

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

As Engrossed: S3/14/13

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
14

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:
21

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.

27 This subchapter shall be known and may be cited as the "Arkansas Peer
28 Review Fairness Act".
29

20-9-1302 Findings – Intent.

(a) The General Assembly finds that:

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 conducted by a hospital's
14 medical staff to determine the validity, if any, of a concern or complaint
15 raised against a physician or other practitioner who is a member of the
16 medical staff of a hospital that adversely affects or may adversely affect
17 hospital staff membership or clinical privileges of the physician or other
18 practitioner;

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

22 (B) "Medical staff" includes a medical staff committee and
23 an individual medical staff member acting on behalf of the medical staff or a
24 medical staff committee;

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

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

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

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

3 (B) Determine the scope or conditions of his or her
4 privileges or membership; or

5 (C) Change or modify his or her privileges or membership;
6 and

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

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

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12 20-9-1304. Due process in peer review activity.

13 (a) The stages of a peer review activity may include without
14 limitation, an investigation, a hearing, and an appeal.

15 (b) At every stage of a peer review activity:

16 (1) The physician or other practitioner and the medical staff
17 conducting the peer review activity may be represented by legal counsel;

18 (2) An attorney representing the medical staff or serving as the
19 hearing officer or arbitrator may not be from a firm regularly utilized by
20 the hospital;

21 (3) The medical staff shall choose its own legal counsel,
22 regardless of who may pay or otherwise retain the counsel;

23 (4) When choosing a hearing officer, a hospital shall appoint
24 individuals chosen from among recommendations by the medical staff;

25 (5)(A) When choosing a hearing panel, the hospital shall appoint
26 individuals from among those medical staff members recommended by the medical
27 staff executive committee.

28 (B) If it is not feasible to appoint a hearing panel from
29 the medical staff, then physicians or other members of the same profession as
30 the respondent who are not members of the medical staff may serve;

31 (6) The individual or individuals conducting a peer review
32 activity shall be impartial, shall gain no direct financial benefit from the
33 outcome of the peer review activity, and shall not otherwise be in
34 competition with the physician or other practitioner who is the subject of
35 the peer review activity;

36 (7) The individual or individuals conducting a peer review

activity shall not have actively participated in an earlier stage of the peer review activity, with the exception of hearing officers;

(8) The physician or other practitioner who is the subject of a peer review activity shall be given the opportunity to appear before the individual or individuals conducting a peer review activity before any recommendation or decision that adversely affects, or may adversely affect, the physician or practitioner;

(9) The physician or practitioner shall be offered a reasonable opportunity to challenge the impartiality of any individual or individuals conducting a peer review activity;

(10) Knowledge of the matter does not preclude an individual from participating in a peer review activity; and

(11) The hospital shall provide all relevant information to the individual or individuals conducting a peer review activity, whether inculpatory or exculpatory to the practitioner or the hospital.

(c) Unless the physician or practitioner who is the subject of the peer review activity makes a credible allegation that the hospital's actions contributed to the matter under review, the medical staff, upon written notice to the hospital, may waive the requirement in subdivision (b)(2) of this section that the attorney representing the medical staff not be from a firm regularly utilized by the hospital.

20-9-1305. Governing board.

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

20-9-1306. Judicial review.

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

(b) If the practitioner prevails on appeal to court, the practitioner shall be entitled to reasonable attorney's fees and costs as determined by the court and to the extent not prohibited by federal law.

20-9-1307. Right to representation.

A practitioner who is the subject of a peer review activity is entitled

1 to independent legal representation at all stages of the proceedings.

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3 20-9-1308. Enforcement.

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

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8 20-9-1309. Bylaws.

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

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

13 (c) An attorney from a firm regularly utilized by the hospital is not
14 eligible to represent the medical staff in reviewing the bylaws.

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16 20-9-1310. Summary suspensions.

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

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

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25 20-9-1311. Immunity.

26 This subchapter is not intended to abrogate the immunity provided under
27 the Healthcare Quality Improvement Act, 42 U.S.C. §§ 11101-11152 or under §
28 17-1-102 or § 20-9-501 et seq.

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30 /s/Bledsoe
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