

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 673 By: Anderson of the Senate
3 and
4 Sullivan of the House
5
6

7 (peer review - confidential - appeal - patient
8 advocate pilot program - codification -
9 effective date)
10
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12 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
13 entire bill and insert

14 "An Act relating to public health and safety;
15 amending 63 O.S. 2001, Section 1-1709.1, as last
16 amended by Section 2, Chapter 558, O.S.L. 2004, and
17 5052 (63 O.S. Supp. 2008, Section 1-1709.1), which
18 relate to peer review information and judicial
19 review; modifying definitions; specifying persons
20 who may request certain review; and providing an
21 effective date.

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

23 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1709.1, as
24 last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp.
2008, Section 1-1709.1), is amended to read as follows:

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

1 1. "Credentialing or recredentialing data" means:

- 2 a. the application submitted by a health care
3 professional requesting appointment or reappointment
4 to the medical staff of a health care facility or
5 requesting clinical privileges or other permission to
6 provide health care services at a health care
7 facility,
8 b. any information submitted by the health care
9 professional in support of such application,
10 c. any information, unless otherwise privileged, obtained
11 by the health care facility during the credentialing
12 or recredentialing process regarding such application,
13 and
14 d. the decision made by the health care facility
15 regarding such application;

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

20 3. "Health care facility" means:

- 21 a. any hospital or related institution offering or
22 providing health care services under a license issued
23 pursuant to Section 1-706 of this title,
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- 1 b. any ambulatory surgical center offering or providing
2 health care services under a license issued pursuant
3 to Section 2660 of this title, ~~and~~
4 c. the clinical practices of accredited allopathic and
5 osteopathic state medical schools, and
6 d. the Oklahoma Health Care Authority;

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

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

- 17 a. the medical records of a patient whose health care in
18 a health care facility is being reviewed,
19 b. incident reports and other like documents regarding
20 health care services being reviewed, regardless of how
21 the reports or documents are titled or captioned,
22 c. the identity of any individuals who have personal
23 knowledge regarding the facts and circumstances
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1 surrounding the patient's health care in the health
2 care facility,

3 d. factual statements regarding the patient's health care
4 in the health care facility from any individuals who
5 have personal knowledge regarding the facts and
6 circumstances surrounding the patient's health care,
7 which factual statements were generated outside the
8 peer review process,

9 e. the identity of all documents and raw data previously
10 created elsewhere and considered during the peer
11 review process,

12 f. copies of all documents and raw data previously
13 created elsewhere and considered during the peer
14 review process, whether available elsewhere or not, or

15 g. credentialing or recredentialing data regarding the
16 health care professional who provided the health care
17 services being reviewed or who is the subject of a
18 credentialing or recredentialing process; and

19 6. "Peer review process" means any process, program or
20 proceeding, including a credentialing or recredentialing process,
21 utilized by the Oklahoma Health Care Authority, a health care
22 facility or county medical society to assess, review, study or
23 evaluate the credentials, competence, professional conduct or health
24 care services of a health care professional.

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

3 a. except that a health care facility or county medical
4 society shall be permitted to provide relevant peer
5 review information to the state agency or board which
6 licensed the health care professional who provided the
7 health care services being reviewed in a peer review
8 process or who is the subject of a credentialing or
9 recredentialing process, with notice to the health
10 care professional, and

11 b. except as provided in subsections C and D of this
12 section.

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

18 C. In any civil action in which a patient or patient's legal
19 representative has alleged that the patient has suffered injuries
20 resulting from negligence by a health care professional in providing
21 health care services to the patient in a health care facility,
22 factual statements, presented during a peer review process utilized
23 by such health care facility, regarding the patient's health care in
24 the health care facility from individuals who have personal

1 knowledge of the facts and circumstances surrounding the patient's
2 health care shall be subject to discovery, pursuant to the Oklahoma
3 Discovery Code, upon an affirmative showing that such statements are
4 not otherwise available in any other manner.

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

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

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

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

20 2. Any information discovered pursuant to this subsection:

21 a. shall not be admissible as evidence until a judge or
22 jury has found the health care professional to have
23 been negligent in providing health care services to
24 the patient in such health care facility, and

1 b. shall not at any time include the identity or means by
2 which to ascertain the identity of any other patient
3 or health care professional.

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

8 SECTION 2. AMENDATORY 63 O.S. 2001, Section 5052, is
9 amended to read as follows:

10 Section 5052. A. Any applicant or recipient, adversely
11 affected by a decision of the Oklahoma Health Care Authority on
12 benefits or services provided pursuant to the provisions of this
13 title, shall be afforded an opportunity for a hearing pursuant to
14 the provisions of subsection B of this section after such applicant
15 or recipient has been notified of the adverse decision of the
16 Authority.

17 B. 1. Upon timely receipt of a request for a hearing as
18 specified in the notice of adverse decision and exhaustion of other
19 available administrative remedies, the Authority shall hold a
20 hearing pursuant to the provisions of rules promulgated by the
21 Oklahoma Health Care Authority Board pursuant to this section.

22 2. The record of the hearing shall include, but shall not be
23 limited to:

24 a. all pleadings, motions, and intermediate rulings,

- 1 b. evidence received or considered,
2 c. any decision, opinion, or report by the officer
3 presiding at the hearing, and
4 d. all staff memoranda or data submitted to the hearing
5 officer or members of the agency in connection with
6 their consideration of the case.

7 3. Oral proceedings shall be electronically recorded by the
8 Authority. Any party may request a copy of the tape recording of
9 such person's administrative hearing or may request a transcription
10 of the tape recording to comply with any federal or state law.

11 C. Any decision of the Authority after such a hearing pursuant
12 to subsection B of this section shall be subject to review by the
13 Administrator of the Oklahoma Health Care Authority upon a timely
14 request for review by the ~~applicant or recipient~~ Medicaid member or
15 agency. The Administrator shall issue a decision after review. A
16 hearing decision of the Authority shall be final and binding unless
17 a review is requested pursuant to the provisions of this subsection.
18 The decision of the Administrator may be appealed to the district
19 court in which the applicant or recipient resides within thirty (30)
20 days of the date of the decision of the Administrator as provided by
21 the provisions of subsection D of this section.

22 D. ~~Any applicant or recipient under this title~~ The Medicaid
23 member or agency who is aggrieved by a decision of the Administrator
24 rendered pursuant to this section may petition the district court in

