

Hall of the House of Representatives
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of House Bill No. 2423

"TO PROTECT RECORDS OF AND TESTIMONY BEFORE QUALITY ASSURANCE
COMMITTEES EVALUATING THE QUALITY OF CARE IN A LONG-TERM CARE
FACILITY."

Amendment No. 1 to House Bill No. 2423.

Amend House Bill No. 2423 as originally introduced:

Page 1, delete line 36 and substitute the following:
"health services in the area.

20-10-1902. (a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any member of a quality assurance committee for any act or proceeding undertaken or performed within the scope of the functions of the committee if the committee member acts without malice or fraud.

(b) This subchapter shall not be construed to confer immunity from liability on any professional association or upon any health professional while performing services other than as a member of a quality assurance committee.

20-10-1903. (a)(1) The proceedings and records of a quality assurance committee, as defined in section 1 of this act, shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are subject to evaluation and review by the committee.

(2) No person who was in attendance at a meeting of the committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or any members thereof.

(b)(1) However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such action merely because they were presented during the proceedings of the committee.

(2) Nor shall any person who testifies before the committee or who is a member of the committee be prevented from testifying as to matters



within his or her knowledge, but the witness shall not be asked about his or her testimony before the committee or about opinions formed by him or her as a result of the committee hearings.

(c) The submission of the quality assurance proceedings, minutes, records, reports, and communications to a long-term care facility governing board shall not operate as a waiver of the privilege.

20-10-1904. Any physician, administrator, nurse, certified nurse's aid, nurse's aid in training, and any other person engaged in work in or about a long-term care facility and having any information or knowledge relating to the care provided in the long-term care facility or to the efficient use of the long-term care facility shall be obligated, when requested, to advise committees reviewing the matters with respect to all the facts or information possessed by the individual with reference to the care or use.

SECTION 2. Title 16, Chapter 46, Subchapter 1, relating to documentary evidence, is amended by adding the following section:

16-46-109. (a)(1)(A) The proceedings, minutes, records, or reports of organized communities of long-term care facilities having the responsibility for reviewing and evaluating the quality of medical, nursing, or other care delivered in a long-term care facility, and any records, other than those records described in subsection (c) of this section, compiled or accumulated by the administrative staff of the facilities in connection with the review or evaluation, together with all communications or reports originating in the committees, shall not be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq., or admissible in any legal proceeding and shall be absolutely privileged communications.

(B) The submission of the proceedings, minutes, records, reports, and communications to a facility governing board shall not operate as a waiver of the privilege.

(2) Neither shall testimony as to events occurring during the activities of the committees be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq. or admissible as evidence in any legal proceeding.

(b)(1) Nothing in this section shall be construed to prevent disclosure of the data mentioned in subsection (a) of this section to appropriate state or federal regulatory agencies which by statute or regulation are entitled to access to the data, nor to organized committees of hospital medical staffs or governing boards where the medical or nursing practitioner seeks membership or clinical privileges.

(2) Further, nothing in this section shall be construed to prevent discovery and admissibility if the legal action in which the data sought is brought by a medical or nursing practitioner who has been subjected to censure or disciplinary action by the agency, committee, or by a hospital medical staff or governing board.

(c) Nothing in this section shall be construed to apply to original long-term care facility medical records, incident reports, or other records with respect to the care or treatment of any resident or to affect the discoverability or admissibility of such records.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that in order to ensure candor, objectivity, and the presentation of all pertinent information sought by committees reviewing the quality of care in long-term care facilities and thus contribute to the effective functioning of committees striving to determine and improve such care, an absolute privilege of confidentiality should be afforded to data elicited during the course of such inquiries and that the privilege of confidentiality should be provided for as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

The Amendment was read _____
By: Representative Gillespie
KLT/JMB - 031220031039
JMB372

Chief Clerk