

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.

Act 198 of the Regular Session

State of Arkansas As Engrossed: H1/27/09 H1/28/09 H2/4/09 H2/5/09 H2/9/09 H2/11/09

87th General Assembly

A Bill

Regular Session, 2009

HOUSE BILL 1232

By: Representatives Overbey, T. Baker, Breedlove, Cooper, Dale, Davis, Dunn, Everett, Gaskill, George, Glidewell, R. Green, Hall, Hoyt, Lea, Lovell, S. Malone, Ragland, Rice, Shelby, Wells, Woods, Word, Carnine, Kidd, J. Rogers, Sample, Saunders, Summers, Barnett, Clemmer, B. Wilkins, *Garner, Hopper*  
By: Senators Horn, J. Taylor, D. Wyatt, Altes, Crumbly, T. Smith, Steele, J. Key, H. Wilkins

For An Act To Be Entitled

AN ACT TO CREATE THE LONG-TERM CARE QUALITY IMPROVEMENT ACT; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO CREATE THE LONG-TERM CARE QUALITY IMPROVEMENT ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. Arkansas Code Title 20, Chapter 10 is amended to add an additional subchapter to read as follows:*

*20-10-2201. Purpose -- Findings.*

*(a) The purpose of the Quality Assurance Committee in a long-term care facility is to evaluate and improve the quality of health care rendered to residents of the facility.*

*(b) The General Assembly finds that:*

*(1) Confidentiality of Quality Assurance Committee proceedings and records is key to improving the quality of care in long-term care facilities by promoting thorough and candid discussions for a full review and analysis of care processes; and*

*(2) The work of the Quality Assurance Committee is an ongoing process in which individuals from various disciplines meet as a committee to:*

*(A) Ensure that current practice standards are maintained;*



1 (B) Prevent deviations from care practices to the extent  
2 possible;

3 (C) Track, trend, and identify care concerns; and

4 (D) Correct inappropriate care processes.

5  
6 20-10-2202. Applicability -- Scope.

7 (a) This subchapter applies to long-term care facilities as those  
8 entities defined in § 20-10-101.

9 (b) This subchapter does not expand, limit, or constrict any other  
10 privilege, particularly a privilege under § 20-9-502, § 20-9-503, or § 16-46-  
11 105.

12  
13 20-10-2203. Liability of Quality Assurance Committee members --  
14 Construction.

15 (a) A cause of action for damages or monetary liability shall not  
16 arise against a member of the Quality Assurance Committee for an act or  
17 proceeding undertaken or performed within the scope of the functions of the  
18 committee if the committee member acts without malice or fraud.

19 (b) This subchapter does not confer immunity from liability on an  
20 individual while performing services other than as a member of a Quality  
21 Assurance Committee.

22  
23 20-10-2204. Proceedings and records confidential.

24 (a)(1) A long-term care facility may appoint members to serve as a  
25 duly appointed Quality Assurance Committee in which individuals from various  
26 disciplines meet as a committee to:

27 (A) Ensure that current practice standards are maintained;

28 (B) Prevent deviations from care practices to the extent  
29 possible;

30 (C) Track, trend, and identify care concerns; and

31 (D) Correct inappropriate care processes.

32 (2)(A) The proceedings of and records that are created by or for the  
33 Quality Assurance Committee of a long-term care facility are not subject to  
34 discovery or introduction into evidence in a civil action against a provider  
35 of professional health services arising out of the matters that are subject  
36 to evaluation and review by the committee.

1 (B) Appointments to the Quality Assurance Committee and the  
2 dates of the meetings shall be documented and maintained.

3 (3)(A) A long-term care facility may retain a professional  
4 consultant to assist the Quality Assurance Committee in studying quality of  
5 care concerns.

6 (B) Any oral or written reports of the consultants to the  
7 Quality Assurance Committee are privileged and not subject to discovery or  
8 introduction into evidence in a civil action against a provider of  
9 professional health services.

10 (C) Oral or written communications privileged under this  
11 section may be used by the consultant without waiver of the privilege.

12 (4) A person who was in attendance at a meeting of the Quality  
13 Assurance Committee shall not be permitted or required to testify in a civil  
14 action as to the following:

15 (A) Evidence or other matters produced or presented during  
16 the proceedings of the Quality Assurance Committee; or

17 (B) Findings, recommendations, evaluations, opinions, or  
18 other actions of the committee or any members of the committee made or taken  
19 in the quality assurance role.

20 (b)(1) This section does not apply to or affect the discovery or  
21 admissibility into evidence in a civil proceeding of the following records:

22 (A) Records or reports made in the regular course of  
23 business by a long-term care facility or other health care provider that are  
24 not created by or for the Quality Assurance Committee;

25 (B) Records or reports otherwise available from original  
26 sources including without limitation, the medical record of specific  
27 residents;

28 (C) Records or reports required to be kept by applicable  
29 law or regulation that are not created by or for the Quality Assurance  
30 Committee;

31 (D) Incident and accident reports;

32 (E) The long-term care facility's operating budgets; or

33 (F) Records of the Quality Assurance Committee's meeting  
34 dates.

35 (2) Without waiving any privilege, appointments to the Quality  
36 Assurance Committee are available to the attorney General's Medicaid Fraud

1 Unit.

2 (3) A person who testifies before the Quality Assurance  
3 Committee or who is a member of the Committee shall not be prevented from  
4 testifying as to matters within his or her knowledge, but the witness shall  
5 not be asked about his or her testimony before the committee or about  
6 opinions formed by him or her as a result of the committee hearings.

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8 20-10-2205. Duty to advise Quality Assurance Committees.

9 Upon a request of a Quality Assurance Committee reviewing care provided  
10 in a long-term care facility, a physician, administrator, nurse, certified  
11 nurse's aide, nurse's aide in training, or other individual engaged in work  
12 in or about the long-term care facility and having information or knowledge  
13 relating to the care provided in the long-term care facility shall advise the  
14 committee concerning all the relevant facts or information possessed by the  
15 individual concerning the quality of care provided in the long-term care  
16 facility.

17  
18 SECTION 3. Arkansas Code Title 16, Chapter 46, Subchapter 1 is amended  
19 to add an additional section to read as follows:

20 16-46-109. Proceedings, minutes, and records confidential.

21 (a)(1) The proceedings, minutes, records, or reports of the Quality  
22 Assurance Committees having the responsibility for reviewing and evaluating  
23 the quality of medical, nursing, or other care delivered in a long-term care  
24 facility, or of professional consultants engaged by long-term care facilities  
25 to study quality of care issues identified by the Quality Assurance  
26 Committee, and any other records, other than those records described in  
27 subsection (c) of this section, compiled or accumulated by the staff of a  
28 facility in connection with the review or evaluation, together with all  
29 communications or reports originating in the Committees are:

30 (A) Exempt from discovery and disclosure to the same  
31 extent that proceedings, minutes, records, or reports of committees  
32 evaluating quality of medical or hospital care are exempt under § 16-46-  
33 105(a)(1);

34 (B) Not admissible in any legal proceeding; and

35 (C) An absolutely privileged communication.

36 (2) Testimony as to events occurring during the activities of

1 the Quality Assurance Committee is:

2 (A) Exempt from discovery and disclosure to the same  
3 extent that testimony before committees evaluating quality of medical or  
4 hospital care are exempt under § 16-46-105(a)(2); and

5 (B) Not admissible as evidence in any legal proceeding.

6 (b) This section does not prevent disclosure of the data mentioned in  
7 subsection (a) of this section to an appropriate state or federal regulatory  
8 agency that by statute or regulation is entitled access to the data.

9 (c)(1) This section does not apply to or affect the discovery or  
10 admissibility into evidence in a civil proceeding of the following records:

11 (A) Records or reports made in the regular course of  
12 business by a long-term care facility or other health care provider that are  
13 not created by or for the Quality Assurance Committee;

14 (B) Records or reports otherwise available from original  
15 sources including without limitation, the medical record of specific  
16 residents;

17 (C) Records or reports required to be kept by applicable  
18 law or regulation that are not created by or for the Quality Assurance  
19 Committee;

20 (D) Incident and accident reports;

21 (E) The long-term care facility's operating budgets; or

22 (F) Records of the Quality Assurance Committee's meeting  
23 dates.

24 (2) Without waiving any privilege appointments to the Quality  
25 Assurance Committee are available to the attorney General's Medicaid Fraud  
26 Unit.

27  
28  
29 /s/ Overbey

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31 **APPROVED: 2/20/2009**