GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2016 REGULAR SESSION

SENATE BILL NO. 20

WEDNESDAY, FEBRUARY 10, 2016

The following bill was reported to the House from the Senate and ordered to be printed.

RECEIVED AND FILED
DATE April 8, 2016
2:30pm
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

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

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO

4 READ AS FOLLOWS:

5 ***(1) As used in this section:***

6 ***(a) "Administrative appeals hearing" means a formal adjudicatory proceeding***

7 ***conducted by the administrative hearing tribunal of the Cabinet for Health***

8 ***and Family Services in accordance with KRS Chapter 13B;***

9 ***(b) "Department" means the Department for Medicaid Services;***

10 ***(c) "External independent third-party review" means a review performed by an***

11 ***independent third party outside of the Medicaid managed care***

12 ***organization's internal appeal process pursuant to administrative***

13 ***regulations promulgated by the department;***

14 ***(d) "Medicaid managed care organization" means an entity for which the***

15 ***Department for Medicaid Services has contracted to serve as a managed***

16 ***care organization as defined in 42 C.F.R. sec. 438.2; and***

17 ***(e) "Provider" means any person or entity licensed in Kentucky as defined in***

18 ***KRS 304.17A-700(9) that provides covered services to enrollees.***

19 ***(2) Notwithstanding any law to the contrary, a provider who has exhausted the***

20 ***written internal appeals process of a Medicaid managed care organization shall***

21 ***be entitled to an external independent third party review on the Medicaid***

22 ***managed care organization's final decision that denies, in whole or in part, a***

23 ***health care service to an enrollee or a claim for reimbursement to a provider for a***

24 ***health care service rendered by the provider to an enrollee of the Medicaid***

25 ***managed care organization. Multiple claims may be determined in one (1) action***

26 ***upon request of a party in accordance with administrative regulations***

27 ***promulgated by the department.***

1 *(3) A Medicaid managed care organization's letter to a provider reflecting the final*
2 *decision of the provider's internal appeal shall include:*
3 *(a) A statement that the provider's internal appeal rights within the Medicaid*
4 *managed care organization have been exhausted;*
5 *(b) A statement that the provider is entitled to an external independent third-*
6 *party review; and*
7 *(c) The time period and address to request an external independent third-party*
8 *review.*
9 *(4) A party shall be entitled to appeal a final decision of the external independent*
10 *third-party review to the administrative hearing tribunal within the Cabinet for*
11 *Health and Family Services for an administrative hearing to be held in*
12 *accordance with KRS Chapter 13B. An appeal shall be filed within thirty (30)*
13 *days from the appealing party's receipt of the final decision of the external*
14 *independent third-party review. A decision of the administrative hearing tribunal*
15 *shall be final for purposes of judicial appeal.*
16 *(5) Within one hundred twenty (120) days after the effective date of this Act, the*
17 *department shall promulgate administrative regulations to implement the*
18 *external independent third-party review as required by this section.*
19 *(6) The department shall promulgate administrative regulations to establish*
20 *reasonable fees, not to exceed one thousand dollars ($1,000), to defray expenses*
21 *associated with an administrative hearing that shall be paid by the party who does*
22 *not prevail in the administrative hearing.*
23 *(7) This section shall apply to all contracts or master agreements between Medicaid*
24 *managed care organizations and the Commonwealth of Kentucky entered into or*
25 *renewed on or after July 1, 2016.*
26 ➔Section 2. KRS 13B.020 is amended to read as follows:
27 (1) The provisions of this chapter shall apply to all administrative hearings conducted

1 by an agency, with the exception of those specifically exempted under this section.
2 The provisions of this chapter shall supersede any other provisions of the Kentucky
3 Revised Statutes and administrative regulations, unless exempted under this section,
4 to the extent these other provisions are duplicative or in conflict. This chapter
5 creates only procedural rights and shall not be construed to confer upon any person
6 a right to hearing not expressly provided by law.
7 (2) The provisions of this chapter shall not apply to:
8 (a) Investigations, hearings to determine probable cause, or any other type of
9 information gathering or fact finding activities;
10 (b) Public hearings required in KRS Chapter 13A for the promulgation of
11 administrative regulations;
12 (c) Any other public hearing conducted by an administrative agency which is
13 nonadjudicatory in nature and the primary purpose of which is to seek public
14 input on public policy making;
15 (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter
16 35;
17 (e) Administrative hearings conducted by the legislative and judicial branches of
18 state government;
19 (f) Administrative hearings conducted by any city, county, urban-county, charter
20 county, or special district contained in KRS Chapters 65 to 109, or any other
21 unit of local government operating strictly in a local jurisdictional capacity;
22 (g) Informal hearings which are part of a multilevel hearing process that affords
23 an administrative hearing at some point in the hearing process if the
24 procedures for informal hearings are approved and promulgated in accordance
25 with subsections (4) and (5) of this section;
26 (h) Limited exemptions granted for specific hearing provisions and denoted by
27 reference in the text of the applicable statutes or administrative regulations;

1 (i) Administrative hearings exempted pursuant to subsection (3) of this section;
2 (j) Administrative hearings exempted, in whole or in part, pursuant to
3 subsections (4) and (5) of this section; and
4 (k) Any administrative hearing which was commenced but not completed prior to
5 July 15, 1996.
6 (3) The following administrative hearings are exempt from application of this chapter
7 in compliance with 1994 Ky. Acts ch. 382, sec. 19:
8 (a) Finance and Administration Cabinet
9 1. Higher Education Assistance Authority
10 a. Wage garnishment hearings conducted under authority of 20
11 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
12 b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A
13 and sec. 3716, and 34 C.F.R. sec. 30.33
14 2. Department of Revenue
15 a. Any licensing and bond revocation hearings conducted under the
16 authority of KRS 138.210 to 138.448 and 234.310 to 234.440
17 b. Any license revocation hearings under KRS 131.630 and 138.130
18 to 138.205
19 (b) Cabinet for Health and Family Services
20 1. Office of Health Policy
21 a. Certificate-of-need hearings and licensure conducted under
22 authority of KRS Chapter 216B
23 b. Licensure revocation hearings conducted under authority of KRS
24 Chapter 216B
25 2. Department for Community Based Services
26 a. Supervised placement revocation hearings conducted under
27 authority of KRS Chapter 630

1 3. Department for Income Support
2 a. Disability determination hearings conducted under authority of 20
3 C.F.R. sec. 404
4 ***4. Department for Medicaid Services***
5 ***a. Administrative appeal hearings following an external***
6 ***independent third-party review of a Medicaid managed care***
7 ***organization's final decision that denies, in whole or in part, a***
8 ***health care service to an enrollee or a claim for reimbursement***
9 ***to the provider for a health care service rendered by the provider***
10 ***to an enrollee of the Medicaid managed care organization,***
11 ***conducted under authority of Section 1 of this Act***
12 (c) Justice and Public Safety Cabinet
13 1. Department of Kentucky State Police
14 a. Kentucky State Police Trial Board disciplinary hearings conducted
15 under authority of KRS Chapter 16
16 2. Department of Corrections
17 a. Parole Board hearings conducted under authority of KRS Chapter
18 439
19 b. Prison adjustment committee hearings conducted under authority
20 of KRS Chapter 197
21 c. Prison grievance committee hearings conducted under authority of
22 KRS Chapters 196 and 197
23 3. Department of Juvenile Justice
24 a. Supervised placement revocation hearings conducted under KRS
25 Chapter 635
26 (d) Energy and Environment Cabinet
27 1. Department for Natural Resources

1 a. Surface mining hearings conducted under authority of KRS
2 Chapter 350
3 2. Department for Environmental Protection
4 a. Wild River hearings conducted under authority of KRS Chapter
5 146
6 b. Water resources hearings conducted under authority of KRS
7 Chapter 151
8 c. Water plant operator and water well driller hearings conducted
9 under authority of KRS Chapter 223
10 d. Environmental protection hearings conducted under authority of
11 KRS Chapter 224
12 e. Petroleum Storage Tank Environmental Assurance Fund hearings
13 under authority of KRS Chapter 224
14 3. Public Service Commission
15 a. Utility hearings conducted under authority of KRS Chapters 74,
16 278, and 279
17 (e) Labor Cabinet
18 1. Department of Workers' Claims
19 a. Workers' compensation hearings conducted under authority of
20 KRS Chapter 342
21 2. Kentucky Occupational Safety and Health Review Commission
22 a. Occupational safety and health hearings conducted under authority
23 of KRS Chapter 338
24 (f) Public Protection Cabinet
25 1. Board of Claims
26 a. Liability hearings conducted under authority of KRS Chapter 44
27 (g) Education and Workforce Development Cabinet

1 1. Unemployment Insurance hearings conducted under authority of KRS
2 Chapter 341
3 (h) Secretary of State
4 1. Registry of Election Finance
5 a. Campaign finance hearings conducted under authority of KRS
6 Chapter 121
7 (i) State universities and colleges
8 1. Student suspension and expulsion hearings conducted under authority of
9 KRS Chapter 164
10 2. University presidents and faculty removal hearings conducted under
11 authority of KRS Chapter 164
12 3. Campus residency hearings conducted under authority of KRS Chapter
13 164
14 4. Family Education Rights to Privacy Act hearings conducted under
15 authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
16 5. Federal Health Care Quality Improvement Act of 1986 hearings
17 conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS
18 Chapter 311.
19 (4) Any administrative hearing, or portion thereof, may be certified as exempt by the
20 Attorney General based on the following criteria:
21 (a) The provisions of this chapter conflict with any provision of federal law or
22 regulation with which the agency must comply, or with any federal law or
23 regulation with which the agency must comply to permit the agency or
24 persons within the Commonwealth to receive federal tax benefits or federal
25 funds or other benefits;
26 (b) Conformity with the requirement of this chapter from which exemption is
27 sought would be so unreasonable or so impractical as to deny due process

1 because of undue delay in the conduct of administrative hearings; or
2 (c) The hearing procedures represent informal proceedings which are the
3 preliminary stages or the review stages of a multilevel hearing process, if the
4 provisions of this chapter or the provisions of a substantially equivalent
5 hearing procedure exempted under subsection (3) of this section are applied at
6 some level within the multilevel process.
7 (5) The Attorney General shall not exempt an agency from any requirement of this
8 chapter until the agency establishes alternative procedures by administrative
9 regulation which, insofar as practical, shall be consistent with the intent and purpose
10 of this chapter. When regulations for alternative procedures are submitted to the
11 Administrative Regulation Review Subcommittee, they shall be accompanied by the
12 request for exemption and the approval of exemption from the Attorney General.
13 The decision of the Attorney General, whether affirmative or negative, shall be
14 subject to judicial review in the Franklin Circuit Court within thirty (30) days of the
15 date of issuance. The court shall not overturn a decision of the Attorney General
16 unless the decision was arbitrary or capricious or contrary to law.
17 (6) Except to the extent precluded by another provision of law, a person may waive any
18 procedural right conferred upon that person by this chapter.
19 ➔Section 3. Whereas the effective operation of the Medicaid program is of
20 tantamount importance to the health and welfare of the Commonwealth, and a new fiscal
21 year begins on July 1, 2016, an emergency is declared to exist, and this Act takes effect
22 upon its passage and approval by the Governor or upon its otherwise becoming a law.

President of Senate

Speaker-House of Representatives

Attest: Chief Clerk of Senate

Approved Governor

Date 8 APRIL 2016