

1 AN ACT relating to medical review panels.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 216C.020 is amended to read as follows:

4 (1) All malpractice and malpractice-related claims against a health care provider, other
5 than claims validly agreed for submission to a binding arbitration procedure, shall
6 be reviewed by a medical review panel. Such an action may not be commenced in a
7 court in Kentucky before:

8 (a) The claimant's proposed complaint has been presented to a medical review
9 panel established under this chapter; and

10 (b) An opinion is given by the panel. **Except as provided in subsection (4) of this**
11 **section,** if the panel has not given its opinion within nine (9) months after the
12 filing of the proposed complaint, the plaintiff may commence the action in
13 court.

14 (2) Any action involving a dependent claim accruing after June 29, 2017, shall be
15 immediately and automatically stayed until:

16 (a) The claimant's proposed complaint against the health care provider has been
17 presented to a medical review panel established under this chapter and an
18 opinion is given by the panel; or

19 (b) **Except as provided in subsection (4) of this section,** nine (9) months after the
20 filing of the proposed complaint if the panel has not given its opinion.

21 (3) Nothing in this chapter shall apply to a cause of action filed before June 29, 2017.

22 **(4) If the medical review panel proceedings are stayed pursuant to KRS 216C.270,**
23 **the nine (9) month time period established by subsection (1)(b) or (2)(b) of this**
24 **section shall be extended for the length of time of the stay.**

25 ➔Section 2. KRS 216C.040 is amended to read as follows:

26 (1) The filing of a proposed complaint tolls the applicable statute of limitations. The
27 statute of limitations is tolled until ninety (90) days after the claimant has received

1 the opinion of the medical review panel.

2 (2) A proposed complaint is considered filed when:

3 (a) A copy of the proposed complaint and the filing fees set forth in subsection
4 (3) of this section are ***received by***~~[delivered or mailed by registered or certified
5 mail to]~~ the cabinet; or

6 (b) An electronic copy of the proposed complaint and the filing fees set forth in
7 subsection (3) of this section are transmitted to the cabinet if the cabinet
8 establishes an electronic filing system.

9 (3) ***(a) Except as provided by paragraph (b) of this subsection,*** each proposed
10 complaint shall be accompanied by a filing fee, as established by the cabinet.

11 ***(b) The cabinet may promulgate an administrative regulation to establish a***
12 ***process for waiving the fee for an indigent person.***

13 ***(4) In addition to the filing fee established pursuant to subsection (3)(a) of this***
14 ***section, if the complaint names an out-of-state defendant who will be served***
15 ***using the process established in subsection (3) of Section 3 of this Act, the***
16 ***claimant shall include a separate check or money order payable to the Kentucky***
17 ***State Treasurer in the amount of ten dollars (\$10) per out-of-state defendant. The***
18 ***cabinet shall forward the payment for service on out-of-state defendants to the***
19 ***Secretary of State as required by subsection (3) of Section 3 of this Act. The***
20 ***separate fee for service on out-of-state defendants shall not be waived for an***
21 ***indigent person.***

22 ➔Section 3. KRS 216C.050 is amended to read as follows:

23 ***(1) (a) Within ten (10) business days*** after receiving a proposed complaint and the
24 filing fee, the cabinet shall serve a copy of the proposed complaint ***in***
25 ***accordance with the Kentucky Rules of Civil Procedure***~~[by registered or
26 certified mail]~~ on each health care provider that has been named as a
27 defendant in the proposed complaint.

1 **(b)** The proposed complaint shall be served:

2 **1.** On a person authorized to receive summons under the Kentucky Rules
3 of Civil Procedure; **or**

4 **2.** ***In accordance with subsection (3) of this section for an out-of-state***
5 ***defendant.***

6 **(2)** Service shall be deemed complete for purposes of this chapter upon receipt by the
7 cabinet of the return mail receipt showing delivery on the defendant **or other proof**
8 **permitted under the Kentucky Rules of Civil Procedure.**

9 **(3) (a)** ***For an out-of-state defendant, service of process may be made on such***
10 ***person, or any agent of such person, outside of this Commonwealth, where***
11 ***he or she may be found.***

12 **(b)** ***The cabinet shall issue a summons against the out-of-state defendant***
13 ***named in the complaint and shall execute the summons by sending to the***
14 ***Secretary of State by certified mail:***

15 **1.** ***Two (2) true copies of the summons;***

16 **2.** ***Two (2) attested copies of the complaint; and***

17 **3.** ***The ten dollar (\$10) fee required by Section (2) of this Act.***

18 **(c)** ***The Secretary of State shall, within seven (7) business days of receipt of the***
19 ***summons, complaint, and fee in the office of the Secretary of State, mail a***
20 ***copy of the summons and complaint to the defendant at the address given in***
21 ***the complaint. The letter shall be posted by certified mail, return receipt***
22 ***requested, and shall bear the return address of the Secretary of State. The***
23 ***Secretary of State shall make a return to the cabinet showing that the acts***
24 ***contemplated by this statute have been performed, and shall attach to the***
25 ***return the green card or, if the package was not delivered, the package. The***
26 ***summons shall be deemed to be served on the return of the Secretary of***
27 ***State.***

1 ➔Section 4. KRS 216C.070 is amended to read as follows:

2 The chairperson of a medical review panel shall be selected in the following manner:

- 3 (1) Within ten (10) ***business*** days after service of the complaint on all defendants as
4 described in KRS 216C.050, the cabinet shall notify the parties to select a panel
5 chairperson by agreement. If no agreement on a panel chairperson can be reached
6 within ***thirty (30)***~~twenty (20)~~ days of service upon all parties, any party may
7 request the cabinet to select a list of potential chairpersons;
- 8 (2) Upon receipt of a twenty-five dollar (\$25) medical review panel chairperson
9 selection fee from the party making the request, the cabinet shall draw at random a
10 list of five (5) names of attorneys who:
- 11 (a) Are licensed to practice law in the Commonwealth of Kentucky;
- 12 (b) Applied to serve as the chairperson of a panel and are on the list of attorneys
13 maintained by the cabinet pursuant to subsection (8) of this section; and
- 14 (c) Practice in the Supreme Court district in which the case would be filed or, if
15 five (5) attorneys cannot be drawn from that Supreme Court district, from an
16 adjacent Supreme Court district;
- 17 (3) The cabinet shall notify the parties, and the parties shall then strike names
18 alternately, with the plaintiff striking first until one (1) name remains. If there is
19 more than one (1) plaintiff or more than one (1) defendant, the plaintiffs shall make
20 their strikes collectively and the defendants shall make their strikes collectively. The
21 remaining attorney shall be the chairperson of the panel;
- 22 (4) After the striking, the party making the last strike shall notify the chairperson and
23 all other parties of the name of the chairperson;
- 24 (5) If a party does not strike a name within five (5) ***business*** days after receiving notice
25 from the cabinet:
- 26 (a) The opposing party shall, in writing, request the cabinet to strike for the
27 nonresponsive party; and

1 (b) The cabinet shall draw at random a name to strike and shall strike that name;

2 (6) When one (1) name remains, the cabinet shall within five (5) ***business*** days notify
3 the chairperson and all other parties of the name of the chairperson;

4 (7) Within fifteen (15) days after being notified of being selected as chairperson, the
5 chairperson shall:

6 (a) Send a written acknowledgment of appointment to the cabinet; or

7 (b) Show good cause for relief from serving as provided in KRS 216C.120; and

8 (8) ***(a)*** The cabinet shall maintain a list of attorneys who have applied to serve as
9 chairperson of a medical review panel, as described in KRS 216C.060.

10 ***(b)*** This list shall be used to select a chairperson if the parties do not agree on a
11 chairperson.

12 ***(c) The list shall be updated to remove the name of an attorney if:***

13 ***1. The attorney notifies the cabinet in writing that he or she is***
14 ***withdrawing the application; or***

15 ***2. The cabinet receives notification that the attorney:***

16 ***a. Is no longer licensed to practice law in Kentucky;***

17 ***b. Is currently suspended or disbarred by the Kentucky Bar***
18 ***Association; or***

19 ***c. Is deceased.***

20 ➔Section 5. KRS 216C.090 is amended to read as follows:

21 (1) Within five (5) ***business*** days after acknowledging appointment of the selection of a
22 panel chairperson, the panel chairperson shall provide the parties with two (2) lists
23 of panelists who are eligible for panel membership under KRS 216C.080. Each list
24 shall contain three (3) names of prospective panelists eligible to serve. The lists
25 shall, to the extent reasonably possible, include only prospective panelists from the
26 professions and within the specialty fields, if any, of one (1) or more of the
27 defendants, and shall, to the extent reasonably possible, include only prospective

1 panelists who are licensed in the Commonwealth of Kentucky. The parties to the
 2 proposed complaint shall be permitted to propose to the panel chairperson the
 3 health care provider professions and related specialty fields from which the lists of
 4 panelists will be drawn.

5 (2) **Within five (5) business days of receiving the list,** the plaintiff shall strike a name
 6 from each list, and the defendant shall strike a name from each list. If there is more
 7 than one (1) plaintiff or more than one (1) defendant, the plaintiffs shall make their
 8 strikes collectively and the defendants shall make their strikes collectively. The
 9 remaining names on each list shall serve as panel members, **and the chairperson**
 10 **shall notify the two (2) panel members of their selection. Within fifteen (15) days**
 11 **of receipt of that notification,** the two (2) selected panelists shall then select a third
 12 panel member who meets the criteria set forth in KRS 216C.080 and is from the
 13 profession and specialty field, if any, of one (1) or more of the defendants.

14 (3) If a party fails to make a strike within the time provided, the chairperson shall make
 15 the strike and notify all parties. Within fifteen (15) days after their selection, the
 16 panel members shall select the third member and notify the chairperson and the
 17 parties. If the panel members fail to make a selection, the chairperson shall make
 18 the selection and notify all parties.

19 (4) If there are multiple plaintiffs or defendants, only one (1) panel member shall be
 20 selected by the plaintiffs, collectively, and one (1) by the defendants, collectively.

21 ➔Section 6. KRS 216C.110 is amended to read as follows:

22 When a medical review panel is formed, the chairperson shall, within five (5) **business**
 23 days, notify the cabinet and the parties **in writing**~~[by registered or certified mail]~~ of the
 24 following:

- 25 (1) The names and addresses of the panel members; and
- 26 (2) The date on which the last member was selected.

27 ➔Section 7. KRS 216C.160 is amended to read as follows:

- 1 (1) The evidence to be considered by the medical review panel shall be submitted by
2 the respective parties in written or electronic form.
- 3 (2) The evidence may consist of nonprivileged medical records, X-rays, lab tests,
4 excerpts of treatises, depositions of witnesses including parties, and affidavits.
- 5 (3) (a) Depositions of parties and witnesses may be taken with the approval of the
6 chairperson after the formation of the panel but before the evidence is
7 submitted to the panel. The approval of the chairperson shall not be
8 unreasonably withheld.
- 9 (b) The chairperson may authorize other forms of discovery, such as
10 interrogatories, requests for admissions, or requests for production of
11 documents, consistent with the Kentucky Rules of Civil Procedure.
- 12 (4) Upon request of any party, or upon request of any panel member, the chairperson
13 shall issue administrative subpoenas and subpoenas duces tecum in aid of the taking
14 of depositions and the production of documentary evidence for inspection or
15 copying, or both.
- 16 (5) The chairperson shall ensure that before the panel gives its opinion, each panel
17 member has the opportunity to review every item of evidence submitted by the
18 parties.
- 19 (6) The plaintiff's evidence shall be submitted to the medical review panel within sixty
20 (60) days after the chairperson has notified the parties of the formation of the
21 medical review panel as set forth in KRS 216C.110.
- 22 (7) The defendant's evidence shall be submitted to the medical review panel within
23 forty-five (45) days after the receipt of the plaintiff's submission of evidence.
- 24 (8) If no submission is made by one (1) or more of the parties, the medical review panel
25 shall review the evidence submitted by the other parties and shall proceed with
26 rendering its opinion on the evidence submitted.
- 27 (9) The chairperson may extend the deadlines set forth in this section in the event of

1 extenuating circumstances, if requested by one (1) or more of the parties.

2 ➔Section 8. KRS 216C.190 is amended to read as follows:

3 **(1) Except as provided by subsection (2) of this section,** if the panel has not given its
4 opinion within nine (9) months after the filing of the proposed complaint, the
5 plaintiff may commence the action in court. The panel shall submit a report to the
6 parties, stating the reasons for the delay, and may continue its work to reach an
7 opinion.

8 **(2) If the medical review panel proceedings are stayed pursuant to KRS 216C.270,**
9 **the nine (9) month time period referenced in subsection (1) of this section shall**
10 **be extended for the length of the stay.**

11 ➔Section 9. KRS 216C.220 is amended to read as follows:

12 (1) Each member of the medical review panel other than the chairperson is entitled to
13 be paid as follows:

14 (a) Up to three hundred fifty dollars (\$350) for all work performed as a member
15 of the panel exclusive of time involved if called as a witness to testify in
16 court; and

17 (b) Reasonable travel expenses.

18 (2) The chairperson of the panel is entitled to be paid as follows:

19 (a) At the rate of two hundred fifty dollars (\$250) per diem, not to exceed two
20 thousand dollars (\$2,000) per case; and

21 (b) Reasonable travel expenses.

22 (3) **(a)** The chairperson shall keep an accurate record of the time and expenses of all
23 the members of the panel.

24 **(b) 1. Except as provided by subparagraph 2. of this paragraph,** the record
25 shall be submitted to the parties for payment with the panel's report.

26 **2. If the claim is dismissed or the parties agree to settle or withdraw the**
27 **proposed complaint prior to receipt of the medical review panel's**

1 report pursuant to KRS 216C.180 and 216C.230, the members of the
 2 panel and the chairperson shall be paid at the rates established in
 3 subsections (1) and (2) of this section for all work conducted prior to
 4 the resolution of the claim. The chairperson shall submit the record of
 5 the time and expenses to the parties for payment.

6 (4) (a) Fees of the panel, including travel expenses and other expenses of the review,
 7 shall be paid by the party or parties in whose favor the opinion is written.

8 **(b) If the claim is dismissed, settled, or withdrawn pursuant to an agreement**
 9 **between the plaintiff and defendant, the fees of the panel, including travel**
 10 **expenses and other expenses of the review, shall be paid as follows:**

11 **1. If the notification of dismissal, settlement, or withdrawal addresses the**
 12 **payment of fees and expenses, the payment shall be made as agreed to**
 13 **by the parties; or**

14 **2. If the notification of dismissal, settlement, or withdrawal does not**
 15 **address payment of the fees and expenses, the plaintiff shall pay fifty**
 16 **percent (50%) and the defendant shall pay fifty percent (50%) of the**
 17 **fees and expenses. If there are multiple plaintiffs, the plaintiff's share**
 18 **of the fees and expenses shall be divided equally. If there are multiple**
 19 **defendants, the defendant's share of the fees and expenses shall be**
 20 **divided equally.**

21 **(c) If the claim is dismissed or withdrawn not pursuant to an agreement**
 22 **between the plaintiff and defendant, the fees and expenses shall be paid by**
 23 **the plaintiff.**

24 ➔Section 10. KRS 216C.230 is amended to read as follows:

25 The chairperson shall submit a copy of the panel's report **in writing**~~[by registered or~~
 26 ~~certified mail]~~ within five (5) **business** days after the panel gives its opinion to:

27 (1) The cabinet; and

1 (2) All parties and the attorneys for the parties.

2 ➔Section 11. KRS 216C.240 is amended to read as follows:

3 (1) A court having jurisdiction over the subject matter and the parties to a proposed
4 complaint filed with the cabinet under this chapter may, upon the filing of a petition
5 as set forth in KRS 216C.250:

6 (a) Entertain motions to compel or limit discovery previously authorized by the
7 chairperson of the medical review panel;

8 (b) Entertain motions to enforce or quash subpoenas issued by the chairperson of
9 the medical review panel; ~~and~~

10 (c) Entertain motions for sanctions pursuant to KRS 216C.130 and

11 (d) Entertain motions to dismiss under the Kentucky Rules of Civil Procedure,
12 including motions to dismiss for lack of subject matter jurisdiction, lack of
13 personal jurisdiction, failure to state a claim upon which relief can be
14 granted, or failure to name indispensable parties.

15 (2) The court has jurisdiction to entertain a motion filed under this chapter only during
16 that time after a proposed complaint is filed with the cabinet under this chapter but
17 before the medical review panel gives the panel's written opinion.

18 (3) The failure of any party to move to compel or limit discovery under this chapter
19 does not constitute the waiver of any affirmative defense or issue of law or fact.