

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

As Engrossed: S3/14/13 H3/22/13

# A Bill

SENATE BILL 887

By: Senator Bledsoe

## For An Act To Be Entitled

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

## Subtitle

TO ESTABLISH THE ARKANSAS PEER REVIEW  
FAIRNESS ACT.

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

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

*Subchapter 13 – Arkansas Peer Review Fairness Act*

*“20-9-1301. Title.*

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

*20-9-1302. Findings and intent.*

*(a) The General Assembly finds that:*

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

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



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

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

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

20-9-1303. Definitions.

As used in this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20-9-1305 Medical staff bylaws.

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

20-9-1306 Suspensions.

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

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

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

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

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

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

20-9-1307 Actions for equitable relief permitted.

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

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

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

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

(c) Except as otherwise expressly permitted by law:

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

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

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

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

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

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

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

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

/s/Bledsoe