

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 H2/4/09 H2/5/09

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  
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. 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;



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

2 (4) Correct inappropriate care processes.

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

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

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

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

15  
16 20-10-2203. Proceedings and records confidential.

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

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

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

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

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

36 (b)(1) However, information, documents, or records otherwise available

1 from original sources are not immune from discovery or use in an action  
2 arising under subsection (a) of this section merely because the information,  
3 documents, or records were presented during the proceedings of the committee.

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

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

12  
13 20-10-2204. Duty to advise quality assurance committees.

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

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

25 16-46-109. Proceedings, minutes, and records confidential.

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

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

1 105(a)(1);

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

3 (iii) An absolutely privileged communication.

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

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

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

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

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

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

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

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

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

28  
29 /s/ Overbey  
30  
31  
32  
33  
34  
35  
36