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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2051

02/20/2023 Authored by Liebling
The bill was read for the first time and referred to the Committee on Health Finance and Policy

1.1 A bill for an act
1.2 relating to health; aligning independent informal dispute resolution process;
1.3 amending Minnesota Statutes 2022, section 144A.10, subdivisions 15, 16.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. Minnesota Statutes 2022, section 144A.10, subdivision 15, is amended to read:

1.6 Subd. 15. Informal dispute resolution. The commissioner shall respond in writing to
1.7 a request from a nursing facility certified under the federal Medicare and Medicaid programs
1.8 for an informal dispute resolution within 30 days of the exit date of the facility's survey.
1.9 The commissioner's response shall identify the commissioner's decision regarding the
1.10 continuation of each deficiency citation challenged by the nursing facility, as well as a
1.11 statement of any changes in findings, level of severity or scope, and proposed remedies or
1.12 sanctions for each deficiency citation.

1.13 EFFECTIVE DATE. This section is effective August 1, 2023.

1.14 Sec. 2. Minnesota Statutes 2022, section 144A.10, subdivision 16, is amended to read:

1.15 Subd. 16. Independent informal dispute resolution. (a) Notwithstanding subdivision
1.16 15, a facility certified under the federal Medicare or Medicaid programs that has been
1.17 assessed a civil money penalty as provided by Code of Federal Regulations, title 42, section
1.18 488.430, may request from the commissioner, in writing, an independent informal dispute
1.19 resolution process regarding any deficiency citation issued to the facility. The facility must
1.20 specify in its written request each deficiency citation that it disputes. The commissioner
1.21 shall provide a hearing under sections 14.57 to 14.62. Upon the written request of the facility,
1.22 the parties must submit the issues raised to arbitration by an administrative law judge submit

2.1 its request in writing within 30 days of receiving notice that a civil money penalty will be
 2.2 imposed.

2.3 (b) An independent informal dispute resolution may not be requested for any deficiency
 2.4 that is the subject of an active informal dispute resolution requested under subdivision 15.
 2.5 The facility must withdraw its informal dispute resolution prior to requesting independent
 2.6 informal dispute resolution.

2.7 ~~(b)~~ (c) Upon receipt of a written request for an ~~arbitration proceeding~~ independent
 2.8 informal dispute resolution, the commissioner shall file with the Office of Administrative
 2.9 Hearings a request for the appointment of an ~~arbitrator~~ administrative law judge from the
 2.10 Office of Administrative Hearings and simultaneously serve the facility with notice of the
 2.11 request. ~~The arbitrator for the dispute shall be an administrative law judge appointed by the~~
 2.12 Office of Administrative Hearings. ~~The disclosure provisions of section 572B.12 and the~~
 2.13 notice provisions of section 572B.15, subsection (e), apply. ~~The facility and the commissioner~~
 2.14 have the right to be represented by an attorney.

2.15 (d) An independent informal dispute resolution proceeding shall be scheduled within
 2.16 30 days of the commissioner's request to the Office of Administrative Hearings, unless the
 2.17 parties agree otherwise or the chief administrative law judge deems the timing to be
 2.18 unreasonable. The independent informal dispute resolution process must be completed
 2.19 within 60 calendar days of the facility's request.

2.20 ~~(e)~~ (e) The commissioner and the facility ~~may present~~ must submit written statements
 2.21 and arguments, documentary evidence, depositions, and ~~oral statements and arguments at~~
 2.22 the arbitration proceeding. ~~Oral statements and arguments may be made by telephone~~ any
 2.23 other materials supporting their position to the administrative law judge five working days
 2.24 in advance of the scheduled meeting.

2.25 (f) The independent informal dispute resolution proceeding shall be informal and
 2.26 conducted in a manner so as to allow the parties to fully present their positions and respond
 2.27 to the opposing party's positions.

2.28 (g) The facility and commissioner have the right to be represented by an attorney or
 2.29 nonattorney at the proceeding. However, representation at the proceeding by a nonattorney
 2.30 is not the unauthorized practice of law.

2.31 ~~(d)~~ (h) Within ~~ten~~ seven working days of the close of the ~~arbitration~~ proceeding, the
 2.32 administrative law judge shall issue findings and recommendations regarding each of the
 2.33 deficiencies in dispute. The findings shall be one or more of the following:

3.1 (1) Supported in full. The citation is supported in full, with no deletion of findings and
 3.2 no change in the scope or severity assigned to the deficiency citation.

3.3 (2) Supported in substance. The citation is supported, but one or more findings are
 3.4 deleted without any change in the scope or severity assigned to the deficiency.

3.5 (3) Deficient practice cited under wrong requirement of participation. The citation is
 3.6 amended by moving it to the correct requirement of participation.

3.7 (4) Scope not supported. The citation is amended through a change in the scope assigned
 3.8 to the citation.

3.9 (5) Severity not supported. The citation is amended through a change in the severity
 3.10 assigned to the citation.

3.11 (6) No deficient practice. The citation is deleted because the findings did not support
 3.12 the citation or the negative resident outcome was unavoidable. ~~The findings of the arbitrator
 3.13 are not binding on the commissioner.~~

3.14 (i) The findings of the administrative law judge are not binding on the commissioner.

3.15 (j) Within ten calendar days of receiving the administrative law judge's recommendation,
 3.16 the commissioner shall issue a recommendation to the Center for Medicare and Medicaid
 3.17 Services.

3.18 ~~(e) (k) The commissioner shall reimburse the Office of Administrative Hearings for the~~
 3.19 ~~costs incurred by that office for the arbitration proceeding. The facility shall reimburse the~~
 3.20 ~~commissioner for the proportion of the costs that represent the sum of deficiency citations~~
 3.21 ~~supported in full under paragraph (d), clause (1), or in substance under paragraph (d), clause~~
 3.22 ~~(2), divided by the total number of deficiencies disputed. A deficiency citation for which~~
 3.23 ~~the administrative law judge's sole finding is that the deficient practice was cited under the~~
 3.24 ~~wrong requirements of participation shall not be counted in the numerator or denominator~~
 3.25 ~~in the calculation of the proportion of costs.~~

3.26 **EFFECTIVE DATE.** This section is effective October 1, 2023, or upon federal approval,
 3.27 whichever is later, and applies to appeals of deficiencies which are issued after October 1,
 3.28 2023, or on or after the date upon which federal approval is obtained, whichever is later.
 3.29 The commissioner of health shall notify the revisor of statutes when federal approval is
 3.30 obtained.