



Focus on Frankfort Government Affairs Update

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What I Do

- Translator
- Connect policy-makers to Baptist Health
- Seek opportunities to highlight Baptist Health



Trigger Warning



Making Sausage



- Relationships, relationships, relationships
- Coalition building
- More than one way to skin a cat: House vs Senate
- Pressure points
- Emotional arguments vs Intellectual arguments



2016-2017 Results

- Tort Reform
 - Medical Review Panels
- Interstate Nurses' Compact
- Genetic Counselor License
- Telehealth Initiatives
- Substance Abuse Strategies



Medical Review Panels Overview

- KRS 216C (Codification of SB4)
- Establishes Medical Review Panels in Kentucky
 - Three healthcare providers
 - One panel chairman
 - Opinion regarding negligence determined in nine (9) months
- Overseen by the Cabinet for Health and Family Services
- Law went into effect on June 29, 2017
- Only applies to medical malpractice claims filed after June 29, 2017.



PROPOSED COMPLAINT

- Claimant files a Proposed Complaint with the KY Cabinet for Health and Family Services.
- Claimant pays a filing fee – currently set as \$125 plus \$12 per defendant.
- Within 10 days of receiving the Proposed Complaint, the Cabinet will serve a copy of the same on each healthcare provider (on the registered agent). Service complete upon return mail receipt showing delivery.



SELECTING A CHAIRPERSON

- Within 10 days of service of the Proposed Complaint on the Defendants, the Cabinet will notify the parties to select a panel chairperson by agreement.
- Chairperson must be a lawyer. Lawyers can apply to serve as the chairperson of a panel and must practice in the Commonwealth of Kentucky.
- If no agreement (after 20 days), either party can request a random list of 5 panel chairpersons to choose from (\$25).
- Plaintiff strikes first, then defendant (collectively)... until 1 remains.
- If party fails to make strike within 5 days, opposing party notifies the clerk and one is struck at random.



DUTIES OF THE CHAIRPERSON

- Expedite selection of the other panel members;
- Convene the panel;
- Expedite the review of the Proposed Complaint.
- The chairperson may establish a reasonable schedule for submission of evidence to the medical review panel, but shall allow reasonable time for the parties to make full and adequate presentation of related facts and authorities.



WHO ARE PANEL MEMBERS?

- “Any health care providers who are natural persons, whether in the teaching profession or not, who hold a valid, active license to practice in his or her profession, shall be eligible for selection as a member of the medical review panel.”
- The Cabinet asks each licensing agency to provide a current list of health care providers who hold an active, valid license.
- The list shall include the provider’s name, mailing address, type of license and specialty field.



WHO ARE PANEL MEMBERS?

- Dietitians
- Nutritionists
- Physicians
- Emergency Medical Services
- Medical Imaging / Radiology technicians
- Chiropractors
- Dentists
- Nurses
- Respiratory Therapists
- Pharmacists
- Physical / Occupational/Speech Therapists
- Medical Laboratories technologists
- Audiologists
- Social Workers



SELECTING A REVIEW PANEL

- Panel Chairperson sends the parties two lists of panelists.
 - Parties may propose professions and specialty fields for the panelists to be drawn.
- Plaintiff strikes one name from each list, then Defendant, until two remain.
- Two chosen panel members select the third.
- Panel member may only be excused by conflict/dismissal; agreement of the parties or “for good cause” (supported by Affidavit to the panel chair).



SUBMISSION OF EVIDENCE

- Plaintiff's evidence shall be submitted within 60 days after the formation of the panel.
- Defendants evidence shall be submitted within 45 days after the receipt of the plaintiff's submission.
- Submission may include:
 - Non-privileged medical records;
 - X-rays;
 - Lab tests;
 - Excerpts from treatises;
 - Depositions of parties and witnesses (subject to the approval of the panel chair - - may not be “unreasonably be withheld”);
 - Affidavits



MEDICAL REVIEW PANEL OPINION

- No contact with panel members is allowed prior to their opinion.
- Panel can request additional information.
- Panel can consult with “medical authorities.”
- Panel may consider reports of other healthcare providers to fully inform their opinion.



MEDICAL REVIEW PANEL OPINION

- All parties shall have full access to any material submitted to the panel.
- Panel may conduct a hearing to question counsel or ask the parties to answer specific questions.
- Chairperson advises the panel of the law and prepares the opinion of the panel.



PANEL OPINION

- Opinion due 30 days after receipt of Defendants' evidence.
- Opinion Options:
 - Evidence supports conclusion of Standard of Care violation and causation.
 - Evidence supports conclusion of Standard of Care violation but not causation.
 - Evidence does not support conclusion of Standard of Care violation.
- Two or more of the members of the panel must agree on the conclusion (signed by supporting members).



TIMING ISSUES

- If the panel opinion has not been given within nine (9) months after filing of the Proposed Complaint, the plaintiff may commence the action in court.
- The panel shall submit a report to all parties, stating the reason for the delay, and may continue its work to reach an opinion.
- Chairperson submits opinion to Cabinet and all parties (within 5 days after the opinion) and panel is dissolved.

EFFECT OF PANEL OPINION

- “Upon motion, the trial court shall admit the panel’s opinion into evidence as an expert opinion, subject to cross-examination, **upon a written finding that the evidence would assist the trier of fact and otherwise comply with the Kentucky Rules of Evidence.**”
- “The opinion is not conclusive, and **either party may call any member of the medical review panel as a witness. If called as a witness, the panel member shall appear and testify, but shall be entitled to reasonable compensation by the party calling the witness.**”



KEY TAKEAWAYS

- Lawsuits involving medical care filed after July 29, 2017 are subject to Medical Review Panel process.
- All licensed practitioners are subject to being appointed as panel members.
- Panel members may be called as witnesses if case continues.

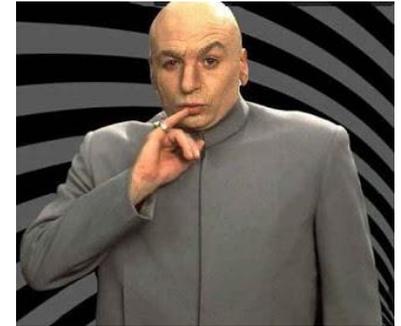


Secret to Next Session(s): 4 Numbers





\$100 Million



Current Rainy Day Fund =
ZERO



\$155 Million

Shortfall for FY 2018.

\$500 Million

- ▶ CBO estimates for the newly-insured:
 - ◆ 40% through Medicaid expansion
 - ◆ 60% through commercial insurance

- ▶ Results for Kentucky's newly-insured:
 - ◆ 85% through Medicaid expansion (471,998)
 - ◆ 15% through commercial insurance (81,155)

- ▶ By FY 2018, the projected total Medicaid enrollment in Kentucky is 1.43 million (~33% of the population)

Figure 1
Status of State Medicaid Expansion Decisions, as of
October 22, 2013



NOTES: 1 - Exploring an approach to Medicaid expansion likely to require voter approval. 2 - Discussion of a special session being called on the Medicaid expansion.
SOURCES: State decisions on the Medicaid expansion as of October 22, 2013. Based on data from the Centers for Medicare and Medicaid Services, available at <http://www.cms.gov/StateMedicaidExpansion/StateMedicaidExpansion/StateMedicaidExpansion.aspx>. Data have been updated to reflect more recent activity.

MEDICAID EXPANSION IN KENTUCKY

New Enrollees

SFY 2017 Q3 **471,998**

Projected Cost to the State

SFY 2017 \$ 74 million

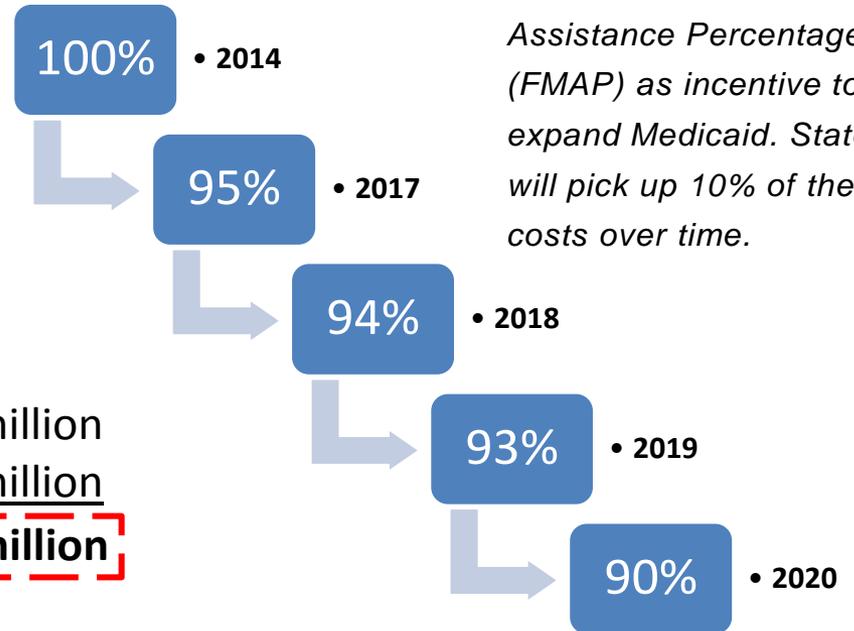
SFY 2018 \$ 173 million

\$ 247 million

SFY 2019 \$ 215 million

SFY 2020 \$ 294 million

\$ 509 million



Under ACA, states received an increased Federal Medical Assistance Percentage (FMAP) as incentive to expand Medicaid. States will pick up 10% of these costs over time.

KENTUCKY MEDICAID 1115 DEMONSTRATION WAIVER

- The Commonwealth initiated a process to ensure its Medicaid program's fiscal sustainability back in December 2015
- Plan has many shared goals with federal reform goals: to preserve citizens' access to care by making sure the program is fiscally sustainable and improving health outcomes for members
- Still unsure how federal reforms will affect Kentucky's proposed plan; there are many outstanding questions and pieces that will need to fall in place before making a final impact assessment



Cost Sharing

Cost sharing introduces members to key commercial market features, including making timely monthly premium payments, tracking deductibles, and managing a healthcare spending account (My Rewards) as a way of investing in personal health.

Premium Assistance

Establishes a path for the state to pay member's premium if employer sponsored insurance is available.

Deductible Account

The deductible account empowers individuals to make cost-conscious healthcare decisions.

My Rewards Account

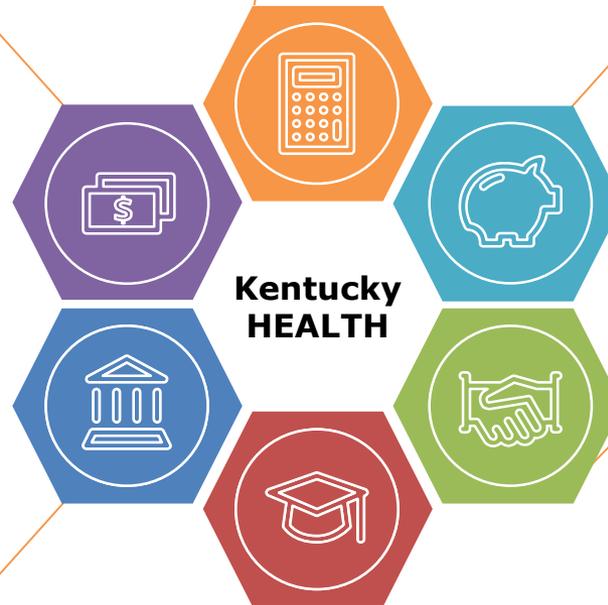
By rewarding healthy living and community-related activities, the My Rewards Account provides incentives for members to improve their health, engage in their communities, and improve their job skills.

PATH Program

Research shows an important link between some sort of community engagement (like volunteer work, public service, or employment) and an individual's overall health and well-being. This program is a unique community engagement and employment initiative for Kentucky HEALTH members, and is designed to build and strengthen Kentucky's workforce.

Education and Training

The Health and Financial Literacy classes allow Kentuckians to gain skills for long-term independence and success.





\$1 BILLION

New \$\$ needed for state employee pensions



Poor Legislators and Poor Us

- No good answers
- Hard votes ahead



Flexibility, Fixed Budgets, Funding Levels

- In Kentucky, Medicaid is where the action is and will be.
 - The budget session of the next General Assembly will be very important.
- Under any scenario, flexibility will be key as an increased amount of authority will rest with the state in both the commercial and Medicaid populations.
- There are multiple federal legislative and regulatory vehicles to watch.
- Fixed budgets (per-capita caps or block grants) will define Medicaid, and there will be increased pressure on the MCOs to create new contracting models and/or cut costs (denials, prior authorizations, etc.) as funding levels are decreased for expanded population.



2018 State Goals



- Tort Reform
 - Peer Review Protection
 - Constitutional Amendment permitting caps on noneconomic and punitive damages and attorney fees
- Smoke free legislation
- Tax Reform – Provider Tax
- Encourage good things/discourage bad things
 - Lay midwife bill
 - Telehealth



Have a great day!

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