

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2319

By: Roach

AS INTRODUCED

An Act relating to torts; stating legislative intent and purpose; defining terms; creating quality improvement committees for peer review for certain health care professionals; providing for confidentiality and privileged data and information; prohibiting disclosure; making certain records and proceedings not subject to discovery; providing for use of certain records and testimony; authorizing closure of certain meetings; specifying reasons and majority vote; restricting admissibility of certain data; providing for construction and applicability of certain section; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 30.1 of Title 76, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Oklahoma Legislature to encourage committees made up of professional health care providers to candidly, conscientiously and objectively evaluate and review their

peers' professional conduct, competence, and ability to provide health care services. Oklahoma further recognizes that confidentiality is essential both to effective functioning of quality improvement committees and to the continued improvement in the care and treatment of patients.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 30.2 of Title 76, unless there is created a duplication in numbering, reads as follows:

For purposes of this act:

1. "Professional health care provider" means an individual who is licensed, or an organization which is authorized to practice or operate in the health care field under the laws of Oklahoma, including, but not limited to, the following individuals or organizations:

- a. a medical and/or osteopathic physician,
- b. a dentist,
- c. a podiatrist,
- d. a chiropractor,
- e. an optometrist,
- f. a psychologist,
- g. a pharmacist,
- h. a registered or practical nurse,
- i. a physical therapist,
- j. a physician's assistant,
- k. an occupational therapist,
- l. a corporation or other organization operating a hospital, a nursing or convalescent home, or other health care facility, as well as the officers, directors, or employees of such corporation or organization or the members of such corporation's or organization's governing board who are performing one

or more of the functions of quality improvement committees,

- m. an entity that provides health care services or arranges for health care services, including, but not limited to, Preferred Provider Organizations, Health Maintenance Organizations, Physician Hospital Organizations, Provider Sponsored Organizations, and Independent Practitioner Associations,
- n. an entity that furnishes the services of professional health care providers to another professional health care provider, and
- o. a professional society or professional certifying organization;

2. "Health care" means professional services rendered by a professional health care provider or an employee or agent of a professional health care provider;

3. "Administrative staff" means the employees or agents of any individual, group, or entity identified as a professional health care provider;

4. "Consumer director" means a director of a health service plan corporation or health maintenance organization who is not a licensed or registered professional health care provider;

5. "Quality improvement committee" means an individual designated or group established, by one or more professional health care providers, to gather and review information relating to the care and treatment of patients for the purpose of:

- a. evaluating and improving the quality of health care rendered in the area or medical institution or by a professional health care provider that established the quality improvement committee,
- b. reducing morbidity or mortality,

- c. obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illnesses and injuries,
- d. developing and publishing guidelines showing the norms of health care in the area or medical institution or by the professional health care provider that established the quality improvement committee,
- e. developing and publishing guidelines designed to keep the cost of health care within reasonable bounds.
- f. reviewing the quality or cost of health care services provided to enrollees of health maintenance organizations, health service plans, preferred provider organizations, insurance companies, and similar organizations,
- g. acting as a professional standard review organization pursuant to United States Code, Title 42, Section 1320-1 et seq.,
- h. determining whether a professional health care provider shall be granted clinical privileges in a medical institution, membership in a state or local association of professional health care providers, or participating status in a nonprofit health service plan corporation, health maintenance organization, preferred provider organization, insurance company or similar organization or entity, or whether a professional's clinical privileges, membership, or participation status should be limited, suspended or revoked,
- i. reviewing, ruling on, or advising on controversies, disputes or questions between:
  - (1) health insurance carriers, nonprofit health service plan corporations, health maintenance

- organizations, self-insurers and their insured, subscribers, enrollees, or other covered persons,
- (2) professional licensing boards and professional health care providers licensed by them,
  - (3) professional health care providers and their patients concerning diagnosis, treatment or care, or the charges or fees thereafter,
  - (4) professional health care providers and health insurance carriers, nonprofit health service plan corporations, health maintenance organizations, or self-insurers concerning a charge or fee for health care services provided to an insured, subscriber, enrollee, or other covered person, and
  - (5) professional health care providers or their patients and the federal, state, or local government, or agencies thereof,
- j. providing underwriting assistance in connection with professional liability insurance coverage applied for or obtained by professional health care providers, or providing assistance to underwriters in evaluating claims against dentists,
  - k. providing recommendations on the medical necessity of a health service, or the relevant prevailing community standard for a health service,
  - l. providing quality assurance as required by United States Code, Title 42, Sections 1396r(b)(1)(b) and 1395i-3(b)(1)(b) of the Social Security Act,
  - m. providing information to group purchasers of health care services when that information was originally generated within the quality improvement committee for a purpose specified by this paragraph, or

- n. providing information to other affiliated or nonaffiliated quality improvement committees, when that information was originally generated within the quality improvement committee for a purpose specified by this paragraph, and as long as that information will further the purposes of a quality improvement committee as specified by this paragraph.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 30.3 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this section:

1. All data and information acquired or produced by a quality improvement committee in the exercise of its duties and functions, or by an individual or other entity acting at the direction of a quality improvement committee, shall be privileged, shall be held in confidence, shall not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the quality improvement committee, and shall not be subject to subpoena or discovery;

2. No person shall disclose what transpired at a meeting of a quality improvement committee except to the extent necessary to carry out one or more of the purposes of a quality improvement committee;

3. The proceedings and records of a quality improvement committee shall not be subject to discovery or introduction into evidence in any civil action against a professional arising out of the matter or matters which are the subject of consideration by the quality improvement committee. Information, documents or records otherwise available from original sources shall not be immune from discovery or use in any civil action merely because they were presented during proceedings of a quality improvement committee, nor shall any person who testified before a quality improvement

committee or who is a member of it be prevented from testifying as to matters within the person's knowledge, but a witness cannot be asked about the witness' testimony before a quality improvement committee or opinions formed by the witness as a result of its deliberations;

4. The confidentiality protection and protection from discovery or introduction into evidence provided in this subsection shall also apply to the governing body of the organization which sponsored or appointed the quality improvement committee and shall not be waived as a result of referral of a matter from the quality improvement committee to the governing body or consideration by the governing body of decisions, recommendations, or documentation of the quality improvement committee; and

5. The governing body of any professional health care provider that is owned or operated by a governmental entity may close a meeting to discuss decisions, recommendations, deliberations, or documentation of the quality improvement committee. A meeting may not be closed except by a majority vote of the governing body in a public meeting.

B. The restrictions in subsection A of this section shall not apply to professional health care providers requesting or seeking through discovery, data, information, or records relating to their clinical privileges, membership, or participation status. However, any data so disclosed in such proceedings shall not be admissible in any other judicial proceeding than those brought by the professional health care providers to challenge an action relating to the professional health care provider's clinical privileges, membership or participation status.

SECTION 4. This act shall become effective July 1, 1998.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-8372

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