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.
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:
ARTICLE 1A. DEPARTMENT OF HEALTH.

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

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

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

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

(1) The secretary shall transmit to the licensee a statement of deficiencies attributed to the licensee and request that the licensee submit a plan of correction addressing the cited deficiencies no later than ten working days following the last day of the survey or inspection, or no later than ten working days following the last day of a complaint investigation. 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 licensee returns its plan of correction to the secretary, the licensee may request, in writing, to participate in the independent informal dispute resolution process to protest or refute all or part of the cited deficiencies within ten working days. The secretary may not release the final report until all dispute processes are resolved.
(3) The Secretary of the West Virginia Department of Health and Human Resources (hereinafter "secretary") shall approve and establish a panel of at least three independent review providers: Provided, That in lieu of establishing a panel, the secretary may use an existing panel of approved independent review providers. The secretary shall contract with the independent review providers to conduct the independent informal dispute resolution processes. Each independent review provider shall be accredited by the Utilization Review Accreditation Commission. When a licensee requests an independent informal dispute resolution process, the secretary shall choose one independent review provider from the approved panel to conduct the process.

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

(5) The independent review provider shall hold an independent informal dispute resolution conference, unless additional time is requested by either the licensee, the Department of Health and Human Resources or the independent review provider and approved by the secretary, within ten working days of receipt of the written request for the independent informal dispute resolution process made by a licensee. The licensee or the Department of Health and Human Resources may submit additional information before the independent informal dispute resolution conference.
(6) Neither the secretary nor the licensee may 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 licensee, but is limited to:

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

(B) A telephonic conference; or

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

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

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

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

(10) If the secretary accepts the determination, the secretary shall issue an order affirming the independent review provider’s determination within ten working days of receiving the independent review provider’s determination.
(11) If the independent review provider determines that the original statement of deficiencies should be changed as a result of the independent informal dispute resolution process and the secretary accepts the determination, the secretary shall transmit a revised statement of deficiencies to the licensee within ten working days of the independent review provider’s determination.

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

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

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

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

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

(e) Establishment of the independent informal dispute resolution process does not preclude licensees from utilizing other informal dispute resolution processes provided by statute.
or rule in lieu of the independent informal dispute resolution process.

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

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

(h) The pendency of administrative or judicial review does not prevent the secretary or a licensee from obtaining injunctive relief as provided by statute or rule.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

[Signatures]

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 26th day of March, 2014.

[Signature]

Governor
PRESENTED TO THE GOVERNOR

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