

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4453

BY DELEGATES SHOTT, FLEISCHAUER, PETHTEL, ISNER,

LOVEJOY, HORNBUCKLE, BYRD, CANESTRARO, LANE,

MOORE AND SUMMERS

[INTRODUCED FEBRUARY 7, 2018; REFERRED

TO THE COMMITTEE ON THE JUDICIARY.]

1 A BILL 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; and correcting an error by changing “not” to “or”.

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, ~~not~~ or both. No appeal bond is required
23 to effect any such appeal.

24 (e) The filing of the petition for appeal does not stay or supercede 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 ~~it its discretion~~ may disregard errors not argued by brief
50 or may consider errors that are not assigned or argued. The court shall fix a date and time for the
51 hearing on the petition. Unless otherwise agreed by the parties, the court ~~shall~~ may not schedule
52 the hearing sooner than 10 days after the filing of the petition for appeal. The petitioner shall
53 provide notice of the date and time of the hearing to the agency.

54 (l) 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.

NOTE: The purpose of this bill is to correct an error in this section by changing “not” to “or”
“in §9-2-13(d).

Strike-throughs indicate language that would be stricken from a heading or the present law
and underscoring indicates new language that would be added.