
Judiciary Committee

HB 2308

Title: An act relating to awarding of costs, including attorneys' fees, in actions challenging actions taken by professional peer review bodies.

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

Sponsors: Representatives Rodne and Pedersen.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Revises the standard for the award of prevailing party costs and attorneys' fees in actions under the state Health Care Peer Review Act.
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Hearing Date: 1/16/12

Staff: Edie Adams (786-7180).

Background:

The state Health Care Peer Review Act (HCPRA) incorporates provisions of the federal Health Care Quality Improvement Act of 1986 (HCQIA) relating to immunity from damages for professional peer review actions that are based on the competence or professional conduct of a health care provider.

The 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 aimed to accomplish these goals by providing incentives and protection for health care providers and physicians engaging in professional peer review processes.

The HCQIA provides immunity from damages for professional peer review bodies and persons serving on or assisting professional peer review bodies for actions taken by the body if those

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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 of the suit attributable to the 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. A defendant does not substantially prevail when the plaintiff obtains an award for damages or permanent injunctive relief.

The state (HCPRA) incorporates the provisions of the federal HCQIA providing 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. Actions based on matters not related to competence or professional conduct are limited to appropriate 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, as approved by the court, 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 of Bill:

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 shall award to the substantially prevailing party the costs of the suit attributable to any claim or defense asserted in the action by the non-prevailing party if the non-prevailing party's claim, defense, or conduct was frivolous, unreasonable, without foundation, or in bad faith.

The court shall 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 board.

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

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.