



will notify the parties at which time they will alternate striking attorneys until the remaining attorney is named chairperson.

Attorneys being considered by CHFS to act as panel chairperson must have applied to serve as chairperson, be on the list of attorneys to be maintained by CHFS as possible chairpersons, and practice in the Supreme Court district in which the case would be filed. If five attorneys cannot be drawn from the district, they shall be drawn from an adjacent Supreme Court district. CHFS may excuse an attorney from serving if serving would constitute an unreasonable burden or undue hardship.

When reasonably possible, the list of prospective panelist shall include only those licensed in Kentucky.

The opinion of the panel which might be admissible as evidence in any subsequent court action will state in part one of the three outcomes:

- Failure to comply with appropriate standards and the conduct was a substantial factor in producing a negative outcome for the patient;
- Failure to comply with appropriate standards and the conduct was NOT a substantial factor in producing a negative outcome for the patient; and
- Evidence does not conclude that there was a failure to meet the applicable standard of care.

A filing fee as determined by CHFS shall accompany each complaint filed.

Evidence may be submitted in written or electronic form. The plaintiff's evidence shall be submitted to the panel within 60 days.

The panel may conduct a hearing to question counsel or ask the parties to answer specific questions.

If the panel has not given its opinion within nine months after filing the proposed complaint, the plaintiff may commence the action in court. The panel may continue its work to reach an opinion. The opinion may, upon motion, be admitted into evidence as an expert opinion subject to cross-examination.

After the panel gives its opinions, the panel is dissolved and shall take no further action.

**SB 4 HCS retains the major provisions of the measure as introduced and makes the following changes in the bill:**

Removes language defining a "malpractice-related claim" as a "breach of contract."

If the panel has not given its opinion within nine months after filing the proposed complaint, the plaintiff may commence the action in court.

Removes language providing for a \$100 filing fee and a \$10 processing fee for each complaint filed, and now provides for a filing fee only as established by CHFS.  
Removes language providing for the director of the Kentucky Bar Association to select a chairperson. This selection is now the responsibility of CHFS.

Removes language requiring that attorneys being considered by CHFS to act as panel chairperson to maintain offices in the county of venue or a contiguous county.

Language added to require attorneys being considered by CHFS to act as a panel chairperson to have applied to serve as chairperson, be on the list of attorneys to be maintained by CHFS as possible chairpersons, and to practice in the Supreme Court district in which the case would be filed or, if five attorneys cannot be drawn from the district, from an adjacent Supreme Court district.

When reasonably possible, the list of prospective panelist shall include only those licensed in Kentucky.

CHFS may excuse an attorney from serving as a chairperson if serving would constitute an unreasonable burden or undue hardship.

Evidence may be submitted in written or electronic form. The time frame for which a plaintiff's evidence shall be submitted to the panel is increased from 30 days to 60 days.

The panel may conduct a hearing to question counsel or ask the parties to answer specific questions.

The time for which the plaintiff may commence the action in court due to lack of an opinion from the panel is increased from 180 days to 9 months. The panel may continue its work to reach an opinion. The opinion may upon motion, be admitted into evidence as an expert opinion subject to cross-examination.

After the panel gives its opinions, the panel is dissolved and shall take no further action.

### **Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost**

**The fiscal impact of SB 4 HCS on local governments is expected to be minimal.**

For purposes of this local government mandate analysis, only hospitals and long term care facilities owned, operated or contracted for by local governments were considered.

CHFS shows four hospitals owned, operated, or contracted by local governments. The hospitals all happen to be owned by county governments. Those hospitals are listed below:

Casey County Hospital  
Hardin Memorial Hospital  
Knox County Hospital  
Russell County Hospital

There are 3 long term care facilities owned, operated, or contracted by local governments.  
Those facilities are listed below:

Cumberland Valley Manor  
Metcalf Health Care Center  
Spring Creek Health Care.

**All cost associated with the panel** including compensation to the members, reasonable travel expenses, and any other expenses are to be paid for by the party or parties in whose favor the opinion is written. Additionally, the \$25 fee accompanying the request for CHFS to select a chairperson is paid by the party making the request.

Whereas government employees are not excluded as possible panel members, there may be cost to cover the work load of a local government employee if selected as a panel member. This could be an attorney or health care worker employed by the local government.

**Data Source(s):** LRC staff, Cabinet for Health and Family Services..

**Preparer:** Wendell F. Butler      **Reviewer:** KHC      **Date:** 2/28/17