

1 ENGROSSED SENATE  
2 BILL NO. 673

By: Anderson of the Senate  
and  
Sullivan of the House

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7 [ peer review - confidential - appeal - patient  
8 advocate pilot program - codification -  
9 effective date ]

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

12 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1709.1, as  
13 last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp.  
14 2008, Section 1-1709.1), is amended to read as follows:

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

16 1. "Credentialing or recredentialing data" means:

17 a. the application submitted by a health care  
18 professional requesting appointment or reappointment  
19 to the medical staff of a health care facility or  
20 requesting clinical privileges or other permission to  
21 provide health care services at a health care  
22 facility,

23 b. any information submitted by the health care  
24 professional in support of such application,

- 1           c. any information, unless otherwise privileged, obtained  
2           by the health care facility during the credentialing  
3           or recredentialing process regarding such application,  
4           and  
5           d. the decision made by the health care facility  
6           regarding such application;

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

11           3. "Health care facility" means:

- 12           a. any hospital or related institution offering or  
13           providing health care services under a license issued  
14           pursuant to Section 1-706 of this title,  
15           b. any ambulatory surgical center offering or providing  
16           health care services under a license issued pursuant  
17           to Section 2660 of this title, and  
18           c. the clinical practices of accredited allopathic and  
19           osteopathic state medical schools, and  
20           d. the Oklahoma Health Care Authority;

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

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

- 8 a. the medical records of a patient whose health care in  
9 a health care facility is being reviewed,
- 10 b. incident reports and other like documents regarding  
11 health care services being reviewed, regardless of how  
12 the reports or documents are titled or captioned,
- 13 c. the identity of any individuals who have personal  
14 knowledge regarding the facts and circumstances  
15 surrounding the patient's health care in the health  
16 care facility,
- 17 d. factual statements regarding the patient's health care  
18 in the health care facility from any individuals who  
19 have personal knowledge regarding the facts and  
20 circumstances surrounding the patient's health care,  
21 which factual statements were generated outside the  
22 peer review process,

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- 1 e. the identity of all documents and raw data previously  
2 created elsewhere and considered during the peer  
3 review process,  
4 f. copies of all documents and raw data previously  
5 created elsewhere and considered during the peer  
6 review process, whether available elsewhere or not, or  
7 g. credentialing or recredentialing data regarding the  
8 health care professional who provided the health care  
9 services being reviewed or who is the subject of a  
10 credentialing or recredentialing process; and

11 6. "Peer review process" means any process, program or  
12 proceeding, including a credentialing or recredentialing process,  
13 utilized by the Oklahoma Health Care Authority, a health care  
14 facility or county medical society to assess, review, study or  
15 evaluate the credentials, competence, professional conduct or health  
16 care services of a health care professional.

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

- 19 a. except that a health care facility or county medical  
20 society shall be permitted to provide relevant peer  
21 review information to the state agency or board which  
22 licensed the health care professional who provided the  
23 health care services being reviewed in a peer review  
24 process or who is the subject of a credentialing or

1           recredentialing process, with notice to the health  
2           care professional, and

3           b.    except as provided in subsections C and D of this  
4           section.

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

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

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

23           a.    that the patient has suffered injuries resulting from  
24           negligence by a health care professional in providing

1 health care services to the patient in a health care  
2 facility, or

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

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

12 2. Any information discovered pursuant to this subsection:

13 a. shall not be admissible as evidence until a judge or  
14 jury has found the health care professional to have  
15 been negligent in providing health care services to  
16 the patient in such health care facility, and

17 b. shall not at any time include the identity or means by  
18 which to ascertain the identity of any other patient  
19 or health care professional.

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

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

3 Section 5052. A. Any applicant or recipient, adversely  
4 affected by a decision of the Oklahoma Health Care Authority on  
5 benefits or services provided pursuant to the provisions of this  
6 title, shall be afforded an opportunity for a hearing pursuant to  
7 the provisions of subsection B of this section after such applicant  
8 or recipient has been notified of the adverse decision of the  
9 Authority.

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

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

- 17 a. all pleadings, motions, and intermediate rulings,
- 18 b. evidence received or considered,
- 19 c. any decision, opinion, or report by the officer  
20 presiding at the hearing, and
- 21 d. all staff memoranda or data submitted to the hearing  
22 officer or members of the agency in connection with  
23 their consideration of the case.

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

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

16           D. ~~Any applicant or recipient under this title~~ The Medicaid  
17 member or agency who is aggrieved by a decision of the Administrator  
18 rendered pursuant to this section may petition the district court in  
19 which the applicant or recipient resides for a judicial review of  
20 the decision pursuant to the provisions of Sections 318 through 323  
21 of Title 75 of the Oklahoma Statutes. A copy of the petition shall  
22 be served by mail upon the general counsel of the Authority.

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1 SECTION 3. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-2220 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. The State Department of Health shall develop and implement a  
5 patient advocate pilot program in a rural county department of  
6 health. The pilot program shall begin no later than January 1,  
7 2010, and end no later than December 31, 2011.

8 B. The purpose of the patient advocate pilot program shall be  
9 to designate one or more persons as patient advocates to resolve  
10 medical issues and disputes and assist current and potential  
11 patients with the coordination of health care solutions.

12 C. The Department shall issue a report to the Legislature on or  
13 before December 31, 2011, on the patient advocate pilot program. At  
14 a minimum, the report shall include:

15 1. The number of persons who utilized the services of a patient  
16 advocate through the pilot program;

17 2. Information on the outcomes of the pilot program, including  
18 its effect on persons who utilized the services of a patient  
19 advocate through the pilot program;

20 3. Whether a statewide expansion of the pilot program would  
21 improve patient outcomes; and

22 4. The projected fiscal impact of a statewide expansion of the  
23 pilot program.

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