

H. B. 2589

(By Delegates Ellington, Householder and Pasdon)

[Introduced February 4, 2015; referred to the

Committee on Health and Human Resources then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-13, relating to judicial review of decisions of the West Virginia Department of Health and Human Resources Board of Review and the Bureau of Medical Services affecting applicants, recipients or providers of state or federal assistance programs.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §9-2-13, to read as follows:

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-13. Judicial review of decisions of contested cases.

(a) For purposes of this section:

(1) "Agency" means the Board of Review or the Bureau for Medical Services, as the case may be, that has been named as a party to any proceeding on appeal made pursuant to the provisions

1 of this section.

2 (2) "Board of Review" or "board" means the West Virginia Department of Health and Human
3 Resources Board of Review operating pursuant to the provisions of subdivision (13), section six of
4 this article.

5 (3) "Bureau" means the Department of Health and Human Resources Bureau for Medical
6 Services which is the single state agency for Medicaid services in West Virginia.

7 (b) The board shall provide a fair, impartial, and expeditious grievance and appeal process
8 to applicants or recipients of state assistance, federal assistance, federal-state assistance or welfare
9 assistance, as defined in article one of this chapter. The bureau shall provide a fair, impartial, and
10 expeditious grievance and appeal process to providers of Medicaid services.

11 (c) Any party adversely affected or aggrieved by a final decision or order of the agency may
12 seek judicial review of that decision.

13 (d) Proceedings for review shall be instituted by filing a petition, at the election of the
14 petitioner, in either the circuit court of Kanawha County, West Virginia or in the circuit court of the
15 county in which the petitioner or any one of the petitioners resides or does business, or with the judge
16 thereof in vacation, within thirty days after the date upon which such party received notice of the
17 final order or decision of the agency. A copy of the petition shall be served upon the agency and all
18 other parties of record by registered or certified mail. The petition shall state whether the appeal is
19 taken on questions of law or questions of fact, not both. No appeal bond is required to effect any
20 such appeal.

21 (e) The filing of the petition for appeal does not stay or supercede enforcement of the final
22 decision or order of the agency. The agency may voluntarily stay such enforcement, and the

1 appellant, at any time after the filing of the petition for appeal, may apply to the circuit court of
2 Kanawha County or in the circuit court of the county in which the petitioner or any one of the
3 petitioners resides or does business, for a stay of or to supersede the final decision or order. Pending
4 the appeal, the circuit court may grant a stay or supersede the order upon such terms as it considers
5 proper.

6 (f) Within fifteen days after receipt of a copy of the petition by the agency, or within such
7 further time as the court may allow, the agency shall prepare and transmit to the circuit court of
8 Kanawha County or in the circuit court of the county in which the petitioner or any one of the
9 petitioners resides or does business, the original or a certified copy of the entire record of the
10 proceeding under review. This shall include a transcript of all reported testimony and all exhibits,
11 papers, motions, documents, evidence, records, agency staff memoranda and data used in
12 consideration of the case, all briefs, memoranda, papers and records considered by the agency in the
13 underlying proceeding, and a statement of matters officially noted. By stipulation of the parties, the
14 record may be shortened. In the event the complete record is not filed with the court within the time
15 provided in this section, the appellant may apply to the court to have the case docketed, and the court
16 shall order the agency to file the record.

17 (g) The cost of preparing the official record shall be assessed as part of the costs of the
18 appeal. The appellant shall provide security for costs satisfactory to the court. Any party
19 unreasonably refusing to stipulate to limit the record may be assessed by the court for the additional
20 costs involved. Upon demand by any party to the appeal, the agency shall furnish, at cost to the
21 requesting party, a copy of the official record.

22 (h) The court shall hear appeals upon assignments of error filed in the petition or set out in

1 the briefs filed by the parties. The court, in its discretion, may disregard errors not argued by brief
2 or may consider errors that are not assigned or argued. The court shall fix a date and time for the
3 hearing on the petition. Unless otherwise agreed by the parties, the court shall not schedule the
4 hearing sooner than ten days after the filing of the petition for appeal. The petitioner shall provide
5 notice of the date and time of the hearing to the agency.

6 (i) In cases involving alleged irregularities in procedure before the agency that are not shown
7 in the record, the court may take additional testimony. Otherwise, the circuit court shall review the
8 appeal without a jury and may only consider the official record provided pursuant to the
9 requirements of this section. The court may hear oral arguments and require written briefs.

10 (j) The court may affirm the final decision or order of the agency or remand the matter for
11 further proceedings. The court may reverse, vacate or modify the final decision or order of the
12 agency only if the substantial rights of the petitioner have been prejudiced because the administrative
13 findings, inferences, conclusions, decision or order are:

14 (1) In violation of constitutional or statutory provisions;

15 (2) In excess of the statutory authority or jurisdiction of the agency;

16 (3) Made upon unlawful procedures;

17 (4) Affected by other error of law;

18 (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole
19 record; or

20 (6) Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted
21 exercise of discretion.

22 (k) The judgment of the circuit court is final unless reversed, vacated or modified on appeal

- 1 to the West Virginia Supreme Court of Appeals.
- 2 (l) The process established by this section is the exclusive remedy for judicial review of final
- 3 decisions of the Board of Review and the Bureau for Medical Services.

NOTE: The purpose of this bill is to establish an appeal process for decisions issued by the West Virginia Department of Health and Human Resources Board of Review and the Bureau for Medical Services. Appeals shall be filed with the circuit court of Kanawha County, West Virginia, or the circuit court in the county in which the petitioner resides or does business and shall be determined under the clearly wrong, abuse of discretion standards.

The section is new; therefore, it has been completely underscored.