

Senate Bill No. 46

(By Senator Tucker)

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[Introduced January 8, 2014; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §27-1A-13, relating
12 to creating an informal dispute resolution process available
13 to behavioral health providers licensed by the Department of
14 Health and Human Resources for orders or citations of
15 deficient practice; setting forth how the process is to
16 function; providing for independent review providers; setting
17 forth how certain costs are to be handled; providing that the
18 informal dispute resolution process does not affect the
19 ability of a licensee to seek administrative and judicial
20 review; and permitting injunctive relief.

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

22 That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new section, designated §27-1A-13, to read as
2 follows:

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

4 **§27-1A-13. Informal dispute resolution.**

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

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

1 (c) The independent informal dispute resolution process is not
2 a formal evidentiary proceeding and utilization of the independent
3 informal dispute resolution process does not waive the right of the
4 licensee to request a formal hearing.

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

7 (1) The secretary shall transmit to the licensee a statement
8 of deficiencies attributed to the licensee and request that the
9 licensee submit a plan of correction addressing the cited
10 deficiencies no later than ten working days following the last day
11 of the survey or inspection, or no later than ten working days
12 following the last day of a complaint investigation. Notification
13 of the availability of the independent informal dispute resolution
14 process and an explanation of the independent informal dispute
15 resolution process shall be included in the transmittal.

16 (2) When the licensee returns its plan of correction to the
17 secretary, the licensee may request, in writing, to participate in
18 the independent informal dispute resolution process to protest or
19 refuse all or part of the cited deficiencies within ten working
20 days. The secretary may not release the final report until the
21 appealed citations are resolved.

22 (3) The secretary shall refer the request to an independent

1 review provider from the panel of certified independent review
2 providers approved by the department within five working days of
3 receipt of the written request for the independent informal dispute
4 resolution process made by a licensee. The secretary shall vary
5 the selection of the independent review providers on a rotating
6 basis. The secretary shall acknowledge in writing to the licensee
7 that the request for independent review has been received and
8 forwarded to the independent review provider. The notice shall
9 include the name and address of the independent review provider.

10 (4) The independent review provider shall hold an independent
11 informal dispute resolution conference unless additional time is
12 requested by either party or the independent review provider and
13 approved by the secretary within ten working days of receipt of the
14 written request for the independent informal dispute resolution
15 process made by a licensee. The licensee may submit additional
16 information before the independent informal dispute resolution
17 conference.

18 (5) Neither the secretary nor the licensee may be accompanied
19 by counsel during the independent informal dispute resolution
20 conference. The manner in which the independent informal dispute
21 resolution conference is held is at the discretion of the provider,
22 but is limited to:

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

3 (B) A telephonic conference; or

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

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

11 (7) The independent review provider shall make a determination
12 within ten working days of the independent informal dispute
13 resolution conference, based upon the facts and findings presented,
14 and shall transmit a written decision containing the rationale for
15 its determination to the secretary.

16 (8) If the secretary disagrees with the determination, the
17 secretary may reject the determination made by the independent
18 review provider and shall issue an order setting forth the
19 rationale for the reversal of the independent review provider's
20 decision to the licensee within ten working days of receiving the
21 independent review provider's determination.

22 (9) If the secretary accepts the determination, the secretary

1 shall issue an order affirming the independent review provider's
2 determination within ten working days of receiving the independent
3 review provider's determination.

4 (10) If the independent review provider determines that the
5 original statement of deficiencies should be changed as a result of
6 the independent informal dispute resolution process and the
7 secretary accepts the determination, the secretary shall transmit
8 a revised statement of deficiencies to the licensee within ten
9 working days of the independent review provider's determination.

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to create 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. The bill sets forth how the process is to function. The bill provides for independent review providers. The bill sets forth how certain costs are to be handled. The bill provides that the informal dispute resolution process does not affect the ability of a licensee to seek administrative and judicial review, nor does it prevent injunctive relief from being sought.

This section is new; therefore, strike-throughs and underscoring have been omitted.