

## ***The Healthcare Quality Improvement Act – 1986***

The federal HCQIA was passed by Congress in 1986 to extend immunity to good faith peer review of physicians and dentists and to create the National Practitioner Data Bank (NPDB). The statute is located at 42 United States Code section 11101 et seq.

Note that HCQIA only protects the review of physicians and dentists; review of allied health professionals is not protected by the HCQIA. The statute was enacted as a result of the decision in Patrick vs. Burgett, a federal antitrust case in which physicians were held liable for damages caused to Dr. Patrick by abusive and inappropriate peer review.

### **HCQIA Immunity Coverage Availability**

1. Professional review bodies – Medical staffs are examples of professional review bodies.
2. Members and/or staff of those bodies – The individual members and medical staff coordinators and credentialing specialists should qualify for protection under this section.
3. Those under contract with the bodies – Peer review consultants contracting to provide impartial review should be protected under this section.
4. Anyone who participates or assists the bodies with respect to action.
5. Those who provide information regarding competence/conduct unless the information is false and the person giving the information knew it was false. Whistle blowers are protected under this section.

### **Exceptions to the Immunity Coverage**

1. Healthcare entities failing to meet the standards for immunity below.
2. Healthcare entities failing to report information to the National Practitioner Data Bank. The federal Health and Human Services Department would determine whether a hospital or healthcare entity failed to report as required, and could take away the immunity protection for up to three years.

### **Standards for Immunity**

Only good faith peer review qualifies for HCQIA protection. The HCQIA sets these standards for good faith peer review. To be considered good faith peer review, peer review must:

1. Be carried out with the reasonable belief that the action was taken to further quality healthcare
2. Follow a reasonable effort, through investigation and review, to obtain the facts
3. Meet adequate notice and fair hearing procedures afforded to the physician or dentist, either by proving in court that the procedure was fair, or by meeting fair hearing standards listed in the HCQIA (see below)
4. Have been conducted in the reasonable belief that the action was warranted by the facts after #2 (fact-finding) and #3 (fair hearing) are accomplished. The hearing procedures that automatically qualify as a fair hearing under the HCQIA must have these elements:
  - a. The physician or dentist is given written notice of the proposed action, stating:
    - i. That a professional review action has been proposed to be taken against the physician or dentist;
    - ii. The reasons for the proposed action;

- iii. That the physician or dentist has the right to request a hearing on the proposed action;
- iv. Any time limit (of not less than 30 days) within which to request such a hearing; and vs. a summary of rights in the hearing.
- b. If a hearing is requested, the physician or dentist must be given notice of hearing, stating:
  - i. The place, time and date of the hearing, which date shall not be less than 30 days after the date of the notice of hearing; and
  - ii. A list of the witnesses (if any) expected to testify at the hearing on the part of the professional review body.
- c. If a hearing is requested, the hearing shall be held (as determined by the hospital or healthcare entity):
  - i. before an arbitrator mutually acceptable to the physician or dentist and the hospital;
  - ii. before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician or dentist involved; or
  - iii. before a panel of individuals who are appointed by the entity and are not in direct economic competition with the physician or dentist involved.
- d. In the hearing, the physician or dentist involved has the right:
  - i. to representation by an attorney or other person of the physician's or dentist's choice;
  - ii. to have a record made of the proceeding, copies of which may be obtained by the physician or dentist upon payment of any reasonable charges associated with the preparation of the record;
  - 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 vs. to submit a written statement at the close of the hearing.
- e. Upon completion of the hearing, the physician or dentist has the right:
  - i. to receive the written recommendation of the hearing body, including a statement of the basis for the recommendation; and
  - ii. to receive the written decision of the hospital or healthcare entity, including a statement of the basis for the decision.

### **Application of Immunity**

The HCQIA had been successfully applied in cases brought by physicians challenging the peer review action taken by the hospitals, to protect the hospital and the physicians who conducted the review. In *Mathews vs. Lancaster General Hospital*, 87 F. 3d 624 (Pa. 1996), committee including competitors found substandard care; outside consultant agreed; surgeon challenged summary judgment applying HCQIA immunity; HCQIA presumption of good faith upheld.