

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 H1/28/09

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. Findings.

(a) The 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.

(b) Quality Assurance is a process used in long-term care facilities to evaluate and improve the quality of health care rendered to residents of the facility.

(c) Quality Assurance is an on-going process in which administration, nursing, or ancillary services meet as a committee to:

(1) Ensure that current practice standards are maintained;

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

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



1 (4) Correct inappropriate care processes.

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3 SECTION 2. Arkansas Code Title 20, Chapter 10 is amended to add an
4 additional subchapter to read as follows:

5 20-10-2202. Liability of quality assurance committee members --
6 Construction.

7 (a) A cause of action for damages or monetary liability shall not
8 arise against a member of a quality assurance committee for an act or
9 proceeding undertaken or performed within the scope of the functions of the
10 committee if the committee member acts without malice or fraud.

11 (b) This subchapter does not confer immunity from liability on a
12 professional association or upon a health professional while performing
13 services other than as a member of a quality assurance committee.

14
15 20-10-2203. Proceedings and records confidential.

16 (a)(1) The proceedings and records of a quality assurance committee
17 are not subject to discovery or introduction into evidence in a civil action
18 against a provider of professional health services arising out of the matters
19 that are subject to evaluation and review by the committee.

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

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

31 (A) Evidence or other matters produced or presented during
32 the proceedings of the committee; or

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

35 (b)(1) However, information, documents, or records otherwise available
36 from original sources are not immune from discovery or use in an action

1 arising under subsection (a) of this section merely because the information,
2 documents, or records were presented during the proceedings of the committee.

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

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

11
12 20-10-2204. Duty to advise quality assurance committees.

13 Upon a request of a committee reviewing care provided in a long-term
14 care facility or the efficient use of a long-term care facility, a physician,
15 administrator, nurse, certified nurse's aid, nurse's aid in training, or
16 other individual engaged in work in or about the long-term care facility and
17 having information or knowledge relating to the care provided in the long-
18 term care facility or to the efficient use of the long-term care facility
19 shall advise the committee concerning all the relevant facts or information
20 possessed by the individual.

21
22 *SECTION 3.* Title 16, Chapter 46, Subchapter 1, relating to documentary
23 evidence, is amended by adding the following section:

24 16-46-109. Proceedings, minutes, and records confidential.

25 (a)(1)(A) The proceedings, minutes, records, or reports of committees
26 of, or professional consultants engaged by, long-term care facilities having
27 the responsibility for reviewing and evaluating the quality of medical,
28 nursing, or other care delivered in a long-term care facility, and any other
29 records, other than those records described in subsection (c) of this
30 section, compiled or accumulated by the staff of a facility in connection
31 with the review or evaluation, together with all communications or reports
32 originating in the committees is:

33 (i) Exempt from discovery and disclosure to the same
34 extent that proceedings, minutes, records, or reports of committees
35 evaluating quality of medical or hospital care are exempt under § 16-46-
36 105(a)(1);

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

2 (iii) An absolutely privileged communication.

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

6 (2) Testimony as to events occurring during the activities of
7 the committees is:

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

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

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

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

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

19 (2) This section does not prevent discovery and admissibility if
20 the legal action in which the data sought is brought by a medical or nursing
21 practitioner who has been subjected to censure or disciplinary action by the
22 agency, committee, or by the medical staff or governing board of a long-term
23 care facility.

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

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28 /s/ Overbey
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