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POLICY OWNER	Senior Provider Network Manager	EFFECTIVE DATE	01/01/2021
REVIEWERS	Chief Medical Officer, Director of Network Development, Credentialing Committee		
REVISION DATE		NEXT REVIEW DATE	

PURPOSE

To provide a mechanism by which to afford due process to an Embright licensed practitioner if Embright decides to restrict, suspend or terminate the licensed practitioner’s ability to provide health care services to Embright members through ongoing monitoring.

Policy:

Embright shall provide for notice and a fair hearing to an Embright licensed practitioner in any case in which action is proposed to be taken by Embright to restrict, suspend or terminate the practitioner’s ability to provide health care services to Embright members.

PROCEDURE

APPLICABILITY

1. **Final Proposed Adverse Action:** The procedures described in this Fair Hearing Procedure shall apply whenever an action is proposed to be taken by the Embright Chief Medical Officer or Credentialing Committee.
 - 1.1. Summary actions that remain in effect for fourteen (14) days or more (See Restriction, Suspension, or Termination of Licensed Practitioner).
 - 1.2. Restriction, suspension, or termination based on deficiencies in the quality of care, professional competence, or professional conduct of the licensed practitioner.
2. The hearing procedures described in this Fair Hearing Procedure shall not apply in the following circumstances:
 - 2.1. Initial credentialing of a licensed practitioner;
 - 2.2. Recredentialing of a licensed practitioner who fails to meet Embright’s administrative criteria;
 - 2.3. Termination of a licensed practitioner’s agreement with Embright pursuant to a “without cause” provision;
 - 2.4. Termination, restriction, or suspension of a licensed practitioner’s ability to provide health care services to Embright members and/or the licensed practitioner’s agreement with Embright for reasons which are not related to quality of care, professional competence, or professional conduct;
 - 2.5. Summary action, as set forth in Section 4 below, which remains in effect for less than fourteen (14) days; and
 - 2.6. Automatic suspension, limitation, or termination of a licensed practitioner, as set forth in Restriction, Suspension or Termination of Licensed practitioners, Section 5.0.



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3. **Role of the Chief Medical Officer:** The Chief Medical Officer or his/her designee shall serve as Chair of the Credentialing Committee, and as chair, may act on behalf of the Credentialing Committee in fulfilling the Committee's duties under this Fair Hearing Procedure.
4. **Summary Action:** Nothing contained in this Fair Hearing Procedure shall limit or otherwise affect the authority of the Chief Medical Officer or Credentialing Committee to take summary action as set forth in Section 4.0 of Embright Policy and Procedure for the Restriction, Suspension or Termination of Licensed Practitioners. If the summary action remains in effect for fourteen (14) days or more, the Fair Hearing Procedure set forth herein shall apply. The terms of the summary action shall remain in effect pending the outcome of any hearing initiated by the licensed practitioner pursuant to Initiation of Hearing, Section 3, of the Fair Hearing Procedure.
5. **Automatic Suspension, Limitation or Termination:** In the event of the automatic suspension, limitation or termination of a licensed practitioner's ability to provide health care services to Embright members and/or licensed practitioner agreement with Embright as set forth in Section 5.0 of Embright Policy and Procedure for the Restriction, Suspension or Termination of Embright licensed Practitioners, the hearing procedures set forth in this Fair Hearing Procedure shall apply.

INITIATION OF HEARING

1. **Grounds for Hearing:** Any one or more of the following actions, when taken or made based upon deficiencies in quality of care, professional competence, or professional conduct of a licensed practitioner, shall constitute "adverse actions" and grounds for a hearing:
 - 1.1. Termination of a licensed practitioner's ability to provide health care services to Embright members following recredentialing.
 - 1.2. Termination of a licensed practitioner's ability to provide health care services to Embright members at any time.
 - 1.3. Imposition or voluntary acceptance of restrictions on a licensed practitioner's ability to provide health care services to Embright members for thirty (30) or more cumulative days in any twelve (12) month period.
 - 1.4. Imposition of a summary action as set forth in above Section 4, Summary Action, which remains in effect for a period of more than fourteen (14) days.
2. **Notice of Adverse Action:** In all cases where an adverse action is proposed to be made or taken against a licensed practitioner constituting grounds for a hearing as set forth in Section 1 above, the Chief Medical Officer shall, within



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ten (10) days after making his or her decision to take adverse action, give the licensed practitioner written notice of the following:

- 2.1. That an adverse action has been made or is proposed to be taken against the licensed practitioner, which if adopted, shall be reported to the National Practitioner Data Bank and the applicable State licensing board or agency;
 - 2.2. The reasons for the proposed adverse action (a specific statement of charges need not be included in the written notice);
 - 2.3. That the licensed practitioner has a right to request a hearing on the proposed adverse action in accordance with this Fair Hearing Procedure within thirty (30) days after receipt of the notice; and
 - 2.4. A summary of the licensed practitioner's rights in connection with the hearing, as specified in this Fair Hearing Procedure.
3. **Request for Hearing:** A licensed practitioner shall have thirty (30) days following his or her receipt of notice of an adverse action to request a hearing on the proposed action. The request shall be given in writing to the Chief Medical Officer by personal delivery or by a certified or registered mail and shall be deemed given upon receipt.
 4. **Waiver:** Failure of the licensed practitioner to request a hearing within the time and in the manner described in Section 3 above shall constitute a waiver of the hearing and any review. In the case of such a waiver, the licensed practitioner shall be deemed to have accepted the Credentialing Committee's proposed action, and the proposed action shall become effective as indicated by the Committee. If the recommendation is one of termination, the proposed action shall become effective pending final action by the Credentialing Committee. The Credentialing Committee's proposed action shall be forwarded to the Clinical Integration Committee for review and final action or ratification.

HEARING PRE-REQUISITES

1. **Notice and Time for Hearing:** Within ten (10) days after receipt of a request for a hearing, the Chief Medical Officer shall schedule a hearing. The Chief Medical Officer shall send written notice to the licensed practitioner of the place, time, and date of the hearing at least seven (7) days prior thereto. Unless extended by the hearing officer upon a showing of good cause, the hearing date shall be not less than thirty (30) days, nor more than sixty (60) days, following receipt of the request for a hearing, but in any event not less than thirty (30) days after the date of the notice of the adverse action is initially sent.

A hearing for a licensed practitioner, who is under suspension then in effect, shall be held as soon as arrangements for it may reasonably be made, but not later than fifteen (15) days from the date of receipt of the request.

2. **The notice to the licensed practitioner shall contain:** (i) a list of the specific or representative patient records in question or other reasons or subject matter forming the basis for the adverse action; and (ii) a list of the witnesses, if any, expected to testify at the hearing. The notice shall specify that the licensed practitioner may submit to the Chief Medical Officer within ten (10) days following receipt of the notice a list of witnesses expected to testify on behalf of the licensed practitioner. The notice may state that the Chief Medical Officer reserves the right to amend



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the list of documents, information, and witnesses. If so amended, prompt notice shall be given to the licensed practitioner.

- Request for Postponement:** A request for postponement of a hearing and/or extension of time beyond the times expressly permitted in Section 1 above shall be permitted only upon mutual agreement of the parties or by the hearing officer upon a showing of good cause:
- Failure to Appear and Proceed:** The personal presence of the licensed practitioner who requested the hearing shall be required. Failure of the licensed practitioner, without good cause, to appear and proceed at the hearing shall constitute a waiver of his or her right to a hearing and a voluntary acceptance of the adverse action, which shall become effective immediately. The matter shall be forwarded to the Credentialing Committee for review and final action or ratification.
- Hearing Officer or Panel:** If a hearing is requested on a timely basis under the above Section 1, the hearing shall be held before a hearing officer or a panel of individuals who is/are appointed by Embright and who is/are not in direct economic competition with the licensed practitioner. Embright shall determine whether to utilize a hearing officer or a hearing panel. If a hearing panel is utilized, Embright may either appoint (i) one member of the panel or (ii) an additional person to serve as the hearing officer. The hearing officer shall maintain decorum and ensure that all participants have an opportunity to present relevant oral and documentary evidence. The hearing officer shall determine the order of procedure and make rulings on issues and matters.
- A person shall be disqualified from serving as a hearing officer or on a hearing panel if he or she has participated in initiating or investigating the matter at issue or if he or she is in direct economic competition with the licensed practitioner. An individual serving as a hearing officer or as a member of a hearing panel need not be a physician or other health care licensed practitioner:

HEARING PROCEDURES

- Representation:** The licensed practitioner who requested the hearing shall be entitled to be represented by an attorney or other person of his or her choice, the cost of which shall be covered by the practitioner. The Credentialing Committee shall also be entitled to be represented by an attorney of its choice and shall designate one or more persons to represent the facts in support of the adverse action and examine witnesses. The Chief Medical Officer shall appoint a representative of the Credentialing Committee to present the Committee's proposed action and the facts in support of such proposed action, to examine witnesses and to present evidence.
- Rights of Parties At Hearing:** Within reasonable limitations, during the hearing both parties shall have the following rights: (i) to be provided with all of the information and evidence made available to the hearing officer; (ii) to have a record made of the proceedings, copies of which may be obtained by the licensed practitioner upon payment of any reasonable charges associated with the preparation thereof; (iii) to call and examine witnesses on relevant matters; (iv) to present and rebut evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law; (v) to introduce exhibits and documents relevant to the issues; and (vi) to submit a written statement at the close of the hearing, provided, however, that these rights are exercised in an efficient and expeditious manner. If the licensed practitioner does not testify on his or her own behalf, he or she may be called by the Credentialing Committee and examined as if under cross-examination.
- Hearing Completion:** Upon completion of the hearing, the licensed practitioner shall have the following rights: (a) to receive the written recommendation of the hearing officer or panel, including a statement of the basis for the

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recommendation(s); and (b) to receive a written decision of the Credentialing Committee, including a statement of the basis for the decision.

4. **Admissibility of Evidence, Examination of Witnesses:** The hearing need not be conducted strictly according to rules of law relating to the examination of witnesses or presentation of evidence and the parties may present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law. Any relevant evidence shall be admitted by the hearing officer if it is the sort of evidence on which responsible persons are accustomed to relying on in the conduct of serious affairs, regardless of its admissibility in a court of a law. The hearing officer may question the witnesses or call additional witnesses if it deems it appropriate. The hearing officer may request that oral evidence be taken only on oath or affirmation administered by a person entitled to notarize documents.
5. **Burdens of Presenting Evidence and Proof:** The burden of presenting evidence and the burden of proof during the hearing shall be as follow:
 - 5.1. The Credentialing Committee shall have the initial burden of presenting evidence which supports the final proposed adverse action. The licensed practitioner shall have the burden of presenting evidence in response.
 - 5.2. The licensed practitioner shall have the burden of proving, by clear and convincing evidence, that the Embright adverse action lacks any substantial factual basis or that the conclusions drawn are arbitrary and capricious or unreasonable.
6. **Record:** A record or sufficiently accurate summary of the hearing shall be kept. The hearing officer may select the method to be used for making the record.
7. **Adjournment:** The hearing officer or panel may recess, adjourn, and reconvene the hearing without further notice for the convenience of the participants or to obtain additional evidence or consultation, with due consideration for reaching an expeditious conclusion to the hearing.
8. **Conclusion of Hearing:** At the conclusion of the presentation of evidence, the hearing shall be closed. The parties may, at the close of the hearing, submit a written statement. The hearing officer or panel shall then, at a time convenient to itself, privately conduct its deliberations, reach a decision, and adjourn the hearing.

DECISION OF HEARING PANEL

1. **Basis of Decision:** The decision of the hearing panel shall be based on the evidence produced at the hearing, including all logical and reasonable inferences drawn from the evidence and testimony. This evidence may consist of the following:
 - 1.1. oral testimony of witnesses;
 - 1.2. briefs or written or oral arguments presented in connection with the hearing;
 - 1.3. any material contained in the Credentialing Committee’s files regarding the licensed practitioner who requested the hearing, and
 - 1.4. any other evidence deemed admissible under Section 4 above.



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- Decision of Hearing Panel:** Within thirty (30) days after adjournment of the hearing, the hearing panel shall prepare a written decision or report stating its findings of fact and recommendations, including a statement of the basis for the recommendations, and shall forward it to the Credentialing Committee, the licensed practitioner who requested the hearing. If the licensed practitioner is currently under suspension, however, the time for rendering the decision shall be fifteen (15) days

If the final proposed action adversely affects the ability of a licensed practitioner to provide health care services to Embright members for a period longer than thirty (30) days and the adverse action is taken as a result of a quality investigation initiated by Embright based on deficiencies in the licensed practitioner's quality of care, competence or professional conduct, then the recommendation shall state that the action, if adopted, will be reported to the NPDB and the applicable State licensing board.

- No Right of Appeal:** There shall be no right of appeal from the decision of the hearing panel.

FINAL DECISION OF EMBRIGHT CREDENTIALING COMMITTEE – TERMINATIONS

- Review By Credentialing Committee:** At its next regularly scheduled meeting after receipt of the written recommendation of the hearing panel to terminate a licensed practitioner, the Credentialing Committee shall (i) review the report and recommendation of the hearing panel, the hearing record, any written statements and all other documentation relevant to the matter; and (ii) consider whether to affirm, modify or reject the recommendation of the hearing panel to terminate the licensed practitioner, or to refer the matter back to the hearing panel for further review and recommendations. The Credentialing Committee shall assess whether the charges were substantiated and/or whether the recommendation is supported by the evidence.
- Final Decision by Credentialing Committee:** Upon completion of its review, the Credentialing Committee shall render a final decision concerning the termination of the licensed practitioner's ability to provide health care services to Embright members, or any other corrective action the Credentialing Committee deems necessary.
- Licensed Practitioner Notification:** The decision of the Credentialing Committee to restrict or suspend, or terminate, shall (i) be in writing, certified return receipt, within ten (10) business days of the decision (ii) specify the reasons for the action taken (iii) include the text of the report which shall be made to the NPDB and the applicable state licensing board, if any, and (iv) be delivered to the licensed practitioner under review at least ten (10) days prior to submission of a report to the NPDB or the state licensing board.
- Except where the matter is rendered for further review and recommendations, in accordance with above Section 1, Review By Credentialing Committee, the decision of the Credentialing Committee, as applicable, following completion of the procedures set forth in this Fair Hearing Procedure shall constitute the final action of Embright against the licensed practitioner, shall be immediately effective and final and shall not be subject to further hearing or appellate review.

FURTHER REVIEW

If the matter is referred back to the hearing panel for further review, in accordance with above Section 1, Review By Credentialing Committee, the Credentialing Committee or hearing panel shall promptly conduct its review and make its



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recommendations. This further review process and report back to the Credentialing Committee shall in no event exceed thirty (30) days in duration except as the parties may otherwise stipulate.

RIGHT TO ONE HEARING ONLY

No licensed practitioner shall be entitled as a matter of right to more than one (1) hearing on any single matter which shall have been the subject of an adverse action.

REPORTING SERIOUS QUALITY DEFICIENCIES

1. Embright will report to the NPDB and the applicable state licensing/examining board in the event an adverse action is taken as a result of a quality investigation initiated by Embright in which any of the following is identified:
 - 1.1. Deficiency in quality of care and service.
 - 1.2. Deficiency in professional competence.
 - 1.3. Deficiency in professional conduct.
 - 1.4. Patient health, safety or welfare which affects or could adversely affect any member and/or is reasonably likely to be detrimental to the delivery of quality patient care.

Embright will submit reports to the NPDB and the applicable State licensing board within thirty (30) days of the final decision made by the Credentialing Committee and in accordance with above Section 3, Licensed Practitioner Notification.