

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 677

By: Monson of the Senate

and

Mitchell of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending Section 4, Chapter 347, O.S.L. 1992, as last amended by Section 2, Chapter 332, O.S.L. 2000, Section 6, Chapter 347, O.S.L. 1992, as last amended by Section 7, Chapter 389, O.S.L. 1998, Section 8, Chapter 347, O.S.L. 1992, as last amended by Section 9, Chapter 389, O.S.L. 1998 (63 O.S. Supp. 2000, Sections 1-118, 1-120 and 1-122), which relate to the Division of Health Care Information; expanding duties of the Division; providing for penalty for violation of confidentiality provisions; specifying criteria for taking action on behalf of the Advisory Committee; amending 63 O.S. 1991, Section 1-860.13, as amended by Section 1, Chapter 152, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-860.13), which relates to the Hospice Advisory Board; expanding qualifications of Board member; amending Section 4, Chapter 278, O.S.L. 1999 (63 O.S. Supp. 2000, Section 2209.1), which relates to tissue bank permits; establishing time limit for tissue agency accreditation; and providing an effective date.

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

SECTION 1. AMENDATORY Section 4, Chapter 347, O.S.L. 1992, as last amended by Section 2, Chapter 332, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-118), is amended to read as follows:

Section 1-118. A. The Division of Health Care Information is hereby created within the State Department of Health.

B. The Division shall:

1. Collect from providers health care information for which the Division has established a defined purpose and a demonstrated

utility that is consistent with the intent of the provisions of Section 1-117 et seq. of this title;

2. Establish and maintain a uniform health care information system;

3. Analyze health care data submitted including, but not limited to, geographic mapping of disease entities;

4. Provide for dissemination of health care data to users and consumers;

5. Provide for the training and education of information providers regarding processing and maintenance and methods of reporting required information;

6. ~~Require that~~ Be authorized to access all state agency health-related data sets and shall develop mechanisms for the receipt of health care data be submitted to the Division or its agent by all information providers; provided, however, all provisions for confidentiality shall remain in place;

7. Provide for the exchange of information with other agencies or political subdivisions of this state, the federal government or other states, or agencies thereof. The Division shall collaborate with county health departments, including the Oklahoma City-County Health Department and the Tulsa City-County Health Department, in developing city-county based health data sets;

8. Contract with other public or private entities for the purpose of collecting, processing or disseminating health care data; and

9. Build and maintain the data base.

C. 1. The State Board of Health shall adopt rules governing the acquisition, compilation and dissemination of all data collected pursuant to the Oklahoma Health Care Information System Act.

2. The rules shall include, but not be limited to:

- a. adequate measures to provide system security for all data and information acquired pursuant to the Oklahoma Health Care Information System Act,
- b. adequate procedures to ensure confidentiality of patient records,
- c. charges for users for the cost of data preparation for information that is beyond the routine data disseminated by the office, and
- d. time limits for the submission of data by information providers.

D. The Division shall adopt standard nationally recognized coding systems to ensure quality in receiving and processing data.

E. The Division shall implement mechanisms to encrypt all personal identifiers contained in any health care data upon transmission to the State Department of Health, and all such data shall remain encrypted while maintained in the Department's database or while used by a contractor.

F. The Division may contract with an organization for the purpose of data analysis. Any contract or renewal thereof shall be based on the need for, and the feasibility, cost and performance of, services provided by the organization. The Division shall require any data analyzer at a minimum to:

1. Analyze the information;
2. Prepare policy-related and other analytical reports as determined necessary for purposes of this act; and
3. Protect the encryption and confidentiality of the data.

G. The Board shall have the authority to set fees and charges with regard to the collection and compilation of data requested for special reports, and for the dissemination of data. These funds shall be deposited in the Oklahoma Health Care Information System Revolving Fund account.

H. The Division may accept grants or charitable contributions for use in carrying out the functions set forth in the Oklahoma Health Care Information System Act from any source. These funds shall be deposited in the Oklahoma Health Care Information System Revolving Fund.

SECTION 2. AMENDATORY Section 6, Chapter 347, O.S.L. 1992, as last amended by Section 7, Chapter 389, O.S.L. 1998 (63 O.S. Supp. 2000, Section 1-120), is amended to read as follows:

Section 1-120. A. Except as otherwise provided by Section 1-119 of this title, the individual forms, computer tapes, or other forms of data collected by and furnished to the Division of Health Care Information or to a data processor pursuant to the Oklahoma Health Care Information System Act, ~~Section 1-115 et seq. of this title,~~ shall be confidential and shall not be public records as defined in the Open Records Act, ~~Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes.~~

B. After approval by the State Department of Health, the compilations prepared for release or dissemination from the data collected, except for a report prepared at the request of an individual data provider containing information concerning only its transactions, shall be public records. The Division shall establish a Health Care Information Advisory Committee as provided in Section 1-122 of this title, to assist with determinations related to data collection, and information to be released and disseminated to the public.

C. The confidentiality of identifying information is to be protected and the pertinent statutes, rules and regulations of the State of Oklahoma and of the federal government relative to confidentiality shall apply.

D. Identifying information shall not be disclosed, and shall not be used for any purpose except for the creation and maintenance

of anonymous medical case histories for statistical reporting and data analysis.

E. The Division or other state agency receiving information pursuant to the Oklahoma Health Care Information System Act shall be subject to the same confidentiality restrictions imposed by state or federal law as the public or private agency providing the information and is prohibited from taking any administrative, investigative or other action with respect to any individual on the basis of the identifying information. The Division data analyzer or other state agency receiving information pursuant to the Oklahoma Health Care Information System Act is further prohibited from identifying, directly or indirectly, any individual in any report of scientific research or long-term evaluation, or otherwise disclosing identities in any manner.

F. Except as otherwise authorized by the Oklahoma Health Care Information System Act, identifying information submitted to the Division which would directly or indirectly identify any person shall not be disclosed by the Division either voluntarily or in response to any legal process, unless directed to by a court of competent jurisdiction, granted after application showing good cause therefor with notice of the hearing to the Division. In assessing good cause the court shall only grant such application if it seeks to challenge the statistical efficacy of a finding made by the Division or alleges a violation of confidentiality by the Division. Such application shall then be granted only when the public interest and the need for disclosure outweighs the injury to the person, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

G. Any person who submits or receives data as required or authorized by the Oklahoma Health Care Information System Act shall be immune from liability in any civil action for any action taken as required by the provisions of the Oklahoma Health Care Information System Act. This immunity is in addition to any other immunity for the same or similar acts to which the person is otherwise entitled.

H. Any person who violates the confidentiality provisions of this section shall be punishable by a fine of Five Thousand Dollars (\$5,000.00).

SECTION 3. AMENDATORY Section 8, Chapter 347, O.S.L. 1992, as last amended by Section 9, Chapter 389, O.S.L. 1998 (63 O.S. Supp. 2000, Section 1-122), is amended to read as follows:

Section 1-122. A. The State Commissioner of Health shall appoint a Health Care Information Advisory Committee to advise and assist the Division of Health Care Information with determinations related to data elements to be collected, reporting requirements, and the release and dissemination of information to the public.

B. The membership of the Health Care Information Advisory Committee shall include, but not be limited to, the Administrator of the Oklahoma Health Care Authority, or a designee and the presidents of the following organizations, or their designees:

1. The Oklahoma State Chamber of Commerce;
2. The Oklahoma Hospital Association;
3. The Oklahoma State Medical Association;
4. The Oklahoma Osteopathic Association;
5. The Oklahoma AFL-CIO;
6. A statewide health care consumer coalition;
7. The Association of Oklahoma Life Insurance Companies;
8. The Oklahoma Health Care Association;
9. The Oklahoma Pharmaceutical Association;
10. The Oklahoma Dental Association;
11. The Oklahoma State Chiropractic Association;

12. The Oklahoma Optometric Association;
13. The Oklahoma Physical Therapy Association;
14. The Oklahoma Podiatric Medical Association;
15. The Oklahoma Psychological Association; and
16. The Oklahoma Association of Home Care.

C. For voting purposes, a majority of the members in attendance at a meeting shall be able to take action on behalf of the Advisory Committee.

D. The Division, with the approval of the Commissioner, may appoint health care data technical advisory committees as needed and appropriate to assist in the development of implementation methods and in the interpretation and evaluation of the data received pursuant to the Oklahoma Health Care Information System Act.

The Health Care Information Advisory Committee and any technical advisory committees established pursuant to this section shall provide information and assistance to any legislative committee or task force requesting such information or assistance.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-860.13, as amended by Section 1, Chapter 152, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-860.13), is amended to read as follows:

Section 1-860.13 A. There is hereby created a Hospice Advisory Board which shall be composed of seven (7) members, as follows:

1. One member who shall be a general practitioner of the medical professions licensed pursuant to the laws of this state;
2. One member who shall be a registered nurse licensed pursuant to the laws of this state;
3. One member who shall be a professional counselor, psychologist or social worker licensed pursuant to the laws of this state;
4. One member of a statewide association of home care operators whose membership consists of a majority of the licensed home health operators in this state;

5. Two members who shall be administrators of hospices which shall be licensed pursuant to the Hospice Licensing Act; and

6. One member who shall represent the general public.

B. 1. The members of the Hospice Advisory Board shall be appointed by the Governor and shall be in good standing with state and federal regulatory bodies. As used in this paragraph, "good standing" means being in compliance with state and federal statutes and regulations, with no outstanding deficiencies or citations pending with a state or federal agency.

2. The initial term of the member representing the general public shall be for one (1) year, the initial term of the member of the medical profession shall be for three (3) years; the initial terms of the licensed registered nurse and professional counselor, psychologist, or social worker members shall be for two (2) years; and the initial terms of the administrator members shall be for one (1) year.

3. After the initial appointments, the terms of each member shall be for a three-year period. Vacancies shall be filled in the same manner as that position was originally filled.

C. The State Department of Health shall provide an office and a clerical staff worker to perform designated duties of the Hospice Advisory Board. The Department shall also provide space for meetings of the Hospice Advisory Board.

D. The Hospice Advisory Board shall annually elect from among its membership a chair and a secretary-treasurer. Four members of the Hospice Advisory Board shall constitute a quorum. A quorum must be present to transact any business of the Hearing Advisory Board. The Hospice Advisory Board shall meet at least quarterly, and may hold such special meetings as may be necessary. The members of the Hearing Advisory Board shall serve without compensation, but may be reimbursed for expenses by the State Department of Health, pursuant to the State Travel Reimbursement Act.

SECTION 5. AMENDATORY Section 4, Chapter 278, O.S.L. 1999 (63 O.S. Supp. 2000, Section 2209.1), is amended to read as follows:

Section 2209.1 A. On or after November 1, 1999, no person, corporation, partnership, association or other legal entity shall establish, operate or maintain a tissue bank that procures bone, skin, or connective tissue unless that entity has been issued a permit by the State Department of Health.

B. The State Board of Health shall promulgate rules necessary to implement the provisions of this section which shall include, but not be limited to:

1. Requirements for the tissue banks to submit an initial permit application that identifies the proposed service area, the tissue transplantation patient needs in the service area, the probable impact of the establishment and operation of the entity on other tissue banks currently servicing the area, and whether the tissue bank is a for profit or not for profit entity;

2. A requirement that tissue banks, within one (1) year after receipt of a permit, be accredited by the American Association of Tissue Banks or another nationally recognized accreditation organization for tissue agencies;

3. Provisions that all tissue banks employ a procurement technician or other technical operations personnel certified as a Certified Tissue Bank Specialist by the American Association of Tissue Banks or another nationally recognized accreditation or certification organization for tissue agencies and personnel;

4. A requirement that each tissue bank maintain compliance with federal Food and Drug Administration regulations;

5. A provision that each tissue bank have a medical director who is a physician licensed to practice medicine in this state;

6. Requirements for tissue banks to give priority in tissue distribution to the Oklahoma medical community and Oklahoma patients; and

7. A requirement that each tissue bank submit an annual report to the Department which shall provide the accreditation status of the entity, report of regulatory or internal inspections that affect quality, the certification status of personnel employed by the tissue agency, identity and qualification of the current medical director, type and geographic origins of donor tissue obtained, and units of processed tissue used for patients in the service area of the tissue bank.

C. A permit application or renewal thereof, shall be accompanied by a non-refundable fee established by the Board of Health not to exceed One Thousand Dollars (\$1,000.00).

D. Upon receipt of a complete initial permit application, the Department shall cause a public notice of the proposed tissue bank to be published in a newspaper with the greatest circulation. The Department shall also provide written notice of the permit application to existing tissue banks in the state. Any person or organization may submit written comments regarding the proposed tissue bank to the Department.

E. The Department shall issue or deny an initial permit within seventy-five (75) days after publication of the notice. All permits shall be issued for a period not to exceed thirty-six (36) months and shall automatically expire unless renewed.

F. The Department may deny, revoke, suspend or not renew a permit for failure of a tissue bank to comply with the provisions of this section or rules promulgated pursuant thereto. Any tissue bank that has been determined by the Department to have violated any provision of this section or rule promulgated pursuant thereto, is liable for an administrative penalty of no more than One Hundred Dollars (\$100.00) for each day on which a violation occurs or

continues. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

G. The issuance, denial, suspension, non-renewal or revocation of a permit may be appealed under the provisions of Article II of the Administrative Procedures Act, Section 308a of Title 75 of the Oklahoma Statutes.

H. The Department may bring an action in a court of competent jurisdiction for equitable relief to redress or restrain any entity from providing tissue bank services without a valid permit. Said court shall have jurisdiction to determine said action, and to grant the necessary appropriate relief, including but not limited to, mandatory or prohibitive injunctive relief or interim equitable relief.

SECTION 6. This act shall become effective November 1, 2001.

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CJ

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