

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.

State of Arkansas

As Engrossed: H1/27/09

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
By: Senators Horn, J. Taylor, D. Wyatt

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. Liability of quality assurance committee members --
Construction.

(a) A cause of action for damages or monetary liability shall not arise against a member of a quality assurance committee for an 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 does not confer immunity from liability on a professional association or upon a health professional while performing services other than as a member of a quality assurance committee.

20-10-2202. Proceedings and records confidential.

(a)(1) The proceedings and records of a quality assurance committee are not subject to discovery or introduction into evidence in a civil action against a provider of professional health services arising out of the matters



1 that are subject to evaluation and review by the committee.

2 (2) Information, documents, records, or testimony before the
3 committee created or maintained by professional consultants who are
4 independent contractors and who have been engaged by the long-term care
5 facility specifically to perform mock surveys or quality of care reviews on
6 behalf of the quality assurance committee are not subject to discovery or
7 introduction into evidence in a civil action against a provider of
8 professional health services arising out of the matters that are subject to
9 evaluation and review by the committee.

10 (3) A person who was in attendance at a meeting of the committee
11 shall not be permitted or required to testify in a civil action as to the
12 following:

13 (A) Evidence or other matters produced or presented during
14 the proceedings of the committee; or

15 (B) Findings, recommendations, evaluations, opinions, or
16 other actions of the committee or any members of the committee.

17 (b)(1) However, information, documents, or records otherwise available
18 from original sources are not immune from discovery or use in an action
19 arising under subsection (a) of this section merely because the information,
20 documents, or records were presented during the proceedings of the committee.

21 (2) A person who testifies before the committee or who is a
22 member of the committee shall not be prevented from testifying as to matters
23 within his or her knowledge, but the witness shall not be asked about his or
24 her testimony before the committee or about opinions formed by him or her as
25 a result of the committee hearings.

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

29
30 20-10-2203. Duty to advise quality assurance committees.

31 Upon a request of a committee reviewing care provided in a long-term
32 care facility or the efficient use of a long-term care facility, a physician,
33 administrator, nurse, certified nurse's aid, nurse's aid in training, or
34 other individual engaged in work in or about the long-term care facility and
35 having information or knowledge relating to the care provided in the long-
36 term care facility or to the efficient use of the long-term care facility

1 shall advise the committee concerning all the relevant facts or information
2 possessed by the individual.

3
4 SECTION 2. Title 16, Chapter 46, Subchapter 1, relating to documentary
5 evidence, is amended by adding the following section:

6 16-46-109. Proceedings, minutes, and records confidential.

7 (a)(1)(A) The proceedings, minutes, records, or reports of committees
8 of, or professional consultants engaged by, long-term care facilities having
9 the responsibility for reviewing and evaluating the quality of medical,
10 nursing, or other care delivered in a long-term care facility, and any other
11 records, other than those records described in subsection (c) of this
12 section, compiled or accumulated by the staff of a facility in connection
13 with the review or evaluation, together with all communications or reports
14 originating in the committees is:

15 (i) Exempt from discovery and disclosure to the same
16 extent that proceedings, minutes, records, or reports of committees
17 evaluating quality of medical or hospital care are exempt under § 16-46-
18 105(a)(1);

19 (ii) Not admissible in any legal proceeding; and

20 (iii) An absolutely privileged communications.

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

24 (2) Testimony as to events occurring during the activities of
25 the committees is:

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

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

30 (b)(1) This section does not prevent disclosure of the data mentioned
31 in subsection (a) of this section to an:

32 (A) Appropriate state or federal regulatory agency that by
33 statute or regulation is entitled to access to the data; or

34 (B) Committees of long-term care facility medical staffs
35 or governing boards where the medical or nursing practitioner seeks
36 membership or clinical privileges.

(2) This section does not 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 the medical staff or governing board of a long-term care facility.

(c) This section does not apply to original medical charts with respect to the care or treatment of any resident or to affect the discoverability or admissibility of such records.

/s/ Overbey