

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 887

5 By: Senator Bledsoe
6

For An Act To Be Entitled

8 AN ACT TO PROVIDE FOR FAIRNESS WHEN PHYSICIANS OR
9 OTHER PRACTITIONERS ARE SUBJECT TO PEER REVIEW
10 PROCEEDINGS; TO ENSURE THAT PEER REVIEW ACTIVITIES
11 ARE CONDUCTED IN FURTHERANCE OF QUALITY PATIENT CARE;
12 AND FOR OTHER PURPOSES.
13

Subtitle

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16 TO ESTABLISH THE ARKANSAS PEER REVIEW
17 FAIRNESS ACT.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code Title 20, Chapter 9, is amended add an
23 additional subchapter to read as follows:

Subchapter 13 – Arkansas Peer Review Fairness Act

20-9-1301. Title.

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27 This subchapter shall be known and may be cited as the "Arkansas Peer
28 Review Fairness Act".
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20-9-1302 Findings – Intent.

(a) The General Assembly finds that:

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32 (1) Peer review, when fairly conducted, is essential to
33 preserving the highest standards of medical practice;

34 (2) Peer review that is not conducted fairly results in harm to
35 both patients and practitioners by limiting access to care and patient choice
36 of practitioner;



1 (3) Hospitals and physicians both play an important role in peer
2 review, and it is important that their roles be free of conflicts of
3 interest, anti-competitive purpose, or other improper influences; and

4 (4) It does not impose any additional burden on hospitals or
5 physicians to conduct peer review in a fair and impartial manner.

6 (b) The General Assembly intends that peer review be conducted fairly
7 and without real or perceived conflicts of interest.

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9 20-9-1303. Definitions.

10 As used in this subchapter:

11 (1) "Hospital" means a facility licensed as a hospital under §
12 20-9-201 et seq.;

13 (2) "Investigation" means a process to determine the validity,
14 if any, of a concern or complaint raised against a physician or other member
15 of the medical staff at a hospital;

16 (3)(A) "Medical staff" means physicians with privileges in a
17 hospital, as well as other licensed health care practitioners with clinical
18 privileges in a hospital, as approved by the hospital's governing board.

19 (B) "Medical staff" includes a medical staff committee and
20 an individual medical staff member acting on behalf of the medical staff or a
21 medical staff committee;

22 (4) "Medical staff executive committee" means the medical staff
23 members formally constituted as the medical staff executive committee of a
24 hospital or the medical staff leaders serving a similar function as an
25 executive committee;

26 (5) "Peer review action" means an action or recommendation of a
27 peer review body that is based on the competence or professional conduct of
28 an individual physician or other health care practitioner and that adversely
29 affects, or may adversely affect, hospital medical staff membership or
30 clinical privileges of the practitioner;

31 (6) "Peer review activity" means an activity of a hospital or
32 medical staff with respect to an individual physician or other health care
33 practitioner to:

34 (A) Determine whether he or she may have clinical
35 privileges with respect to or medical staff membership in the hospital;

36 (B) Determine the scope or conditions of his or her

1 privileges or membership; or

2 (C) Change or modify his or her privileges or membership;
3 and

4 (7)(A) "Peer review body" means a body or committee of a
5 hospital or medical staff that conducts peer review activities.

6 (B) "Peer review body" includes without limitation a peer
7 review committee as defined in § 20-9-501.

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9 20-9-1304. Medical staff investigations.

10 (a) A medical staff shall conduct investigations of physicians or
11 other practitioners.

12 (b) Legal counsel may be engaged by or for the medical staff to assist
13 the medical staff in the investigation.

14 (c) A medical staff shall select the legal counsel engaged under
15 subsection (b) of this section regardless of who engages the counsel for the
16 services.

17 (d)(1) An attorney from a firm regularly utilized by a hospital or by
18 a practitioner who is the subject of an investigation shall not serve as
19 legal counsel under this section with or without pay.

20 (2) The same law firm shall not be engaged to represent both the
21 hospital and the medical staff under this section.

22 (e) A practitioner who is the subject of an investigation shall be
23 permitted to make an appearance before the medical staff members conducting
24 the investigation take any action.

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26 20-9-1305. Hearings generally.

27 (a) Once a peer review action is recommended against a practitioner,
28 the hospital shall provide the practitioner timely notice and the opportunity
29 for a prompt hearing.

30 (b) Upon request for a hearing from the practitioner or the
31 practitioner's legal counsel, the hospital shall appoint individuals to the
32 hearing committee from among those medical staff members recommended by the
33 medical staff executive committee.

34 (c) The hearing committee members shall be impartial peers who gain no
35 direct financial benefit from the outcome and are otherwise not in economic
36 competition with the respondent.

1 (d) The hearing committee members shall not have acted as accusers,
2 investigators, fact finders, or initial decision makers and shall not
3 otherwise have actively participated in the consideration of the matter
4 leading up to the adverse recommendation or action.

5 (e) If it is not feasible to appoint a hearing committee from the
6 medical staff, then physicians, other members of the same profession as the
7 respondent who are not members of the medical staff may serve.

8 (f) Knowledge of the matter involved does not preclude an individual
9 from serving as a member of the hearing committee.

10 (g) A respondent practitioner shall be afforded a reasonable
11 opportunity to challenge the impartiality of the hearing committee members.

12 (h) A hospital shall provide all relevant information to the hearing
13 committee, whether inculpatory or exculpatory to the practitioner or the
14 hospital.

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16 20-9-1306. Legal representation of the hearing committee.

17 (a) Legal counsel may be engaged by or for the hearing committee to
18 represent it in connection with the hearing.

19 (b)(1) A hearing committee shall select the legal counsel regardless
20 of who engages the counsel for the services.

21 (2) An attorney from a firm regularly utilized by the hospital
22 or by the practitioner who is the subject of the investigation may not serve
23 as legal counsel under this section with or without pay.

24 (c) The same law firm may not be engaged to represent both the
25 hospital and the hearing committee.

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27 20-9-1307. Hearing officer.

28 (a) A hospital shall appoint a hearing officer from recommendations
29 made by the medical staff executive committee.

30 (b) The hearing officer shall be an attorney qualified to preside over
31 an administrative hearing.

32 (c) An attorney from a firm regularly utilized by the hospital or the
33 respondent practitioner is not eligible to serve as hearing officer.

34 (d) A hearing officer shall gain no direct financial benefit from the
35 outcome and shall not act as a prosecuting officer or as an advocate.

1 20-9-1308. Appeal.

2 (a) If the hearing committee issues an adverse peer review action
3 against a practitioner, the hospital shall provide notice and opportunity for
4 an appeal upon request by the respondent practitioner.

5 (b) A member of an appeal panel shall be chosen in the same manner and
6 with the same criteria as provided for selection of the hearing committee
7 under § 20-9-1305.

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9 20-9-1309. Governing board.

10 After hearing and appeal rights have been exhausted or waived and,
11 subject to judicial review, a hospital's governing board shall make the final
12 decision for the hospital on the peer review action.

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14 20-10-1310. Judicial review.

15 (a) A practitioner is entitled to appeal an adverse peer review action
16 to a court of competent jurisdiction.

17 (b) If the hospital's governing board reverses an appeal panel of
18 peers under § 20-9-1308 and the practitioner prevails on appeal to court, the
19 practitioner is entitled to reasonable attorney's fees and costs as
20 determined by the court.

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22 20-9-1311. Right to representation.

23 A practitioner who is the subject of a peer review activity is entitled
24 to independent legal representation at all stages of the proceedings.

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26 20-9-1312. Enforcement.

27 A practitioner who is the subject of a peer review activity may seek a
28 writ of mandamus or other order from a court of competent jurisdiction if a
29 party fails to comply with this subchapter.

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31 20-9-1313. Bylaws.

32 (a) Medical staff bylaws shall contain peer review provisions that
33 comply with this subchapter.

34 (b) Medical staff bylaws shall be reviewed by independent counsel
35 solely representing the medical staff.

36 (c) An attorney from a firm regularly utilized by the hospital is not

eligible to represent the medical staff in reviewing the bylaws.

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