

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1569

By: Monson of the Senate

and

Askins of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; stating legislative findings and declarations; creating the Joint Legislative Task Force on Patient Safety; stating purpose; specifying examples of legislative or regulatory efforts; providing for Task Force composition, officers, staffing and reporting; sunseting Task Force; amending 63 O.S. 2001, Section 1-1709.1, as amended by Section 3, Chapter 156, O.S.L. 2002 (63 O.S. Supp. 2003, Section 1-1709.1), which relates to peer review information; expanding definition; providing for noncodification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. Recognizing that physicians must play an active role in developing systems to improve patient safety and that it is in the best interest of the public and physicians for physicians to more actively work to improve patient care and reduce harm, there is hereby created the Joint Legislative Task Force on Patient Safety. The purpose of the Task Force shall be to study the feasibility of legislative or regulatory efforts designed to improve patient safety that include, but need not be limited to:

1. Implementation of physician licensure requirements for risk management training;

2. Provision of premium discounts on malpractice insurance based on a physician performance;

3. Provision of partial subsidies of physicians' premiums under various health plans, Medicaid and Medicare in return for specific safety enhancements;

4. Investment by physicians in tools such as electronic prescribing aids and automated systems for tracking of tests; and

5. Improved collection and reporting of information on patient safety in order to facilitate safety improvement and physician involvement.

B. 1. The Task Force shall be composed of six members of the Senate, appointed by the President Pro Tempore of the Senate, and six members of the House of Representatives, appointed by the Speaker.

2. In addition, the following directors shall serve on the Task Force:

a. the Director of the Board of Medical Licensure and Supervision,

b. the Director of the Oklahoma Board of Osteopathic Examiners,

c. the Director of the Oklahoma Board of Nursing, and

d. the director of a statewide association representing hospitals.

3. The President Pro Tempore shall appoint the chair of the Task Force from among the Senate members and the Speaker shall appoint the vice-chair of the Task Force from among the House members.

C. The chair of the Task Force shall convene the first meeting of the Task Force on or before December 1, 2004.

D. Staffing for the Task Force shall be provided by the staffs of the State Senate and the Oklahoma House of Representatives.

E. The Task Force shall issue a report of its findings to the Legislature on or before January 31, 2005.

F. The Joint Legislative Task Force on Patient Safety shall sunset on January 31, 2005.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1709.1, as amended by Section 3, Chapter 156, O.S.L. 2002 (63 O.S. Supp. 2003, Section 1-1709.1), is amended to read as follows:

Section 1-1709.1 A. As used in this section:

1. "Credentialing or recredentialing 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 or recredentialing process regarding such application, and
- d. the decision made by the health care facility regarding such application;

2. "Credentialing or recredentialing 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 this title, ~~and~~

- b. any ambulatory surgical center offering or providing health care services under a license issued pursuant to Section 2660 of this title, and
- c. the clinical practices of accredited allopathic and osteopathic state medical schools;

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 or recredentialing data regarding the health care professional who provided the health care services being reviewed or who is the subject of a credentialing or recredentialing process; and

6. "Peer review process" means any process, program or proceeding, including a credentialing or recredentialing process, utilized by a health care facility or county medical society 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 or county medical society 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 or recredentialing 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 section 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 $\text{\textcircled{D}}$:

- 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 3. 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.

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CJ

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