

FINAL BILL REPORT

HB 2308

C 165 L 12
Synopsis as Enacted

Brief Description: Regulating awarding of costs, including attorneys' fees, in actions challenging actions taken by professional peer review bodies.

Sponsors: Representatives Rodne and Pedersen.

House Committee on Judiciary
Senate Committee on Judiciary

Background:

The federal Health Care Quality Improvement Act of 1986 (HCQIA) was enacted with the stated purpose of encouraging effective professional peer review to improve the quality of medical care and reduce the cost of medical malpractice lawsuits.

The HCQIA provides immunity from damages for actions taken by a professional peer review body if those actions meet certain standards. In order to qualify for immunity, the professional peer review body action must be taken: in the reasonable belief that the action was in furtherance of quality health care; after a reasonable effort to obtain the facts of the matter; after adequate notice and hearing procedures; and in the reasonable belief that the action was warranted by the known facts.

The HCQIA contains a fee-shifting provision for prevailing defendants who meet the standards for HCQIA immunity. The court must award to a substantially prevailing party defending against a claim the costs and reasonable attorneys' fees attributable to the claim if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith. A defendant does not substantially prevail when the plaintiff obtains an award for damages or permanent injunctive relief.

The state Health Care Peer Review Act (HCPRA) incorporates the provisions of the federal HCQIA that provide immunity from damages for professional peer review actions that are based on the competence or professional conduct of a health care provider.

In addition, the HCPRA provides the exclusive remedy for actions taken by professional peer review bodies that are found to be based on matters not related to the competence or professional conduct of the health care provider. These actions are limited to appropriate

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injunctive relief and damages for lost earnings directly attributable to the professional peer review body's action.

With respect to suits based on these actions, the HCPRA provides that reasonable attorneys' fees and costs must be awarded to the prevailing party, as determined by the court. This provision has been interpreted to require the court to award costs and reasonable attorneys' fees to the prevailing party.

Summary:

Standards for the award of prevailing party costs and attorneys' fees are revised for suits under the HCPRA that are based on professional peer review body actions not related to competence or professional conduct.

The court must award to the substantially prevailing party the costs of the suit, including reasonable attorneys' fees, attributable to any claim or defense asserted in the action by the nonprevailing party if the nonprevailing party's claim, defense, or conduct was frivolous, unreasonable, without foundation, or in bad faith.

The court must award to the substantially prevailing defendant the cost of the suit, including reasonable attorneys' fees, if the nonprevailing plaintiff failed to exhaust all administrative remedies available before the professional peer review body.

A party may not be considered a substantially prevailing party if the opposing party obtains an award for damages or permanent injunctive relief under the HCPRA.

Votes on Final Passage:

House	96	0	
Senate	49	0	(Senate amended)
House	98	0	(House concurred)

Effective: June 7, 2012