

ENROLLED HOUSE
BILL NO. 1443

By: Boyd, Adair, Adkins, Askins, Beutler, Blackburn, Bryant, Coleman, Case, Calvey, Claunch, Covey, Dank, Deutschendorf, Dunegan, Eddins, Fields, Gilbert, Glover, Gray, Hefner, Hutchison, Kirby, Langmacher, Maddux, Matlock, McCarter, Miller, Mitchell, Morgan, Nations, Nance, Ostrander, Paulk, Perry, Pettigrew, Phillips, Pope (Clay), Pope (Tim), Reese, Rice, Roggow, Sellers, Smith (Hopper), Sullivan (John), Sullivan (Leonard), Taylor, Thomas, Thornbrugh, Tyler, Weaver, Webb, Wilt, Worthen, Begley, Turner and Newport of the House

and

Morgan, Brown, Campbell, Crutchfield, Douglass, Dunlap, Fisher, Ford, Harrison, Helton, Henry, Herbert, Hobson, Horner, Kerr, Leftwich, Littlefield, Long, Milacek, Price, Robinson, Shurden, Snyder, Wilkerson and Williams of the Senate

An Act relating to peer review; defining terms; requiring confidentiality of peer review information; providing exceptions; making certain peer review information subject to discovery; requiring certain showings; specifying certain civil actions in which peer review information may be discovered; providing for discovery of certain information; providing for construction of act; providing for certain admissible and nonadmissible information; requiring confidentiality of certain identities or means of identification; prohibiting certain persons from testifying about certain peer review processes or disclosing certain peer review information; providing for codification; and providing an effective date.

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 1-1709.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Credentialing data" means:

a. the application submitted by a health care professional requesting appointment or reappointment

to the medical staff of a health care facility or requesting clinical privileges or other permission to provide health care services at a health care facility,

- b. any information submitted by the health care professional in support of such application,
- c. any information, unless otherwise privileged, obtained by the health care facility during the credentialing process regarding such application, and
- d. the decision made by the health care facility regarding such application;

2. "Credentialing process" means any process, program or proceeding utilized by a health care facility to assess, review, study or evaluate the credentials of a health care professional;

3. "Health care facility" means:

- a. any hospital or related institution offering or providing health care services under a license issued pursuant to Section 1-706 of Title 63 of the Oklahoma Statutes, and
- b. any ambulatory surgical center offering or providing health care services under a license issued pursuant to Section 2660 of Title 63 of the Oklahoma Statutes;

4. "Health care professional" means any person authorized to practice allopathic medicine and surgery, osteopathic medicine, podiatric medicine, optometry, chiropractic, psychology, dentistry or a dental specialty under a license issued pursuant to Title 59 of the Oklahoma Statutes;

5. "Peer review information" means all records, documents and other information generated during the course of a peer review process, including any reports, statements, memoranda, correspondence, record of proceedings, materials, opinions, findings, conclusions and recommendations, but does not include:

- a. the medical records of a patient whose health care in a health care facility is being reviewed,
- b. incident reports and other like documents regarding health care services being reviewed, regardless of how the reports or documents are titled or captioned,
- c. the identity of any individuals who have personal knowledge regarding the facts and circumstances surrounding the patient's health care in the health care facility,
- d. factual statements regarding the patient's health care in the health care facility from any individuals who have personal knowledge regarding the facts and circumstances surrounding the patient's health care, which factual statements were generated outside the peer review process,

- e. the identity of all documents and raw data previously created elsewhere and considered during the peer review process,
- f. copies of all documents and raw data previously created elsewhere and considered during the peer review process, whether available elsewhere or not, or
- g. credentialing data regarding the health care professional who provided the health care services being reviewed or who is the subject of a credentialing process; and

6. "Peer review process" means any process, program or proceeding, including a credentialing process, utilized by a health care facility to assess, review, study or evaluate the credentials, competence, professional conduct or health care services of a health care professional.

B. 1. Peer review information shall be private, confidential and privileged:

- a. except that a health care facility shall be permitted to provide relevant peer review information to the state agency or board which licensed the health care professional who provided the health care services being reviewed in a peer review process or who is the subject of a credentialing process, with notice to the health care professional, and
- b. except as provided in subsections C and D of this section.

2. Nothing in this act shall be construed to abrogate, alter or affect any provision in the Oklahoma Statutes which provides that information regarding liability insurance of a health care facility or health care professional is not discoverable or admissible.

C. In any civil action in which a patient or patient's legal representative has alleged that the patient has suffered injuries resulting from negligence by a health care professional in providing health care services to the patient in a health care facility, factual statements, presented during a peer review process utilized by such health care facility, regarding the patient's health care in the health care facility from individuals who have personal knowledge of the facts and circumstances surrounding the patient's health care shall be subject to discovery, pursuant to the Oklahoma Discovery Code, upon an affirmative showing that such statements are not otherwise available in any other manner.

D. 1. In any civil action in which a patient or patient's legal representative has alleged:

- a. that the patient has suffered injuries resulting from negligence by a health care professional in providing health care services to the patient in a health care facility, or

- b. that the health care facility was independently negligent as a result of permitting the health care professional to provide health care services to the patient in the health care facility,

the recommendations made and action taken as a result of any peer review process utilized by such health care facility regarding the health care professional prior to the date of the alleged negligence shall be subject to discovery pursuant to the Oklahoma Discovery Code.

2. Any information discovered pursuant to this subsection D:

- a. shall not be admissible as evidence until a judge or jury has found the health care professional to have been negligent in providing health care services to the patient in such health care facility, and
- b. shall not at any time include the identity or means by which to ascertain the identity of any other patient or health care professional.

E. No person involved in a peer review process may be permitted or required to testify regarding the peer review process in any civil proceeding or disclose by responses to written discovery requests any peer review information.

SECTION 2. This act shall become effective November 1, 1999.

Passed the House of Representatives the 13th day of May, 1999.

Speaker of the House of
Representatives

Passed the Senate the 13th day of May, 1999.

President of the Senate