written contested deficiencies, but not all  
123 of them, the licensee shall reimburse the secretary for the cost  
124 charged by the independent review provider on a pro-rata basis  
125 as determined by the secretary.

126 (e) Establishment of the independent informal dispute  
127 resolution process does not preclude licensees from utilizing  
128 other informal dispute resolution processes provided by statute

129 or rule in lieu of the independent informal dispute resolution  
130 process.

131 (f) Administrative and judicial review of a decision rendered  
132 through the independent informal dispute resolution process may  
133 be made in accordance with article five, chapter twenty-nine-a  
134 of this code.

135 (g) Any decision issued by the secretary as a result of the  
136 independent informal dispute resolution process shall be made  
137 effective from the date of issuance.

138 (h) The pendency of administrative or judicial review does  
139 not prevent the secretary or a licensee from obtaining injunctive  
140 relief as provided by statute or rule.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Danny Wells*

Chairman, House Committee

*Rocky Fitzmaurice*  
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

*Bryce M. Sneyd*

Clerk of the House of Delegates

*Joseph McMinard*  
Clerk of the Senate

*Tommy D. Miller*

Speaker of the House of Delegates

*Jeffrey V. K...*  
President of the Senate

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The within is approved this the 26<sup>th</sup>  
day of March, 2014.

*Earl Ray Tomblin*  
Governor

PRESENTED TO THE GOVERNOR

20 2011

Time 11:05 AM