

## CHAPTER 55

( SB 20 )

AN ACT relating to Medicaid provider appeals and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Administrative appeals hearing" means a formal adjudicatory proceeding conducted by the administrative hearing tribunal of the Cabinet for Health and Family Services in accordance with KRS Chapter 13B;*
- (b) *"Department" means the Department for Medicaid Services;*
- (c) *"External independent third-party review" means a review performed by an independent third party outside of the Medicaid managed care organization's internal appeal process pursuant to administrative regulations promulgated by the department;*
- (d) *"Medicaid managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. sec. 438.2; and*
- (e) *"Provider" means any person or entity licensed in Kentucky as defined in KRS 304.17A-700(9) that provides covered services to enrollees.*

(2) *Notwithstanding any law to the contrary, a provider who has exhausted the written internal appeals process of a Medicaid managed care organization shall be entitled to an external independent third party review on the Medicaid managed care organization's final decision that denies, in whole or in part, a health care service to an enrollee or a claim for reimbursement to a provider for a health care service rendered by the provider to an enrollee of the Medicaid managed care organization. Multiple claims may be determined in one (1) action upon request of a party in accordance with administrative regulations promulgated by the department.*

(3) *A Medicaid managed care organization's letter to a provider reflecting the final decision of the provider's internal appeal shall include:*

- (a) *A statement that the provider's internal appeal rights within the Medicaid managed care organization have been exhausted;*
- (b) *A statement that the provider is entitled to an external independent third-party review; and*
- (c) *The time period and address to request an external independent third-party review.*

(4) *A party shall be entitled to appeal a final decision of the external independent third-party review to the administrative hearing tribunal within the Cabinet for Health and Family Services for an administrative hearing to be held in accordance with KRS Chapter 13B. An appeal shall be filed within thirty (30) days from the appealing party's receipt of the final decision of the external independent third-party review. A decision of the administrative hearing tribunal shall be final for purposes of judicial appeal.*

(5) *Within one hundred twenty (120) days after the effective date of this Act, the department shall promulgate administrative regulations to implement the external independent third-party review as required by this section.*

(6) *The department shall promulgate administrative regulations to establish reasonable fees, not to exceed one thousand dollars (\$1,000), to defray expenses associated with an administrative hearing that shall be paid by the party who does not prevail in the administrative hearing.*

(7) *This section shall apply to all contracts or master agreements between Medicaid managed care organizations and the Commonwealth of Kentucky entered into or renewed on or after July 1, 2016.*

➔Section 2. KRS 13B.020 is amended to read as follows:

(1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any

other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.

- (2) The provisions of this chapter shall not apply to:
- (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
  - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
  - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
  - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
  - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
  - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
  - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
  - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
  - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
  - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
  - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
- (a) Finance and Administration Cabinet
    1. Higher Education Assistance Authority
      - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
      - b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
    2. Department of Revenue
      - a. Any licensing and bond revocation hearings conducted under the authority of KRS 138.210 to 138.448 and 234.310 to 234.440
      - b. Any license revocation hearings under KRS 131.630 and 138.130 to 138.205
  - (b) Cabinet for Health and Family Services
    1. Office of Health Policy
      - a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
      - b. Licensure revocation hearings conducted under authority of KRS Chapter 216B
    2. Department for Community Based Services
      - a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630
    3. Department for Income Support
      - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404

4. ***Department for Medicaid Services***
  - a. ***Administrative appeal hearings following an external independent third-party review of a Medicaid managed care organization's final decision that denies, in whole or in part, a health care service to an enrollee or a claim for reimbursement to the provider for a health care service rendered by the provider to an enrollee of the Medicaid managed care organization, conducted under authority of Section 1 of this Act***
- (c) Justice and Public Safety Cabinet
  1. Department of Kentucky State Police
    - a. Kentucky State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
  2. Department of Corrections
    - a. Parole Board hearings conducted under authority of KRS Chapter 439
    - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
    - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
  3. Department of Juvenile Justice
    - a. Supervised placement revocation hearings conducted under KRS Chapter 635
- (d) Energy and Environment Cabinet
  1. Department for Natural Resources
    - a. Surface mining hearings conducted under authority of KRS Chapter 350
  2. Department for Environmental Protection
    - a. Wild River hearings conducted under authority of KRS Chapter 146
    - b. Water resources hearings conducted under authority of KRS Chapter 151
    - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223
    - d. Environmental protection hearings conducted under authority of KRS Chapter 224
    - e. Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224
  3. Public Service Commission
    - a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279
- (e) Labor Cabinet
  1. Department of Workers' Claims
    - a. Workers' compensation hearings conducted under authority of KRS Chapter 342
  2. Kentucky Occupational Safety and Health Review Commission
    - a. Occupational safety and health hearings conducted under authority of KRS Chapter 338
- (f) Public Protection Cabinet
  1. Board of Claims
    - a. Liability hearings conducted under authority of KRS Chapter 44
- (g) Education and Workforce Development Cabinet
  1. Unemployment Insurance hearings conducted under authority of KRS Chapter 341
- (h) Secretary of State
  1. Registry of Election Finance

- a. Campaign finance hearings conducted under authority of KRS Chapter 121
- (i) State universities and colleges
  - 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
  - 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
  - 3. Campus residency hearings conducted under authority of KRS Chapter 164
  - 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
  - 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.
- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
  - (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
  - (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or
  - (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.
- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

➔Section 3. Whereas the effective operation of the Medicaid program is of tantamount importance to the health and welfare of the Commonwealth, and a new fiscal year begins on July 1, 2016, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by Governor April 8, 2016.**