

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 3662

(SENATE AUTHORS: MATHEWS)

DATE
03/21/2018

D-PG
6864

OFFICIAL STATUS
Introduction and first reading
Referred to Health and Human Services Finance and Policy

1.1 A bill for an act
 1.2 relating to health; changing provisions for independent dispute resolution for
 1.3 certain facilities; amending Minnesota Statutes 2016, section 144A.10, subdivision
 1.4 16.

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

1.6 Section 1. Minnesota Statutes 2016, section 144A.10, subdivision 16, is amended to read:

1.7 Subd. 16. **Independent informal dispute resolution.** (a) Notwithstanding subdivision
 1.8 15, a facility certified under the federal Medicare or Medicaid programs may request from
 1.9 the commissioner, in writing, an independent informal dispute resolution process regarding
 1.10 any federal deficiency citation issued to the facility. The facility must specify in its written
 1.11 request each deficiency citation that it disputes. The commissioner shall provide a hearing
 1.12 under sections 14.57 to 14.62. Upon the written request of the facility, the parties must
 1.13 submit the issues raised to ~~arbitration~~ an independent informal dispute resolution proceeding
 1.14 conducted by an administrative law judge.

1.15 (b) Upon receipt of a written request for an ~~arbitration~~ independent informal dispute
 1.16 resolution proceeding, the commissioner shall file with the Office of Administrative Hearings
 1.17 a request for the appointment of an ~~arbitrator~~ administrative law judge and simultaneously
 1.18 serve the facility with notice of the request. ~~The arbitrator for the dispute shall be an~~
 1.19 ~~administrative law judge appointed by the Office of Administrative Hearings. The disclosure~~
 1.20 ~~provisions of section 572B.12 and the notice provisions of section 572B.15, subsection (c),~~
 1.21 ~~apply.~~ Upon receipt of a written request, the chief administrative law judge shall appoint
 1.22 an administrative law judge to conduct an independent informal dispute resolution
 1.23 proceeding. The facility and the commissioner have the right to be represented by an attorney.

2.1 (c) The independent informal dispute resolution proceeding shall be conducted in
 2.2 compliance with Code of Federal Regulations, title 42, section 488.331, federal State
 2.3 Operations Manual Chapter 7, Survey and Enforcement Process for Skilled Nursing Facilities
 2.4 and Nursing Facilities published by the Centers for Medicare and Medicaid Services, and
 2.5 the applicable rules in Minnesota Rules, parts 1400.8505 to 1400.8612. The facility and the
 2.6 commissioner have the right to be represented by an attorney, but legal representation is
 2.7 not required and appearance without legal counsel shall not constitute the unauthorized
 2.8 practice of law. The independent informal dispute resolution proceeding is not a formal,
 2.9 evidentiary hearing. The commissioner and the facility may present written evidence,
 2.10 depositions, and oral statements and arguments at the ~~arbitration~~ independent informal
 2.11 dispute resolution proceeding. Oral statements and arguments may be made by telephone
 2.12 as allowed by the administrative law judge.

2.13 (d) The independent informal dispute resolution proceeding shall be held within 60 days
 2.14 of the commissioner's receipt of the facility's request for the proceeding.

2.15 (e) An independent informal dispute resolution proceeding shall be limited to the amount
 2.16 of time necessary for the parties to expeditiously present the facts relevant to the cited
 2.17 deficiencies and to demonstrate that the deficiencies should not have been cited.

2.18 (f) Findings can be challenged during independent informal dispute resolution proceedings
 2.19 only as allowed by Code of Federal Regulations, title 42, section 488.331, and Chapter 7
 2.20 of the most recent federal State Operations Manual published by the Centers for Medicare
 2.21 and Medicaid Services.

2.22 ~~(d)~~ (g) Within ten 20 working days of the close of the ~~arbitration~~ independent informal
 2.23 dispute resolution proceeding, the administrative law judge shall issue findings regarding
 2.24 each of the deficiencies in dispute. The findings of the administrative law judge are not
 2.25 binding on the commissioner. The findings shall be one or more of the following:

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

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

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

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

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

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

3.6 ~~(e)~~ (h) The commissioner shall reimburse the Office of Administrative Hearings for the
3.7 costs incurred by that office for the ~~arbitration~~ independent informal dispute resolution
3.8 proceeding. ~~The facility shall reimburse the commissioner for the proportion of the costs
3.9 that represent the sum of deficiency citations supported in full under paragraph (d), clause
3.10 (1), or in substance under paragraph (d), clause (2), divided by the total number of
3.11 deficiencies disputed. A deficiency citation for which the administrative law judge's sole
3.12 finding is that the deficient practice was cited under the wrong requirements of participation
3.13 shall not be counted in the numerator or denominator in the calculation of the proportion
3.14 of costs.~~