

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 433**

(By Senators Tucker and Plymale)

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

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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 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 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. Informal Dispute Resolution.**

1 (a) A behavioral health provider licensed by the  
2 Department of Health and Human Resources adversely  
3 affected by an order or citation of a deficient practice issued  
4 pursuant to this article or pursuant to federal law may request  
5 to use the independent informal dispute resolution process.

6 A licensee may contest a cited deficiency as contrary to rule,  
7 regulation or law or unwarranted by the facts.

8 (b) The secretary shall establish a panel of at least three  
9 approved independent review providers: *Provided*, That in  
10 lieu of establishing a panel, the secretary may use an existing  
11 panel of approved independent review providers. The  
12 secretary shall contract with the independent review  
13 providers to conduct the informal dispute resolution  
14 processes. Each independent review provider shall be

15 accredited by the Utilization Review Accreditation  
16 Commission. When a licensee requests an informal dispute  
17 resolution process, the secretary shall choose one  
18 independent review provider from the approved panel to  
19 conduct the process.

20 (c) The independent informal dispute resolution process  
21 is not a formal evidentiary proceeding and utilization of the  
22 independent informal dispute resolution process does not  
23 waive the right of the 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  
27 of deficiencies attributed to the licensee and request that the  
28 licensee submit a plan of correction addressing the cited  
29 deficiencies no later than ten working days following the last  
30 day of the survey or inspection, or no later than ten working  
31 days following the last day of a complaint investigation.  
32 Notification of the availability of the independent informal  
33 dispute resolution process and an explanation of the

34 independent informal dispute resolution process shall be  
35 included in the transmittal.

36 (2) When the licensee returns its plan of correction to the  
37 secretary, the licensee may request, in writing, to participate  
38 in the independent informal dispute resolution process to  
39 protest or refuse all or part of the cited deficiencies within ten  
40 working days. The secretary may not release the final report  
41 until the appealed citations are resolved.

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

52 shall include the name and address of the independent review  
53 provider.

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

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

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

70 (B) A telephonic conference; or

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

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

78 (7) The independent review provider shall make a  
79 determination within ten working days of the independent  
80 informal dispute resolution conference, based upon the facts  
81 and findings presented, and shall transmit a written decision  
82 containing the rationale for its determination to the to the  
83 secretary.

84 (8) If the secretary disagrees with the determination, the  
85 secretary may reject the determination made by the  
86 independent review provider and shall issue an order setting  
87 forth the rationale for the reversal of the independent review  
88 provider's decision to the licensee within ten working days

89 of receiving the independent review provider's  
90 determination.

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

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

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

106 (e) Under the following circumstances, the licensee is  
107 responsible for certain costs of the independent information

108 dispute resolution review, which shall be remitted to the  
109 secretary within sixty days of the informal conference order:

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

115 (2) If the independent review provider's decision  
116 supports the entirety of the originally written contested  
117 deficiency or adverse action taken by the secretary, the  
118 licensee shall reimburse the secretary for the cost charged by  
119 the independent review provider. If the independent review  
120 provider's decision supports some of the originally written  
121 contested deficiencies, but not all of them, the licensee shall  
122 reimburse the secretary for the cost charged by the  
123 independent review provider on a pro-rata basis.

124 (f) Establishment of the independent informal dispute  
125 resolution process does not preclude licensees from utilizing  
126 other informal dispute resolution process provided by statute



127 or rule in lieu of the independent informal dispute resolution  
128 process.

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

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

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

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