

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4453**

BY DELEGATES SHOTT, FLEISCHAUER, PETHTEL, ISNER,

LOVEJOY, HORNBUCKLE, BYRD, CANESTRARO, LANE,

MOORE AND SUMMERS

[Passed March 8, 2018; in effect ninety days from passage.]



1 AN ACT to amend and reenact §9-2-13 of the Code of West Virginia, 1931, as amended, relating  
2 to judicial review of contested cases under the West Virginia Department of Health and  
3 Human Resources Board of Review; correcting an error by changing “not” to “or”; and  
4 making other technical changes.

*Be it enacted by the Legislature of West Virginia:*

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

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

1 (a) For purposes of this section:

2 (1) “Agency” means the Board of Review or the Bureau for Medical Services, as the case  
3 may be, that has been named as a party to any proceeding on appeal made pursuant to the  
4 provisions of this section.

5 (2) “Board of Review” or “Board” means the West Virginia Department of Health and  
6 Human Resources Board of Review operating pursuant to the provisions of §9-2-6 (13) of this  
7 code.

8 (3) “Bureau” means the Department of Health and Human Resources’ Bureau for Medical  
9 Services which is the single state agency for Medicaid services in West Virginia.

10 (b) The board shall provide a fair, impartial and expeditious grievance and appeal process  
11 to applicants or recipients of state assistance, federal assistance, federal-state assistance or  
12 welfare assistance, as defined in §9-1-1 *et seq.* of this code. The bureau shall provide a fair,  
13 impartial and expeditious grievance and appeal process to providers of Medicaid services.

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

16 (d) Proceedings for review shall be instituted by filing a petition, at the election of the  
17 petitioner, in either the circuit court of Kanawha County, West Virginia, or in the circuit court of the

18 county in which the petitioner or any one of the petitioners resides or does business, or with the  
19 judge thereof in vacation, within thirty days after the date upon which such party received notice  
20 of the final order or decision of the agency. A copy of the petition shall be served upon the agency  
21 and all other parties of record by registered or certified mail. The petition shall state whether the  
22 appeal is taken on questions of law or questions of fact, or both. No appeal bond is required to  
23 effect any such appeal.

24 (e) The filing of the petition for appeal does not stay or supersede enforcement of the final  
25 decision or order of the agency. The agency may voluntarily stay such enforcement and the  
26 appellant, at any time after the filing of the petition for appeal, may apply to the circuit court of  
27 Kanawha County, or in the circuit court of the county in which the petitioner or any one of the  
28 petitioners resides or does business, for a stay of or to supersede the final decision or order.  
29 Pending the appeal, the circuit court may grant a stay or supersede the order upon such terms  
30 as it considers proper.

31 (f) Within 15 days after receipt of a copy of the petition by the agency, or within such further  
32 time as the court may allow, the agency shall prepare and transmit to the circuit court of Kanawha  
33 County, or in the circuit court of the county in which the petitioner or any one of the petitioners  
34 resides or does business, the original or a certified copy of the entire record of the proceeding  
35 under review: *Provided*, That all records prepared and transmitted that involve a minor shall be  
36 filed under seal. This shall include a transcript of all reported testimony and all exhibits, papers,  
37 motions, documents, evidence, records, agency staff memoranda and data used in consideration  
38 of the case, all briefs, memoranda, papers, and records considered by the agency in the  
39 underlying proceeding and a statement of matters officially noted. By stipulation of the parties,  
40 the record may be shortened. In the event the complete record is not filed with the court within  
41 the time provided for in this section, the appellant may apply to the court to have the case  
42 docketed and the court shall order the agency to file the record.

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

48 (h) The court shall hear appeals upon assignments of error filed in the petition or set out  
49 in the briefs filed by the parties. The court may disregard errors not argued by brief or may  
50 consider errors that are not assigned or argued. The court shall fix a date and time for the hearing  
51 on the petition. Unless otherwise agreed by the parties, the court may not schedule the hearing  
52 sooner than 10 days after the filing of the petition for appeal. The petitioner shall provide notice  
53 of the date and time of the hearing to the agency.

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

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

- 62 (1) In violation of constitutional or statutory provisions;
- 63 (2) In excess of the statutory authority or jurisdiction of the agency;
- 64 (3) Made upon unlawful procedures;
- 65 (4) Affected by other error of law;
- 66 (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole  
67 record; or

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

70           (k) The judgment of the circuit court is final unless reversed, vacated or modified on appeal  
71           to the West Virginia Supreme Court of Appeals.

72           (l) The process established by this section is the exclusive remedy for judicial review of  
73           final decisions of the Board of Review and the Bureau for Medical Services.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2018.

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*Governor*