

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 433**

4 (By Senators Tucker and Plymale)

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6 [Originating in the Committee on Government Organization;  
7 reported March 21, 2013.]

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

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

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

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

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

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

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

20 (c) The independent informal dispute resolution process is not  
21 a formal evidentiary proceeding and utilization of the independent  
22 informal dispute resolution process does not waive the right of the  
23 licensee to request a formal hearing.

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

26 (1) The secretary shall transmit to the licensee a statement

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

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

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

25       (4) The independent review provider shall hold an independent  
26 informal dispute resolution conference unless additional time is

1 requested by either party or the independent review provider and  
2 approved by the secretary within ten working days of receipt of the  
3 written request for the independent informal dispute resolution  
4 process made by a licensee. The licensee may submit additional  
5 information before the independent informal dispute resolution  
6 conference.

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

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

14 (B) A telephonic conference; or

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

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

22 (7) The independent review provider shall make a determination  
23 within ten working days of the independent informal dispute  
24 resolution conference, based upon the facts and findings presented,  
25 and shall transmit a written decision containing the rationale for  
26 its determination to the secretary.

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

7 (9) If the secretary accepts the determination, the secretary  
8 shall issue an order affirming the independent review provider's  
9 determination within ten working days of receiving the independent  
10 review provider's determination.

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

17 (11) The licensee shall submit a revised plan to correct any  
18 remaining deficiencies to the secretary within ten working days of  
19 receipt of the secretary's order and the revised statement of  
20 deficiencies.

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

25 (1) If the provider or licensee requests a face-to-face  
26 conference, the provider or licensee shall pay any costs incurred

1 by the independent review provider that exceed the cost of a  
2 telephonic conference, regardless of which party ultimately  
3 prevails.

4 (2) If the independent review provider's decision supports the  
5 entirety of the originally written contested deficiency or adverse  
6 action taken by the secretary, the licensee shall reimburse the  
7 secretary for the cost charged by the independent review provider.  
8 If the independent review provider's decision supports some of the  
9 originally written contested deficiencies, but not all of them, the  
10 licensee shall reimburse the secretary for the cost charged by the  
11 independent review provider on a pro-rata basis.

12 (f) Establishment of the independent informal dispute  
13 resolution process does not preclude licensees from utilizing other  
14 informal dispute resolution process provided by statute or rule in  
15 lieu of the independent informal dispute resolution process.

16 (g) Administrative and judicial review of a decision rendered  
17 through the informal dispute resolution process may be made in  
18 accordance with the provisions of article five, chapter  
19 twenty-nine-a of the State Code of West Virginia.

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

23 (i) Immediate relief may be obtained by the provider or  
24 licensee upon a showing of good cause made by a verified petition  
25 to the circuit court.

26 (j) The pendency of administrative or judicial review does not

1 prevent the secretary or a licensee from obtaining injunctive  
2 relief as provided for by statute or rule.