

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 the**
6 **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 the**
17 **primary affiant is not a physician, stating that the breach caused injury to**
18 **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
15 care 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 thirty-three percent (33%) of
7 any awarded damages.

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

10 ➔Section 4. KRS 422.317 is amended to read as follows:

11 (1) Upon a patient's written request, a hospital licensed under KRS Chapter 216B or a
12 health care provider shall provide, without charge to the patient or the patient's
13 health care provider, one (1) non-assignable,~~[a]~~ copy of the patient's medical
14 records and billing records. Except as otherwise provided by law, a health care
15 provider or contractor may charge a reproduction fee, not to exceed the limits
16 established in this subsection, to a person other than the patient who requests a
17 copy of the patient's medical records and billing records. This section shall apply
18 to records requested by subpoena pursuant to KRS 422.305~~[record. A copying fee,~~
19 ~~not to exceed one dollar (\$1) per page, may be charged by the health care provider~~
20 ~~for furnishing a second copy of the patient's medical record upon request either by~~
21 ~~the patient or the patient's attorney or the patient's authorized representative].~~

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

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

26 1. For records stored in paper format or in an electronic health record
27 system and delivered to the requestor on paper or other tangible

- 1 medium, by e-mail, or through an Internet portal, one dollar (\$1) per
2 page for the first twenty (20) pages, fifty cents (\$0.50) per page for
3 pages twenty-one (21) to two hundred (200), and twenty-five cents
4 (\$0.25) for each page thereafter, plus actual postage and taxes. The
5 per page fee for records stored in an electronic health record system
6 and delivered by e-mail or through an Internet portal shall not exceed
7 two hundred dollars (\$200);
- 8 2. For records stored on microfilm or microfiche, one dollar (\$1) per
9 page;
- 10 3. For copies of X-rays, films, slides, and other images:
- 11 A. Twenty-five dollars (\$25) for each CD or DVD; or
12 B. Five dollars (\$5) for each tangible reproduction requested;
- 13 4. For all requests, a twenty-five dollar (\$25) search and retrieval fee in
14 addition to the fees in subparagraphs 1. through 3. of this paragraph;
- 15 5. If no records responsive to the request are located, a fee of fifteen
16 dollars (\$15) to provide a response stating that no records responsive
17 to the request can be located;
- 18 6. For certifying the records, pursuant to KRS 422.305, if requested, ten
19 dollars (\$10);
- 20 7. For a request by Kentucky legal aid on behalf of a patient, the first
21 request per calendar year shall be free of charge; or
- 22 8. For a request for records by attorneys representing a patient applying
23 for Social Security disability benefits or appealing a denial of benefits
24 under the Social Security Act and submitted with form SSA-1696, the
25 first request per calendar year shall be free of charge, and for each
26 subsequent request, twenty-five dollars (\$25).
- 27 For each calendar year beginning after December 31, 2018, upon

1 publication of the annual consumer price index by the United States
 2 Department of Labor, the Department for Public Health shall calculate the
 3 fees established by this section by applying the increase in the consumer
 4 price index to the fees in effect for the previous year.

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

10 ➔SECTION 5. A NEW SECTION OF THE KENTUCKY RULES OF
 11 EVIDENCE IS CREATED TO READ AS FOLLOWS:

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

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

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