

## CHAPTER 180

( HB 429 )

AN ACT relating to medical malpractice.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

- (1) *A claimant commencing any action identified in KRS 413.140(1)(e), or against a long-term-care facility as defined in KRS 216.510 alleging that the long-term care facility failed to provide proper care to one (1) or more residents of the facility, shall file a certificate of merit with the complaint in the court in which the action is commenced.*
- (2) *"Certificate of merit" means an affidavit or declaration that:*
  - (a) *The claimant has reviewed the facts of the case and has consulted with at least one (1) expert qualified pursuant to the Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence who is qualified to give expert testimony as to the standard of care or negligence and who the claimant or his or her counsel reasonably believes is knowledgeable in the relevant issues involved in the particular action, and has concluded on the basis of review and consultation that there is reasonable basis to commence the action;*
  - (b) *The claimant was unable to obtain the consultation required by paragraph (a) of this subsection because a limitation of time established by KRS Chapter 413 would bar the action and that the consultation could not reasonably be obtained before that time expired. An affidavit or declaration executed pursuant to this paragraph shall be supplemented by an affidavit or declaration pursuant to paragraph (a) of this subsection or paragraph (c) of this subsection within sixty (60) days after service of the complaint or the suit shall be dismissed unless the court grants an extension for good cause; or*
  - (c) *The claimant was unable to obtain the consultation required by paragraph (a) of this subsection because the claimant or his or her counsel had made at least three (3) separate good faith attempts with three (3) different experts to obtain a consultation and that none of those contacted would agree to a consultation; so long as none of those contacted gave an opinion that there was no reasonable basis to commence the action.*
- (3) *A single certificate of merit is required for an action even if more than one (1) defendant has been named in the complaint or is subsequently named.*
- (4) *A certificate of merit is not required where the claimant intends to rely solely on one (1) or more causes of action for which expert testimony is not required, including claims of res ipsa loquitur and lack of informed consent, in which case the complaint shall be accompanied by an affidavit or declaration that no cause of action is asserted for which expert testimony is required.*
- (5) *If a request by the claimant for the records of the claimant's medical treatment by the defendants has been made and the records have not been produced, the claimant shall not be required to file a certificate of merit under this section until ninety (90) days after the records have been produced. For purposes of this section, "records" includes but is not limited to paper or electronic copies of dictations, video recordings, fetal heart monitor strips, and imaging studies.*
- (6) *The identity and statements of an expert relied upon in subsection (2) of this section above are not discoverable except:*
  - (a) *When a claim is made under subsection (2)(c) of this section that the claimant was unable to obtain the required consultation with an expert, the court, upon the request of a defendant made prior to compliance by the claimant with this section, may require the claimant to divulge to the court, in camera and without disclosure by the court to any other party, the names of the physicians refusing to consult; or*
  - (b) *If any party to an action hereto prevails on the basis of the failure of an opposing party to offer any competent expert testimony, the court may, upon motion, for good cause shown compel the opposing party or party's counsel to provide to the court the name of any expert consulted and any written materials relied upon in executing the certificate.*

- (7) ***The claimant, in lieu of serving a certificate of merit, may provide the defendant or defendants with expert information in the form required by the Kentucky Rules of Civil Procedure. Nothing in this section requires the disclosure of any "consulting" or nontrial expert, except as expressly stated in this section.***

➔Section 2. The following KRS sections are repealed:

- 216C.005 Purpose of chapter. (Declared void -- See LRC Note Below)
- 216C.010 Definitions for chapter. (Declared void -- See LRC Note Below)
- 216C.020 Review by medical review panel required for all malpractice and malpractice-related claims -- Exceptions -- Timing. (Declared void -- See LRC Note Below)
- 216C.030 Parties may agree to not submit malpractice or malpractice-related claim to medical review panel. (Declared void -- See LRC Note Below)
- 216C.040 Tolling of statute of limitations -- When complaint considered filed -- Filing fee. (Declared void -- See LRC Note Below)
- 216C.050 Service of copy of complaint -- When service is complete. (Declared void)
- 216C.060 Composition of medical review panels -- Expediting of review of proposed complaint -- Time allowed for presentation of evidence. (Declared void -- See LRC Note Below)
- 216C.070 Selection of chairperson of medical review panel. (Declared void -- See LRC Note Below)
- 216C.080 Health care providers eligible for medical review panel selection. (Declared void -- See LRC Note Below)
- 216C.090 Selection of non-attorney members of medical review panel. (Declared void -- See LRC Note Below)
- 216C.100 Challenges of selection of member of medical review panel. (Declared void -- See LRC Note Below)
- 216C.110 Notice to cabinet of medical review panel membership. (Declared void -- See LRC Note Below)
- 216C.120 Relief from serving as member of medical review panel -- Conditions -- Procedure. (Declared void -- See LRC Note Below)
- 216C.130 Sanctions for failing to act as required. (Declared void -- See LRC Note Below)
- 216C.140 Removal and replacement of panel chairperson. (Declared void -- See LRC Note Below)
- 216C.150 Removal and replacement of panel member. (Declared void -- See LRC Note Below)
- 216C.160 Submission of evidence to medical review panel. (Declared void -- See LRC Note Below)
- 216C.170 Restriction on ex parte communication with panel member -- Panel's right to all necessary and relevant information. (Declared void -- See LRC Note Below)
- 216C.180 Opinion of medical review panel after submission of all evidence -- Conclusion to be reached by majority of voting panel members -- Effect of opinion. (Declared void -- See LRC Note Below)
- 216C.190 When panel's delay in rendering opinion permits filing complaint in court -- Explanation of delay. (Declared void -- See LRC Note Below)
- 216C.200 Admission of panel's opinion into evidence in court. (Declared void -- See LRC Note Below)
- 216C.210 Immunity from civil liability for panel member for actions taken within course and scope of required duties. (Declared void -- See LRC Note Below)
- 216C.220 Compensation of panel chairperson and members. (Declared void -- See LRC Note Below)
- 216C.230 Submission of panel's report. (Declared void -- See LRC Note Below)
- 216C.240 Court's jurisdiction to compel or limit discovery, enforce or quash subpoenas, and apply sanctions. (Declared void -- See LRC Note Below)
- 216C.250 Party to medical review panel's proceeding may invoke court's jurisdiction and file complaint and motion with court clerk. (Declared void -- See LRC Note Below)
- 216C.260 Filing and service of written response to motion filed with court. (Declared void -- See LRC Note Below)
- 216C.270 Filing of motion and proposed complaint with court clerk temporarily stays medical review panel's proceedings. (Declared void -- See LRC Note Below)

216C.280 Court's enforcement of ruling on motion filed, subject to right of appeal. (Declared void -- See LRC Note Below)

**Became law without Governor's signature March 27, 201**