



42 U.S.C.

Chapt. 117

The Health Care Quality Improvement Act (HCQIA) of 1986

Proposed amendments to HCOIA (in RED)

Current section

§ 11111. Professional review

(a) In general

(1) Limitation on damages for professional review actions

If a professional review body meets all the standards specified in section 11112 (a) of this title, except as provided in subsection (b) of this section –

(A) the professional review body,

(B) any person acting as a member or staff to the body,

(C) any person under a contract or other formal agreement with the body, and

(D) any person who participates with or assists the body with respect to the action,

Shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action. The preceding sentence shall not apply to damages under any law of the United States or any State relating to the civil rights of any person or persons, including the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. and the Civil Rights Acts, 42 U.S.C. 1981, et seq. Nothing in this paragraph shall prevent the United States or any Attorney General of a State from bringing an action, including an action under section 15c of title 15, where such an action is otherwise authorized.

Proposed amendment

§ 11111. Professional review

(a) In general

(1) Limitation on damages for **good-faith** professional review actions

If a professional review body meets all the standards specified in section 11112 (a) of this title, except as provided in subsection (b) of this section –

(A) the professional review body,

(B) any person acting as a member or staff to the body,

(C) any person under a contract or other formal agreement with the body, and

(D) any person who participates with or assists the body with respect to the action,

Shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action, **provided that the action is taken in good faith for the purpose of furthering quality health care.** The preceding sentence shall not apply to damages under any law of the United States or any State relating to the civil rights of any person or persons, including the Civil Rights Act of 1964, 42 U.S.C.

2000e, et seq. and the Civil Rights Acts, 42 U.S.C. 1981, et seq. Nothing in this paragraph shall prevent the United States or any Attorney General of a State from bringing an action, including an action under section 15c of title 15, where such an action is otherwise authorized.

Current section (§ 11111)

(2) Protection for those providing information to professional review bodies
Notwithstanding any other provision of law, no person (whether as a witness or otherwise) providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew that such information was false.

Proposed amendment

(2) Protection for those providing information to professional review bodies
Notwithstanding any other provision of law, no person (whether as a witness or otherwise) providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew **or should have known** that such information was false.

Current Section

§ 11112. Standards for professional review actions

(a) In general

For purposes of the protection set forth in section 11111 (a) of this title, a professional review action must be taken –

- (1) in the reasonable belief that the action was in the furtherance of quality health care,
- (2) after a reasonable effort to obtain the facts of the matter,
- (3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and
- (4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 11111 (a) of this title unless the presumption is rebutted by a preponderance of the evidence.

(b) Adequate notice and hearing

A health care entity is deemed to have met the adequate notice and hearing requirement of subsection (a) (3) of this section with respect to a physician if the following conditions are met (or are waived voluntarily by the physician):

- (1) Notice of proposed action

The physician has been given notice stating –

(A)

- (i) that a professional review action has been proposed to be taken against the physician,
- (ii) reasons for the proposed action,

(B)

- (i) that the physician has the right to request a hearing on the proposed action,
 - (ii) any time limit (of not less than 30 days) within which to request such a hearing,
- and

(C) a summary of the rights in the hearing under paragraph (3).

(2) Notice of hearing

If a hearing is requested on a timely basis under paragraph (1) (B), the physician involved must be given notice stating –

(A) the place, time, and date, of the hearing, which date shall not be less than 30 days after the date of the notice, and

(B) a list of the witnesses (if any) expected to testify at the hearing on behalf of the professional review body.

(3) Conduct of hearing and notice

If a hearing is requested on a timely basis under paragraph (1) (B) –

(A) subject to subparagraph (B), the hearing shall be held (as determined by the health care entity) –

- (i) before an arbitrator mutually acceptable to the physician and the health care entity,
- (ii) before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved;

(B) the right to the hearing may be forfeited if the physician fails, without good cause, to appear;

(C) in the hearing the physician involved has the right –

- (i) to representation by an attorney or other person of the physician's choice,
- (ii) to have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof,

(iii) to call, examine, and cross-examine witnesses,

(iv) to present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law, and

(v) to submit a written statement at the close of the hearing; and

(D) upon completion of the hearing, the physician involved has the right –

(i) to receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and

(ii) to receive a written decision of the health care entity, including a statement of the basis for the decision.

A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute a failure to meet the standards of subsection (a) (3) of this section.

(c) Adequate procedures in investigations or health emergencies

For purposes of section 11111 (a) of this title, nothing in this section shall be construed as –

(1) requiring the procedures referred to in subsection (a) (3) of this section -

- (A) where there is no adverse professional review action taken, or
- (B) in the case of a suspension or restriction of clinical privileges, for a period of not longer than 14 days, during which an investigation is being conducted to determine the need for a professional review action; or
- (2) precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

Proposed amendment

§ 11112. Standards for professional review actions

(a) In general

For purposes of the protection set forth in section 11111 (a) of this title, a professional review action must be taken –

- (1) for the purpose of furthering quality health care,
- (2) after a reasonable effort to obtain the facts of the matter,
- (3) in the case of an allegation of that a physician was disruptive, after a reasonable opportunity was given to the physician to modify his behavior,
- (4) after adequate notice and hearing procedures are afforded to the physician involved, which provide due process and fundamental fairness to the physician, and
- (5) after a finding that the action was reasonably warranted, based on clear and convincing evidence, by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (4).

[Delete the following]

~~A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 11111 (a) of this title unless the presumption is rebutted by a preponderance of the evidence.~~

(b) Adequate notice and hearing

A health care entity is deemed to have met the adequate notice and hearing requirement of subsection (a) (3) of this section with respect to a physician if the following conditions are met (or are waived voluntarily by the physician):

(1) Notice of proposed action

The physician has been given written notice stating –

(A)

- (i) that a professional review action has been proposed to be taken against the physician,
- (ii) reasons for the proposed action, including the negative impact physician's practice or professional conduct allegedly has on the wellbeing of patients

(B)

- (i) that the physician has the right to request a hearing on the proposed action,
 - (ii) any time limit (of not less than 30 days) within which to request such a hearing,
- and

(C) a summary of the rights in the hearing under paragraph (3).

(2) Notice of hearing

If a hearing is requested on a timely basis under paragraph (1) (B), the physician involved must be given notice stating –

(A) the place, time, and date, of the hearing, which date shall not be less than 30 days after the date of the notice, and

(B) a list of the witnesses (if any) expected to testify at the hearing on behalf of the professional review body **and a list of the evidence to be presented against the physician.**

(3) Conduct of hearing and notice

If a hearing is requested on a timely basis under paragraph (1) (B) –

(A) subject to subparagraph (B), the hearing shall be held (as determined by the health care entity) –

(i) before an arbitrator **or hearing officer** mutually acceptable to the physician and the health care entity,

[Delete the following]

~~(ii) before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved;~~

(B) the right to the hearing may be forfeited if the physician fails, without good cause, to appear;

(C) in the hearing the physician involved has the right –

(i) to representation by an attorney or other person of the physician's choice,

(ii) to have a hearing panel composed of the physician's peers that is mutually acceptable to the physician and the health care entity

(iii) to have a independent record made by a court reporter of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof,

(iv) to call, examine, and cross-examine witnesses,

(v) to present evidence determined to be relevant by the hearing officer, according to standards of admissibility in a court of law, and

(vi) to submit a written statement at the close of the hearing; and

(D) upon completion of the hearing, the physician involved has the right –

(i) to receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and

(ii) to receive a written decision of the health care entity, including a statement of the basis for the decision.

[Delete the following]

~~A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute a failure to meet the standards of subsection (a) (3) of this section.~~

(c) Adequate procedures in investigations or health emergencies

For purposes of section 11111 (a) of this title, nothing in this section shall be construed as –

(1) requiring the procedures referred to in subsection (a) (3) of this section -

(A) where there is no adverse professional review action taken, or

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

(2) precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other **due process** procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

Current section

§ 11113. Payment of reasonable attorneys' fees and costs in defense of suit

In any suit brought against a defendant, to the extent that a defendant has met the standards set forth under section 11112 (a) of this title and the defendant substantially prevails, the court shall, at the conclusion of the action, award to a substantially prevailing party defending against any such claim the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive relief or declaratory relief.

Proposed amendment

[Delete section 11113 in its entirety]

~~§ 11113. Payment of reasonable attorneys' fees and costs in defense of suit~~

~~In any suit brought against a defendant, to the extent that a defendant has met the standards set forth under section 11112 (a) of this title and the defendant substantially prevails, the court shall, at the conclusion of the action, award to a substantially prevailing party defending against any such claim the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive relief or declaratory relief.~~

Current section

§ 11132. Reporting of sanctions taken by Boards of Medical Examiners

(2)

(C)

(b) Failure to report

If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report

information in accordance with subsection (a) of this section, the Secretary shall designate another qualified entity for the reporting of information under section 11113 of this title.

Proposed amendment

§ 11132. Reporting of sanctions taken by Boards of Medical Examiners

(2)

(C)

(b) Failure to report

If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (a) of this section, the Secretary shall designate another qualified entity for the reporting of information under section 11113 of this title. **If the Secretary determines, after investigation, that a Board of Medical Examiners has provided a report that is false or a report that the Board of Medical Examiners should have known was false, to the National Practitioner Data Bank, then the Board of Medical Examiners shall permanently lose the protections of section 11111 (a) (1) of this title, and the Secretary shall publish the name of the Board of Medical Examiners in the Federal Register.**

Current section

§ 11133. Reporting of certain professional review actions taken by health care entities

(a) Reporting by health care entities

(1) On physicians

Each health care entity which -

(A) takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days;

(B) accepts the surrender of clinical privileges of a physician –

(i) while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct, or

(ii) in return for not conducting such an investigation or proceeding; or

(C) in the case of such an entity which is a professional society, takes a professional review action which adversely affects the membership of a physician in the society, shall report to the Board of Medical Examiners, in accordance with section 11134 (a) of this title, the information described in paragraph (3).

Proposed amendment

§ 11133. Reporting of certain professional review actions taken by health care entities

(a) Reporting by health care entities

(1) On physicians

Each health care entity which -

(A) takes a professional review action, **based on a demonstrable threat to patient care or safety, which revokes, suspends or restricts** the clinical privileges of a physician for a period longer than 90 days;

(B) accepts the surrender of clinical privileges of a physician –

(i) while the physician **had written notice of an ongoing** investigation by the entity relating to possible **harm to patients**, or

(ii) **expressly** in return for not conducting such an investigation or proceeding; or

(C) in the case of such an entity which is a professional society, takes a professional review action which adversely affects the membership of a physician in the society, shall report to the Board of Medical Examiners, in accordance with section 11134 (a) of this title, the information described in paragraph (3).

Current section (§ 11133)

(3)

(b)

(c) Sanctions

(1) Health care entities

A health care entity that fails substantially to meet the requirement of subsection (a) (1) of this section shall lose the protections of section 11111 (a) (1) of this title if the Secretary publishes the name of the entity under section 11111 (b) of this title.

(2) Board of Medical Examiners

If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (b) of this section, the Secretary shall designate another qualified entity for the reporting of information under subsection (b) of this section.

(d) References to Board of Medical Examiners

Any reference in this subchapter to a Board of Medical Examiners includes, in the case of a Board in a State that fails to meet the reporting requirements of section 11132 (a) of this title or subsection (b) of this section, a reference to such other qualified entity as the Secretary designates.

Proposed amendment

§ 11133

(3)

(b)

(c) Sanctions

(1) Health care entities

A health care entity that fails substantially to meet the requirement of subsection (a) (1) of this section shall lose the protections of section 11111 (a) (1) of this title if the Secretary publishes the name of the entity under section 11111 (b) of this title. **If the Secretary determines, after investigation, that a health care entity has provided a report that is false or a report that the health care entity should have known was false, to the**

National Practitioner Data Bank, then the health care entity shall permanently lose the protections of section 11111 (a) (1) of this title, and the Secretary shall publish the name of the Board of Medical Examiners in the Federal Register.

(2) Board of Medical Examiners

If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (b) of this section, the Secretary shall designate another qualified entity for the reporting of information under subsection (b) of this section.

(d) References to Board of Medical Examiners

Any reference in this subchapter to a Board of Medical Examiners includes, in the case of a Board in a State that fails to meet the reporting requirements of section 11132 (a) of this title or subsection (b) of this section, a reference to such other qualified entity as the Secretary designates.

Current section

§ 11137. Miscellaneous provisions

(b) confidentiality of information

(2) Penalty for violations

Any person who violates paragraph (1) shall be subject to a civil money penalty of not more than \$10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a-7a of this title are imposed and collected under that section.

(c) Relief from liability for reporting

No person or entity (including the agency designated under section 11134 (b) of this title) shall be held liable in any civil action with respect to any report made under this subchapter (including information provided under subsection (a) of this section without knowledge of the falsity of the information contained in the report.

Proposed amendment

§ 11137. Miscellaneous provisions

(b) Confidentiality of information

(2) Penalty for violations

Any person who violates paragraph (1) shall be subject to a civil money penalty of not more than \$250,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a-7a of this title are imposed and collected under that section. Any health care entity that fails to correct a report to the National Practitioner Data Bank, which following

investigation by the Secretary is determined to be false or the entity should have known it was false, within 15 days of written notification by the Secretary, shall be subject to a civil money penalty of not more than \$500,000 for each false report, and the entity shall permanently lose protections of section 11111 (a) (1) of this title. Failure of the health care entity to correct a false report or a report that the entity should have known was false, within the time frame specified in this section shall also constitute a private cause of action for the individual adversely affected by the false report.

(c) Relief from liability for reporting

No person or entity (including the agency designated under section 11134 (b) of this title) shall be held liable in any civil action with respect to any report made under this subchapter (including information provided under subsection (a) of this section **unless the person, agency or entity knew or should have known the information contained in the report was false.**

Current section

§ 11151. Definitions

(9) The term “professional review action” means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may affect) adversely the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. In this chapter, an action is not considered to be based on the competence or professional conduct of a physician if the action is primarily based on -

- (A) the physician’s association, or lack of association, with a professional society or association,
- (B) the physician’s fees or the physician’s advertising or engaging in other competitive acts intended to solicit or retain business,
- (C) the physician’s participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis,
- (D) a physicians’ association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional, or
- (E) any other matter that does not relate to the competence or professional conduct of a physician.

Proposed amendment

§ 11151. Definitions

(9) The term “professional review action” means a **good-faith** action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could **reasonably be expected to** affect adversely the health or welfare of a patient or patients), and which affects (or may **reasonably be expected to** affect) adversely the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. In this chapter, an action is not considered to be based on the competence or professional conduct of a physician if the action is primarily based on -

- (A) the physician’s association, or lack of association, with a professional society or association,
- (B) the physician’s fees or the physician’s advertising or engaging in other competitive acts intended to solicit or retain business,
- (C) the physician’s participation **or lack of participation** in prepaid group health plans, **Medicare, Medicaid, Workers Compensation, Motor Vehicle No Fault**, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis,
- (D) a physicians’ association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional, or
- (E) any other matter that does not relate to the competence or professional conduct of a physician, **including sham peer review**.

[Addition]

(15) The term “sham peer review” means any official action, which adversely affects a physician’s professional status, taken by a professional review body, in bad faith, for purposes other than the furtherance of quality health care.