

1 AN ACT relating to health care providers.

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

3 ➔Section 1. KRS 216C.010 is amended to read as follows:

4 As used in this chapter unless the context otherwise requires:

5 (1) *"Affidavit of merit" means an affidavit executed by an expert witness meeting*
6 *the requirements of Rule 702 of the Kentucky Rules of Evidence, that includes:*

7 *(a) A statement that the affiant has reviewed all medical records reasonably*
8 *available to the plaintiff concerning the allegations contained in the*
9 *complaint;*

10 *(b) A statement that the affiant is familiar with the applicable standard of care,*
11 *receives more than fifty percent (50%) of his or her revenue from long-term*
12 *care, clinical or hospital work, or academia, and, in the case of a claim*
13 *against a nursing home, has work experience in a nursing home;*

14 *(c) The opinion of the affiant that the standard of care was breached by one (1)*
15 *or more of the defendants to the action; and*

16 *(d) The opinion of the affiant, or a supplementary affidavit by a physician if*
17 *the primary affiant is not a physician, stating that the breach caused injury*
18 *to the plaintiff;*

19 (2) "Cabinet" means the Cabinet for Health and Family Services;

20 ~~(3)~~~~(2)~~ "Dependent claim" means any claim against an entity or person that owns,
21 controls, or manages any part of the operations of a health care provider, and which
22 arises out of or relates in any way, in whole or in part, to a claim of malpractice or a
23 malpractice-related claim;

24 ~~(4)~~~~(3)~~ "Health care" means an act or treatment performed or furnished or that should
25 have been performed or furnished by a health care provider for, to, or on behalf of a
26 patient;

27 ~~(5)~~~~(4)~~ "Health care provider" means any health facility as defined in KRS 216B.015,

1 or a provider, including natural persons, of health care or health services, including
2 but not limited to those licensed, certified, registered under, or subject to KRS
3 194A.700 to 194A.729 or KRS Chapter 310, 311, 311A, 311B, 312, 313, 314,
4 314A, 315, 319, 319A, 320, 327, 333, 334A, or 335 and the current and former
5 officers, directors, administrators, agents, or employees of any such persons or
6 entities acting within the course and scope of their office, employment, or agency;

7 ~~(6)~~~~(5)~~ "Malpractice" means a tort based on or arising out of health care or
8 professional services that were provided, or that should have been provided, by a
9 health care provider to a patient;

10 ~~(7)~~~~(6)~~ "Malpractice-related claim" means a claim for a tort or a violation of a statute,
11 administrative regulation, right, or rule based on or arising out of health care or
12 professional services that were provided, or that should have been provided, by a
13 health care provider to a patient;

14 ~~(8)~~~~(7)~~ "Patient" means an individual who receives or should have received health care
15 from a health care provider under a contract, express or implied, and includes a
16 person having a claim of any kind, whether derivative or otherwise, related to
17 alleged malpractice on the part of a health care provider. Derivative claims include
18 the claim of a spouse, parent, guardian, trustee, child, relative, heir, beneficiary,
19 estate of the patient, representative of the patient's estate, attorney, or any other
20 representative of the patient, including claims for loss of services, wrongful death,
21 loss of consortium, expenses, and other similar claims; and

22 ~~(9)~~~~(8)~~ "Tort" means a legal wrong, breach of duty, or negligent or unlawful act or
23 omission proximately causing injury or damage to another.

24 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
25 READ AS FOLLOWS:

26 *No malpractice or malpractice-related claim may be commenced in a court in*
27 *Kentucky unless it is accompanied by an affidavit of merit, or if a medical review panel*

1 has given an opinion pursuant to KRS 216C.180(2)(a), by the panel opinion.

2 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
3 READ AS FOLLOWS:

4 (1) Except as provided in subsection (2) of this section, in any malpractice or
5 malpractice-related claim against a health care provider, the amount of the
6 claimant's attorneys' fees shall not be greater than:

7 (a) Thirty-five percent (35%) of the first one hundred thousand dollars
8 (\$100,000) of any awarded damages;

9 (b) Twenty-five percent (25%) of the next one hundred thousand dollars
10 (\$100,000) of any awarded damages; and

11 (c) Ten percent (10%) of the balance of any awarded damages.

12 (2) A claimant may pay for the attorneys' services on a per diem basis, by written
13 agreement executed at the time the attorneys are retained.

14 ➔Section 4. KRS 311.377 is amended to read as follows:

15 (1) Any person who applies for, or is granted staff privileges after June 17, 1978, by any
16 health services organization subject to licensing under the certificate of need and
17 licensure provisions of KRS Chapter 216B, shall be deemed to have waived as a
18 condition of such application or grant, any claim for damages for any good faith
19 action taken by any person who is a member, participant in or employee of or who
20 furnishes information, professional counsel, or services to any committee, board,
21 commission, or other entity which is duly constituted by any licensed hospital,
22 licensed hospice, licensed home health agency, health insurer, health maintenance
23 organization, health services corporation, organized medical staff, medical society,
24 or association affiliated with the American Medical Association, American Podiatry
25 Association, American Dental Association, American Osteopathic Association, or
26 the American Hospital Association, or a medical care foundation affiliated with such
27 a medical society or association, or governmental or quasigovernmental agency

1 when ~~the~~^[such] entity is performing the designated function of review of credentials
2 or retrospective review and evaluation of the competency of professional acts or
3 conduct of other health care personnel. This subsection shall have equal application
4 to, and the waiver be effective for, those persons who, subsequent to June 17, 1978,
5 continue to exercise staff privileges previously granted by any such health services
6 organization.

7 (2) At all times in performing a designated professional review function, the
8 proceedings, records, opinions, conclusions, and recommendations of any
9 committee, board, commission, medical staff, professional standards review
10 organization, or other entity, as referred to in subsection (1) of this section shall be
11 confidential and privileged and shall not be subject to discovery, subpoena, or
12 introduction into evidence, in any civil action in any court, **including but not limited**
13 **to medical malpractice actions, actions arising out of review of credentials or**
14 **retrospective review and evaluation as referred to in subsection (1) of this section,**
15 **and actions by an applicant for or grantee of staff privileges as referred to in**
16 **subsection (1) of this section,** or in any administrative proceeding before any board,
17 body, or committee, whether federal, state, county, or city, except as specifically
18 provided with regard to the board in KRS 311.605(2). This subsection shall not
19 apply to any proceedings or matters governed exclusively by federal law or federal
20 regulation.

21 (3) Nothing in subsection (2) of this section shall be construed to restrict or limit the
22 right to discover or use in any civil action or other administrative proceeding any
23 evidence, document, or record which is subject to discovery independently of the
24 proceedings of the entity to which subsection (1) of this section refers.

25 (4) No person who presents or offers evidence in proceedings described in subsection
26 (2) of this section or who is a member of any entity before which such evidence is
27 presented or offered may refuse to testify in discovery or upon a trial of any civil

1 action as to any evidence, document, or record described in subsection (3) of this
 2 section or as to any information within his own knowledge, except as provided in
 3 subsection (5) of this section.

4 (5) No person shall be permitted or compelled to testify concerning his testimony or the
 5 testimony of others except that of a defendant given in any proceeding referred to in
 6 subsection (2) of this section, or as to any of his opinions formed as a result of
 7 the~~[such]~~ proceeding.

8 (6) In any action in which the denial, termination, or restriction of staff membership or
 9 privileges by any health care facility shall be in issue, agents, employees, or other
 10 representatives of a health care entity may with the consent of the~~[such]~~ health care
 11 entity testify concerning any evidence presented in proceedings related to the
 12 facility's denial of ~~[such]~~ staff membership or privileges.

13 (7) Nothing in this section shall be construed to restrict or prevent the presentation of
 14 testimony, records, findings, recommendations, evaluations, opinions, or other
 15 actions of any entity described in subsection (1) of this section, in any statutory or
 16 administrative proceeding related to the functions or duties of the~~[such]~~ entity.

17 (8) In addition to the foregoing, the immunity provisions of the federal Health Care
 18 Quality Improvement Act of 1986, P.L. 99-660, shall be effective arising under state
 19 laws as of July 15, 1988.

20 ➔Section 5. KRS 422.317 is amended to read as follows:

21 (1) Upon a patient's written request, a hospital licensed under KRS Chapter 216B or a
 22 health care provider shall provide, without charge to the patient, a copy of the
 23 patient's medical records and billing records. Except as otherwise provided by law,
 24 a health care provider or contractor may charge a reproduction fee, not to exceed
 25 the limits established in this subsection, to a person other than the patient who
 26 requests a copy of the patient's medical records and billing records. This section
 27 shall apply to records requested by subpoena pursuant to KRS 422.305~~[record. A~~

1 copying fee, not to exceed one dollar (\$1) per page, may be charged by the health
2 care provider for furnishing a second copy of the patient's medical record upon
3 request either by the patient or the patient's attorney or the patient's authorized
4 representative].

5 (a) A health care provider or contractor may require the payment of any fees
6 before delivering the records, and shall provide an itemized invoice.

7 (b) The fees for providing reproductions of medical records and billing records
8 pursuant to this section shall not exceed:

9 1. For records stored in paper format or in an electronic health record
10 system and delivered to the requestor on paper or other tangible
11 medium, by e-mail, or through an Internet portal, one dollar (\$1) per
12 page for the first twenty (20) pages, fifty cents (\$0.50) per page for
13 pages twenty-one (21) to two hundred (200), and twenty-five cents
14 (\$0.25) for each page thereafter, plus actual postage and taxes. The
15 fee for records stored in an electronic health record system and
16 delivered by e-mail or through an Internet portal shall not exceed two
17 hundred dollars (\$200);

18 2. For records stored on microfilm or microfiche, one dollar (\$1) per
19 page;

20 3. For copies of X-rays, films, slides, and other images:

21 A. Twenty-five dollars (\$25) for each CD or DVD; or

22 B. Five dollars (\$5) for each tangible reproduction requested;

23 4. For all requests, a twenty-five dollar (\$25) search and retrieval fee;

24 5. If no records responsive to the request are located, a fee of fifteen
25 dollars (\$15) to provide a response stating that no records responsive
26 to the request can be located;

27 6. For certifying the records, pursuant to KRS 422.305, if requested, ten

1 dollars (\$10); or

2 7. For a request for records necessary for a Social Security disability
 3 application or appeal from denial of benefits, submitted with proof of
 4 the application or request, twenty-five dollars (\$25).

5 For each calendar year beginning after December 31, 2018, upon
 6 publication of the annual consumer price index by the United States
 7 Department of Labor, the Department for Public Health shall calculate the
 8 fees established by this section by applying the increase in the consumer
 9 price index to the fees in effect for the previous year.

10 (2) The Department of Corrections shall not be considered as a health care provider
 11 under this section; however, the department may make medical records of an
 12 individual inmate available to that individual inmate unless the department, through
 13 its designee, determines that the provision of the record is subject to the provisions
 14 of KRS 197.025.

15 ➔SECTION 6. A NEW SECTION OF THE KENTUCKY RULES OF
 16 EVIDENCE IS CREATED TO READ AS FOLLOWS:

17 (1) A statement, writing, or action that expresses sympathy, compassion,
 18 commiseration, or a general sense of benevolence relating to the pain, suffering,
 19 or death of an individual and that is made to that individual or the individual's
 20 family is inadmissible as evidence of an admission of liability in an action for
 21 medical malpractice.

22 (2) This section does not apply to a statement of fault, negligence, or culpable
 23 conduct that is part of or made in addition to a statement, writing, or action
 24 described in subsection (1) of this section.

25 (3) As used in this section, "family" means spouse, parent, grandparent, stepmother,
 26 stepfather, child, adopted child, grandchild, brother, sister, half-brother, half-
 27 sister, father-in-law, or mother-in-law.