

EFFECTIVE DATE

Pub. L. 99-660, title IV, §416, Nov. 14, 1986, 100 Stat. 3788, provided that: "This part [part A (§§411-416) of title IV of Pub. L. 99-660, enacting this subchapter] shall apply to professional review actions commenced on or after the date of the enactment of this Act [Nov. 14, 1986]."

§ 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, or

- (iii) before a panel of individuals who are appointed by the entity and are 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 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.

(Pub. L. 99-660, title IV, §412, Nov. 14, 1986, 100 Stat. 3785.)

§ 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