

1 State of Arkansas As Engrossed: S3/14/13 H3/22/13

2 89th General Assembly

A Bill

3 Regular Session, 2013

SENATE BILL 887

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5 By: Senator Bledsoe

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For An Act To Be Entitled

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AN ACT TO PROVIDE FOR FAIRNESS WHEN PHYSICIANS OR

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OTHER PRACTITIONERS ARE SUBJECT TO PEER REVIEW

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PROCEEDINGS; TO ENSURE THAT PEER REVIEW ACTIVITIES

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ARE CONDUCTED IN FURTHERANCE OF QUALITY PATIENT CARE;

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AND FOR OTHER PURPOSES.

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Subtitle

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TO ESTABLISH THE ARKANSAS PEER REVIEW

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FAIRNESS ACT.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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SECTION 1. Arkansas Code Title 20, Chapter 9, is amended to add an additional subchapter to read as follows:

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Subchapter 13 – Arkansas Peer Review Fairness Act

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26

“20-9-1301. Title.

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This subchapter shall be known and may be cited as the “Arkansas Peer Review Fairness Act”.

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20-9-1302. Findings and intent.

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(a) The General Assembly finds that:

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(1) The peer review process is well established as the most important and effective means of monitoring quality and improving care within an institution;

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(2)(A) Peer review is essential to preserving the highest standards of medical practice.

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1 (B) However, peer review that is not conducted fairly
2 results in harm to both patients and physicians by limiting access to care
3 and patient choice; and

4 (3) It is necessary to balance carefully the rights of patients
5 who benefit by peer review with the rights of those who may be harmed by
6 improper peer review.

7 (b) The General Assembly intends that peer review be conducted fairly
8 for the benefit of the citizens of the State of Arkansas.

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10 20-9-1303. Definitions.

11 As used in this subchapter:

12 (1) "Adversely affect," when used in reference to clinical
13 privileges or medical staff membership, means deny, reduce, restrict,
14 suspend, revoke or fail to renew;

15 (2) "Hospital" means a health care facility licensed as a
16 hospital by the Division of Health Facility Services of the Department of
17 Health under § 20-9-213;

18 (3) "Governing body" means a hospital's board of directors,
19 board of trustees or other body, or duly authorized subcommittee thereof,
20 which has authority to take final action regarding a professional review
21 action.

22 (4) "Investigation" means a process conducted by a professional
23 review body to obtain facts related to a concern or complaint about a
24 physician in order to determine whether a professional review action should
25 be requested or recommended;

26 (5) "Medical staff" means the physicians and other licensed
27 practitioners who are approved and given privileges to provide health care to
28 patients in the hospital.

29 (6) "Professional review action" means an action or
30 recommendation of a professional review body that is taken or made in the
31 conduct of professional review activity and that:

32 (A) Is based on an individual physician's competence or
33 professional conduct that adversely affects or could adversely affect the
34 health or welfare of a patient or patients; and

35 (B) Adversely affects or may adversely affect the hospital
36 membership or clinical privileges of the physician.

1 (7)(A) "Professional review activity" means an activity with
2 respect to an individual physician:

3 (i) To determine whether the physician may have
4 clinical privileges at a hospital or membership in the hospital's medical
5 staff;

6 (ii) To determine the scope or conditions of such
7 clinical privileges or medical staff membership, or

8 (iii) To change or modify such clinical privileges
9 or medical staff membership.

10 (B) "Professional review activity" includes an
11 investigation, as defined in this section; and

12 (8)(A) "Professional review body" means a hospital, its governing
13 body or its medical staff when any of these bodies are conducting a
14 professional review activity.

15 (B) "Professional review body" includes, without
16 limitation, a peer review committee of a hospital as defined by § 20-9-501,
17 and any committee or subcommittee or third party contractor of the hospital,
18 medical staff or governing board, when performing or assisting in the
19 performance of a professional review activity.

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21 20-9-1304. Standards for professional review actions and professional
22 review activities.

23 (a) Professional review activity shall be conducted and professional
24 review actions shall be taken in compliance with the requirements of the
25 Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11101, et seq. and
26 the additional requirements of this subchapter.

27 (b)(1) A physician shall be promptly notified when he or she is
28 referred for an investigation for a possible professional review action.

29 (2) A physician has an absolute right to seek legal
30 representation and engage an attorney to advise and assist the physician
31 concerning any phase of a professional review activity.

32 (c)(1)(A) If at any stage of a professional review activity, an
33 attorney is participating on behalf of a peer review body, then the physician
34 under review also shall be permitted to have independent legal counsel
35 participating in the peer review activity.

36 (B) This provision does not entitle the physician's

1 attorney to appear at any proceeding where an attorney participating on
2 behalf of the peer review body is not present, except as provided in
3 subsection (g)(1).

4 (2)(A) If the attorney representing or advising a professional
5 review body is employed by the hospital or from a firm regularly utilized by
6 the hospital, the physician may request that the peer review body use an
7 attorney not employed by the hospital or from a firm regularly utilized by
8 the hospital.

9 (B) If the peer review body declines to do so, and if
10 review is had under § 20-9-1307, the court shall consider the impact of this
11 decision, if any, in determining whether to grant equitable relief.

12 (d) The hospital shall provide all relevant information to the
13 professional review body and the physician, whether inculpatory or
14 exculpatory to the hospital or physician.

15 (e) During an investigation, the physician under review shall be given
16 the opportunity to discuss the case with the individual or individuals
17 conducting a professional review activity prior to any recommendation or
18 decision that adversely affects, or may affect, the physician.

19 (f) A physician who is the subject of a proposed professional review
20 action shall be given notice of the proposed professional review action, the
21 basis for the proposed action, and the right to a hearing.

22 (g) If a hearing is held in connection with a professional review
23 action:

24 (1) The physician who is the subject of the action has the right
25 to:

26 (A) Be present and present evidence on his or her own
27 behalf; and

28 (B) Be represented by an attorney or another individual of
29 the physician's choice at the hearing.

30 (2) If the professional review body uses a hearing officer or
31 arbitrator for a proceeding related to a professional review action, the
32 individual serving in this role shall be independent and shall not be
33 employed by the hospital or from a firm that regularly represents either the
34 hospital or the physician who is under review.

35 (h) If a professional review body determines that it is appropriate
36 under the circumstances, the professional review body may:

1 (1) Engage independent legal counsel to review a professional
2 review action before a final recommendation is made or final action is taken;
3 or

4 (2) Engage an independent and qualified third party to assist
5 with conducting all or part of the professional review activity.

6 (i) A physician under review shall be afforded a reasonable
7 opportunity to challenge the impartiality of a hearing officer, arbitrator,
8 or member of a hearing panel for a professional review action.

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10 20-9-1305 Medical staff bylaws.

11 The General Assembly encourages medical staffs to obtain independent
12 counsel to review medical staff bylaws to ensure that they contain provisions
13 that comply with this subchapter.

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15 20-9-1306 Suspensions.

16 (a) If failure to take a professional review action may result in an
17 imminent danger to the health of any individual, the hospital may immediately
18 suspend or restrict the medical staff membership or clinical privileges of a
19 physician.

20 (b) If an action is taken under subsection (a) of this section, then
21 the hospital shall follow all the other provisions of this subchapter as soon
22 as practicable following the suspension or restriction.

23 (c) In the case of a suspension or restriction of clinical privileges,
24 for a period of not longer than fourteen (14) days, during which an
25 investigation is being conducted to determine the need for a professional
26 review action:

27 (1) No hearing is required to be held regarding the suspension;

28 (2) The professional review body shall follow the notice
29 provisions of this subchapter; and

30 (3) The physician shall be given the opportunity to discuss the
31 case with the individual or individuals conducting the investigation during
32 the fourteen (14) days before any recommendation or decision is made about
33 continuing the suspension or restriction.

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35 20-9-1307 Actions for equitable relief permitted.

36 (a) A physician may seek an injunction or other equitable relief to

1 correct an erroneous decision or procedure under this subchapter. The review
2 shall be limited to a review of the record.

3 (b)(1) If a physician prevails under subsection (a), the physician
4 shall be entitled to reasonable attorney's fees and costs as determined by
5 the court.

6 (2) A defendant who prevails shall be entitled to reasonable
7 attorney fees and costs as determined by the court to the extent permitted
8 under the Health Care Quality Improvement Act at 42 U.S.C. § 11113.

9 (c) Except as otherwise expressly permitted by law:

10 (1) No professional review body, or any of its members, agents
11 or employees shall be subject to liability for civil damages as a result of
12 making a decision or recommendation in good faith and without malice in
13 connection with a professional review activity or professional review action;
14 and

15 (2) No individual or entity shall be subject to liability for
16 civil damages as a result of acting in good faith and without malice in
17 furnishing any records, information, or assistance to a professional review
18 body in connection with a professional review activity.

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20 20-9-1308. Relationship to other laws and regulations.

21 (a)(1) All proceedings and records related to a professional review
22 activity, including all meetings, interviews, reports, statements, minutes,
23 memoranda, notes, investigative compilations and the contents thereof, and
24 all other information and materials relating to professional review
25 activities shall be confidential and are included within the categories of
26 records and proceedings that are exempt from discovery and disclosure
27 pursuant to § 16-46-105(a)(1) and § 20-9-503.

28 (2) Nothing in this subchapter shall affect the admissibility in
29 evidence in any action or proceeding of the medical records of any patient.

30 (b) Nothing in this subchapter shall be construed to abrogate the
31 immunities or confidentiality provisions of the Healthcare Quality
32 Improvement Act, 42 U.S.C. §§ 11101 et seq., or Arkansas Code § 17-1-102, §
33 20-9-501 et seq., or § 16-46-105.

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35 SECTION 2. DO NOT CODIFY. SEVERABILITY CLAUSE. If any provision of
36 this act or the application of this act to any person or circumstance is held

1 invalid or unconstitutional, the invalidity or unconstitutionality does not
2 affect other provisions or applications of this act which can be given effect
3 without the invalid or unconstitutional provision or application, and to this
4 end the provisions of this act are severable.

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/s/Bledsoe

APPROVED: 04/05/2013