

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/14/03

A Bill

HOUSE BILL 2423

5 By: Representative Gillespie
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE TITLE 20, CHAPTER
10 10 AND ARKANSAS CODE TITLE 16, CHAPTER 46,
11 SUBCHAPTER 1 TO PROTECT RECORDS OF AND TESTIMONY
12 BEFORE QUALITY ASSURANCE COMMITTEES EVALUATING
13 THE QUALITY OF CARE IN A LONG TERM CARE FACILITY;
14 AND FOR OTHER PURPOSES.
15

Subtitle

16 TO PROTECT RECORDS OF AND TESTIMONY
17 BEFORE QUALITY ASSURANCE COMMITTEES
18 EVALUATING THE QUALITY OF CARE IN A
19 LONG-TERM CARE FACILITY.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Chapter 10 of Title 20 of the Arkansas Code is amended by
26 adding the following new subchapter, relating to quality assurance committees
27 of long-term care facilities:

28 Subchapter 19 - Quality Assurance Committee.

29 20-10-1901. As used in this subchapter, the term "quality assurance
30 committee" or "committee" means a committee of a long-term care facility
31 which is formed to evaluate and improve the quality of health care rendered
32 by providers of health services in long-term care facilities or to determine
33 that health services rendered were professionally indicated or were performed
34 in compliance with the applicable standard of care or that the cost of health
35 care rendered was considered reasonable by the providers of professional
36 health services in the area.



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2 20-10-1902. (a) There shall be no monetary liability on the part of,
3 and no cause of action for damages shall arise against, any member of a
4 quality assurance committee for any act or proceeding undertaken or performed
5 within the scope of the functions of the committee if the committee member
6 acts without malice or fraud.

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

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12 20-10-1903. (a)(1) The proceedings and records of a quality assurance
13 committee, as defined in section 1 of this act, shall not be subject to
14 discovery or introduction into evidence in any civil action against a
15 provider of professional health services arising out of the matters which are
16 subject to evaluation and review by the committee.

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

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

27 (2) Nor shall any person who testifies before the committee or
28 who is a member of the committee be prevented from testifying as to matters
29 within his or her knowledge, but the witness shall not be asked about his or
30 her testimony before the committee or about opinions formed by him or her as
31 a result of the committee hearings.

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

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36 20-10-1904. Any physician, administrator, nurse, certified nurse's

1 aid, nurse's aid in training, and any other person engaged in work in or
2 about a long-term care facility and having any information or knowledge
3 relating to the care provided in the long-term care facility or to the
4 efficient use of the long-term care facility shall be obligated, when
5 requested, to advise committees reviewing the matters with respect to all the
6 facts or information possessed by the individual with reference to the care
7 or use.

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

11 16-46-109. (a)(1)(A) The proceedings, minutes, records, or reports of
12 organized communities of long-term care facilities having the responsibility
13 for reviewing and evaluating the quality of medical, nursing, or other care
14 delivered in a long-term care facility, and any records, other than those
15 records described in subsection (c) of this section, compiled or accumulated
16 by the administrative staff of the facilities in connection with the review
17 or evaluation, together with all communications or reports originating in the
18 committees, shall not be subject to discovery pursuant to the Arkansas Rules
19 of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et
20 seq., or admissible in any legal proceeding and shall be absolutely
21 privileged communications.

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

25 (2) Neither shall testimony as to events occurring during the
26 activities of the committees be subject to discovery pursuant to the Arkansas
27 Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-
28 101 et seq. or admissible as evidence in any legal proceeding.

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

35 (2) Further, nothing in this section shall be construed to
36 prevent discovery and admissibility if the legal action in which the data

1 sought is brought by a medical or nursing practitioner who has been subjected
2 to censure or disciplinary action by the agency, committee, or by a hospital
3 medical staff or governing board.

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

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

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

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

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

26 /s/ Gillespie
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