

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 673

By: Anderson

4  
5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2001, Section 1-1709.1, as last amended by  
9 Section 2, Chapter 558, O.S.L. 2004, and 5052 (63  
10 O.S. Supp. 2008, Section 1-1709.1), which relate to  
11 peer review information and judicial review;  
12 modifying definition; allowing the Oklahoma Health  
13 Care Authority to keep certain peer review  
14 information confidential; allowing agency to appeal  
15 certain decisions; updating language; and providing  
16 an effective date.

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

18 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1709.1, as  
19 last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp.  
20 2008, Section 1-1709.1), is amended to read as follows:

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

22 1. "Credentialing or recredentialing data" means:

- 23 a. the application submitted by a health care  
24 professional requesting appointment or reappointment  
to the medical staff of a health care facility or  
requesting clinical privileges or other permission to

1 provide health care services at a health care  
2 facility,

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

5 c. any information, unless otherwise privileged, obtained  
6 by the health care facility during the credentialing  
7 or recredentialing process regarding such application,  
8 and

9 d. the decision made by the health care facility  
10 regarding such application;

11 2. "Credentialing or recredentialing process" means any  
12 process, program or proceeding utilized by a health care facility to  
13 assess, review, study or evaluate the credentials of a health care  
14 professional;

15 3. "Health care facility" means:

16 a. any hospital or related institution offering or  
17 providing health care services under a license issued  
18 pursuant to Section 1-706 of this title,

19 b. any ambulatory surgical center offering or providing  
20 health care services under a license issued pursuant  
21 to Section 2660 of this title, and

22 c. the clinical practices of accredited allopathic and  
23 osteopathic state medical schools, and

24 d. the Oklahoma Health Care Authority;

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

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

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

1 which factual statements were generated outside the  
2 peer review process,

3 e. the identity of all documents and raw data previously  
4 created elsewhere and considered during the peer  
5 review process,

6 f. copies of all documents and raw data previously  
7 created elsewhere and considered during the peer  
8 review process, whether available elsewhere or not, or

9 g. credentialing or recredentialing data regarding the  
10 health care professional who provided the health care  
11 services being reviewed or who is the subject of a  
12 credentialing or recredentialing process; and

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

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

21 a. except that a health care facility or county medical  
22 society shall be permitted to provide relevant peer  
23 review information to the state agency or board which  
24 licensed the health care professional who provided the

1 health care services being reviewed in a peer review  
2 process or who is the subject of a credentialing or  
3 recredentialing process, with notice to the health  
4 care professional, and

5 b. except as provided in subsections C and D of this  
6 section.

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

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

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

1 a. that the patient has suffered injuries resulting from  
2 negligence by a health care professional in providing  
3 health care services to the patient in a health care  
4 facility, or

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

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

14 2. Any information discovered pursuant to this subsection :

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

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

22 E. No person involved in a peer review process may be permitted  
23 or required to testify regarding the peer review process in any  
24

1 civil proceeding or disclose by responses to written discovery  
2 requests any peer review information.

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

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

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

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

- 19 a. all pleadings, motions, and intermediate rulings,  
20 b. evidence received or considered,  
21 c. any decision, opinion, or report by the officer  
22 presiding at the hearing, and  
23  
24

1           d.    all staff memoranda or data submitted to the hearing  
2                   officer or members of the agency in connection with  
3                   their consideration of the case.

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

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

19           D.    ~~Any applicant or recipient under this title~~ The Medicaid  
20 member or agency who is aggrieved by a decision of the Administrator  
21 rendered pursuant to this section may petition the district court in  
22 which the applicant or recipient resides for a judicial review of  
23 the decision pursuant to the provisions of Sections 318 through 323  
24

1 of Title 75 of the Oklahoma Statutes. A copy of the petition shall  
2 be served by mail upon the general counsel of the Authority.

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

4  
5 52-1-654 TEK 3/6/2009 6:01:38 AM

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24