KNOW THE FACTS

Medical Review Panels are Constitutional in Kentucky

SUMMARY

Medical review panel legislation very similar to the process supported by the Care First Kentucky Coalition in Senate Bill 119 has been upheld in Indiana and Louisiana in response to a variety of constitutional challenges. Courts have found that the rationale underlying the medical review panel process is sound and that review panels clearly benefit both medical malpractice claimants and healthcare providers. Indiana and Louisiana's constitutional provisions are similar to Kentucky's Constitution, particularly with regard to each state's Open Access Provision.

Therefore, we believe that medical review panel legislation would withstand constitutional challenges in Kentucky since such challenges have already been analyzed and rejected by both Indiana and Louisiana courts.

KENTUCKY'S CONSTITUTION

Kentucky's Jural Rights Doctrine is a judicially-created doctrine which is based on Sections 14, 54, and 241 of the Kentucky Constitution. Williams v. Wilson, 972 S.W.2d 260, 265-67 (Ky. 1998). Those sections relate generally to a person's right to recover for injuries and specifically provide that:

- All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Ky. Const. § 14.
- The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property. Ky. Const. § 54.
- Whenever the death of a person shall result from an injury inflicted by negligence or wrongful act, then, in every such case, damages may be recovered for such death, from the corporations and persons so causing the same. Until otherwise provided by law, the action to recover such damages shall in all cases be prosecuted by the personal representative of the deceased person. The General Assembly may provide how the recovery shall go and to whom belong; and until such provision is made, the same shall form part of the personal estate of the deceased person. Ky. Const. § 241.

WHAT OPPONENTS OF SENATE BILL 119 WILL SAY

The medical review panel process could run afoul of the certain sections of the Kentucky Constitution.

WHAT THE FACTS SAY

Other states have specifically held that medical review panels are constitutional under provisions that are virtually identical to Section 14 of Kentucky's Constitution. Further, Section 54 and Section 241 of our Constitution would not apply to the medical review panel process because it does not limit any amount that could be recovered at trial and it does not restrict any damages that may be recovered for wrongful death.

THE BOTTOM LINE

Medical review panels are constitutional because they do not prohibit the guarantee of open access to the courts.
THE FACTS TELL THE STORY ABOUT MERITLESS LAWSUITS IN KENTUCKY & BEYOND

Opponents of medical liability reform in Kentucky falsely say there are no facts to support healthcare provider claims of meritless lawsuits filed by aggressive personal injury lawyers. But, perhaps they should pay a little more attention in class.

The FACTs Speak for Themselves

1. A 2014 report by the American College of Emergency Physicians gave Kentucky’s ERs a D Grade and cited our state’s medical liability climate as a major factor in keeping emergency room doctors from relocating to our state.

2. A 2013 independent study by AON Risk Solutions found that Kentucky’s long-term care facilities face the worst environment in the nation for long term care litigation and pay some of the nation’s highest liability insurance rates.

3. In 2012, the Kentucky Department of Insurance found that 415 claims against healthcare providers resulted in an astounding $96.3 million in settlements.

4. A 2011 study supported by the RAND Institute for Civil Justice & the National Institute on Aging found that 75% of all physicians in low-risk specialties face medical malpractice claims by the time they are 65. In high-risk specialties it jumps to 99%.

5. A 2010 report by the American Medical Association found that 61% of all doctors will have been sued by the time they reach 55.

Why Should you Support Senate Bill 119?

- Because meritless Lawsuits are bad for patients, bad for caregivers and bad for Kentucky!
- Because SB 119 offers a fair and simple solution to weed out meritless claims while expediting and strengthening legitimate claims.
- Because SB 119 in no way denies or delays any Kentuckian’s access to courts.
- Because it is time to put the focus of healthcare where it belongs: on Patients, not Lawsuits.

www.CareFirstKY.com
Kentucky's health care providers have joined forces to tackle a major problem impacting care in our Commonwealth: meritless lawsuits brought by predatory personal injury lawyers. The Care First Kentucky Coalition supports Senate Bill 119 to implement a medical review panel (MRP) process to provide an independent evaluation of claims brought against health care providers.

Personal injury lawyers from across the country will spare no expense to protect their mostly taxpayer funded pot of gold at the end of Kentucky's rainbow. As legislators take up Senate Bill 119 during this legislative session, it is imperative that they dismiss the rhetoric and focus on the facts.

What SB 119 Does:
- Establishes an independent panel of three medical experts to review claims against health care providers.
- Provides a timely, independent, medical opinion on the standard of care that is admissible in court.
- Provides another layer of accountability for Kentucky health care providers and personal injury lawyers.

What SB 119 Does NOT Do:
- Does NOT limit, delay, or deny a patient's or their family's access to court. Any claim can still proceed.
- Does NOT create additional costs for a patient or their family to sue a health care provider.
- Does NOT bind a jury from determining findings of fact and conclusions of law.

Why Kentucky Needs SB 119 - Medical Review Panel Legislation:
- Kentucky's has one of the nation's most litigation-friendly environments, making our Commonwealth a prime and profitable target for personal injury lawyers preying upon our health care providers.
- Medical review panels have proven effective in other states for decades. These panels have withstood numerous constitutional challenges in the State Supreme Courts of Indiana and Louisiana. These two states have identical, if not more restrictive, jural rights provisions in their State Constitutions as Kentucky.
- It is time to focus on caring for patients, not worrying about the next meritless attack from personal injury lawyers looking to make a quick buck.

The Problem is Clear.
- A 2009 report from the American College of Emergency Physicians found that Kentucky’s medical liability climate keeps emergency room doctors from relocating to our state.
- A 2012 independent study by AON Risk Solutions found that Kentucky’s long term care industry faces the worst environment in the nation for long term care litigation.
- According to information released by the Kentucky Department of Insurance, from the 415 claims made against our health care providers in 2012 an astounding $96.3 million was awarded in settlements.

SB 119 is a fair, reasonable, and proven solution to address abusive health care litigation in Kentucky.

Prepared by the Care First Kentucky Coalition – www.CareFirstKY.com
THE ISSUE: Personal Injury lawyers are misleading Kentuckians and filing predatory lawsuits in hopes they can collect massive contingency fees. This has led to a dramatic increase in liability insurance costs attributed to the fact that whether dismissed, settled, won, or lost, lawsuits cost health care providers thousands of dollars to defend. This wastes precious resources that could otherwise be spent providing care for patients.

THE SOLUTION: Care First Kentucky urges legislators to support SB 119 to implement a medical review panel process for cases brought against health care providers. This will help put an end to the growing number of meritless lawsuits that increase Kentucky’s health care costs.

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What Are Medical Review Panels and Why Does Kentucky Need Them?
Kentucky should adopt a medical review panel process allowing an independent panel of health care experts to evaluate whether the standard of care was violated in proposed lawsuits against Kentucky health care providers, including nurses, physicians, hospitals, long term care homes and others whom Kentuckians depend upon for their care.

Who Sits on the Medical Review Panel?
Three Kentucky health care experts, including nurses, physicians, hospitals, long term care homes and others whom Kentuckians depend upon for their care, reviews the evidence of a potential case before it goes to court.

Who Determines the Members of Medical Review Panel?
To ensure fairness, each side represented in the case would select a panelist with the third panelist being agreed to by the other two experts. This ensures a fair and unbiased decision from the panel.

What is the Job of the Medical Review Panel?
The independent expert panel provides a medical opinion on the standard of care and does not make a finding of fact or conclusion of law.

How Long Would This Process Take?
Cases would be reviewed within six months ensuring a timely process and protecting access to the legal system.

How Does this Process Benefit the Patient?
The independent panel's review provides another layer of accountability for providers by producing expert findings that are admissible in court. Legitimate claims against providers would be validated while meritless claims would be quickly exposed.

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