

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 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;

(B) Prevent deviations from care practices to the extent



1 possible;

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

3 (D) Correct inappropriate care processes.

4
5 20-10-2202. Applicability -- Scope.

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

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

11
12 20-10-2203. Liability of Quality Assurance Committee members --
13 Construction.

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

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

21
22 20-10-2204. Proceedings and records confidential.

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

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

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

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

30 (D) Correct inappropriate care processes.

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

36 (B) Appointments to the Quality Assurance Committee and the

1 dates of the meetings shall be documented and maintained.

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

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

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

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

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

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

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

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

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

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

30 (D) Incident and accident reports;

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

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

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

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

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7 20-10-2205. Duty to advise Quality Assurance Committees.

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

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

19 16-46-109. Proceedings, minutes, and records confidential.

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

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

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

34 (C) An absolutely privileged communication.

35 (2) Testimony as to events occurring during the activities of
36 the Quality Assurance Committee is:

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

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

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

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

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

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

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

19 (D) Incident and accident reports;

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

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

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

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27
28 /s/ Overbey
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