

FILED

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ENROLLED

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**Senate Bill No. 295**

(BY SENATORS FERNS AND TRUMP)

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[Passed March 14, 2015; in effect ninety days from passage.]

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AN ACT 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 for 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.**

- 1       (a) For purposes of this section:
- 2       (1) "Agency" means the Board of Review or the Bureau
- 3       for Medical Services, as the case may be, that has been

4 named as a party to any proceeding on appeal made pursuant  
5 to the provisions of this section.

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

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

13 (b) The board shall provide a fair, impartial and  
14 expeditious grievance and appeal process to applicants or  
15 recipients of state assistance, federal assistance, federal-state  
16 assistance or welfare assistance, as defined in article one of  
17 this chapter. The bureau shall provide a fair, impartial and  
18 expeditious grievance and appeal process to providers of  
19 Medicaid services.

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

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

35 (e) The filing of the petition for appeal does not stay or  
36 supercede enforcement of the final decision or order of the  
37 agency. The agency may voluntarily stay such enforcement  
38 and the appellant, at any time after the filing of the petition  
39 for appeal, may apply to the circuit court of Kanawha  
40 County, or in the circuit court of the county in which the  
41 petitioner or any one of the petitioners resides or does  
42 business, for a stay of or to supersede the final decision or  
43 order. Pending the appeal, the circuit court may grant a stay  
44 or supersede the order upon such terms as it considers proper.

45 (f) Within fifteen days after receipt of a copy of the  
46 petition by the agency, or within such further time as the  
47 court may allow, the agency shall prepare and transmit to the  
48 circuit court of Kanawha County, or in the circuit court of the  
49 county in which the petitioner or any one of the petitioners  
50 resides or does business, the original or a certified copy of the  
51 entire record of the proceeding under review: *Provided*, That  
52 all records prepared and transmitted that involve a minor  
53 shall be filed under seal. This shall include a transcript of all  
54 reported testimony and all exhibits, papers, motions,  
55 documents, evidence, records, agency staff memoranda and  
56 data used in consideration of the case, all briefs, memoranda,  
57 papers and records considered by the agency in the  
58 underlying proceeding and a statement of matters officially  
59 noted. By stipulation of the parties, the record may be  
60 shortened. In the event the complete record is not filed with  
61 the court within the time provided for in this section, the  
62 appellant may apply to the court to have the case docketed  
63 and the court shall order the agency to file the record.

64 (g) The cost of preparing the official record shall be  
65 assessed as part of the costs of the appeal. The appellant shall  
66 provide security for costs satisfactory to the court. Any party  
67 unreasonably refusing to stipulate to limit the record may be  
68 assessed by the court for the additional costs involved. Upon

69 demand by any party to the appeal, the agency shall furnish,  
70 at cost to the requesting party, a copy of the official record.

71 (h) The court shall hear appeals upon assignments of  
72 error filed in the petition or set out in the briefs filed by the  
73 parties. The court, at its discretion, may disregard errors not  
74 argued by brief or may consider errors that are not assigned  
75 or argued. The court shall fix a date and time for the hearing  
76 on the petition. Unless otherwise agreed by the parties, the  
77 court shall not schedule the hearing sooner than ten days after  
78 the filing of the petition for appeal. The petitioner shall  
79 provide notice of the date and time of the hearing to the  
80 agency.

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

88 (j) The court may affirm the final decision or order of the  
89 agency or remand the matter for further proceedings. The  
90 court may reverse, vacate or modify the final decision or  
91 order of the agency only if the substantial rights of the  
92 petitioner have been prejudiced because the administrative  
93 findings, inferences, conclusions, decision or order are:

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

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

97 (3) Made upon unlawful procedures;

98           **(4) Affected by other error of law;**

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

101           **(6) Arbitrary or capricious or characterized by an abuse**  
102 **of discretion or clearly unwarranted exercise of discretion.**

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

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

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

*Mark R. Hayward*  
.....  
Chairman Senate Committee

*John B. Mc*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Clark S. Barnes*  
.....  
Clerk of the Senate

*Stephan J. Harris*  
.....  
Clerk of the House of Delegates

*Willie P. Hale*  
.....  
President of the Senate

*Carlisle*  
.....  
Speaker of the House of Delegates

The within *is approved* this the *12<sup>th</sup>*  
Day of *April* ..... 2015.

*Earl Ray Tomblin*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2015

Time 3:15 pm