

THE HOUSE OF REPRESENTATIVES
Tuesday, April 14, 2009

Committee Substitute for
ENGROSSED
Senate Bill No. 673

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 673 - By:
ANDERSON of the Senate and SULLIVAN of the House.

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

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

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

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

5 1. "Credentialing or recredentialing data" means:

6 a. the application submitted by a health care professional requesting
7 appointment or reappointment to the medical staff of a health care
8 facility or requesting clinical privileges or other permission to provide
9 health care services at a health care facility,

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

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

11 3. “Health care facility” means:

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

20 4. “Health care professional” means any person authorized to practice allopathic
21 medicine and surgery, osteopathic medicine, podiatric medicine, optometry, chiropractic,

1 psychology, dentistry 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 other information
4 generated during the course of a peer review process, including any reports, statements,
5 memoranda, correspondence, record of proceedings, materials, opinions, findings,
6 conclusions and recommendations, but does not include:

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

- 1 f. copies of all documents and raw data previously created elsewhere and
2 considered during the peer review process, whether available
3 elsewhere or not, or
- 4 g. credentialing or recredentialing data regarding the health care
5 professional who provided the health care services being reviewed or
6 who is the subject of a credentialing or recredentialing process; and
- 7 6. "Peer review process" means any process, program or proceeding, including a
8 credentialing or recredentialing process, utilized by the Oklahoma Health Care
9 Authority, a health care facility or county medical society to assess, review, study or
10 evaluate the credentials, competence, professional conduct or health care services of a
11 health care professional.
- 12 B. 1. Peer review information shall be private, confidential and privileged:
- 13 a. except that a health care facility or county medical society shall be
14 permitted to provide relevant peer review information to the state
15 agency or board which licensed the health care professional who
16 provided the health care services being reviewed in a peer review
17 process or who is the subject of a credentialing or recredentialing
18 process, with notice to the health care professional, and
- 19 b. except as provided in subsections C and D of this section.
- 20 2. Nothing in this section shall be construed to abrogate, alter or affect any
21 provision in the Oklahoma Statutes which provides that information regarding liability

1 insurance of a health care facility or health care professional is not discoverable or
2 admissible.

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

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

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

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

20 the recommendations made and action taken as a result of any peer review process
21 utilized by such health care facility regarding the health care professional prior to the

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 date of the alleged negligence shall be subject to discovery pursuant to the Oklahoma
2 Discovery Code.

3 2. Any information discovered pursuant to this subsection:

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

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

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

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

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

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

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

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

3 b. evidence received or considered,

4 c. any decision, opinion, or report by the officer presiding at the hearing,
5 and

6 d. all staff memoranda or data submitted to the hearing officer or
7 members of the agency in connection with their consideration of the
8 case.

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

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

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

1 petition the district court in which the applicant or recipient resides for a judicial review
2 of the decision pursuant to the provisions of Sections 318 through 323 of Title 75 of the
3 Oklahoma Statutes. A copy of the petition shall be served by mail upon the general
4 counsel of the Authority.

5 SECTION 3. This act shall become effective November 1, 2009.

6 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
7 dated 04-13-09 - DO PASS, As Amended.