An Act

(1ST EXTRAORDINARY SESSION)
ENROLLED HOUSE
BILL NO. 1007

By: Shannon, Stiles, Grau, Cockroft, Ritze and Wright of the House

and

Bingman, Sykes, Jolley and Shortey of the Senate

An Act relating to public health and safety; repealing Section 28, Chapter 228, O.S.L. 2009, which relates to peer review information; amending 63 O.S. 2011, Section 1-1709.1, which relates to peer review information; modifying definitions; modifying information subject to discovery; amending 63 O.S. 2011, Section 1-1709.1, as amended by Section 2 of this act, which relates to peer review information; modifying definitions; modifying information subject to discovery; providing for construction of act; providing for noncodification; and declaring an emergency.

SUBJECT: Public health and safety

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. REPEALER Section 28, Chapter 228, O.S.L. 2009, is hereby repealed.

SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-1709.1, is amended to read as follows:

Section 1-1709.1 A. As used in this section:

1. "Credentialing or recredentialing data" means:

a. the application submitted by a health care professional requesting appointment or reappointment to the medical staff of a health care facility or requesting clinical privileges or other permission to provide health care services at a health care facility,

b. any information submitted by the health care professional in support of such application,

c. any information, unless otherwise privileged, obtained by the health care facility during the credentialing or recredentialing process regarding such application, and

d. the decision made by the health care facility regarding such application;

2. "Credentialing or recredentialing process" means any process, program or proceeding utilized by a health care facility to assess, review, study or evaluate the credentials of a health care professional;

3. "Health care facility" means:

a. any hospital or related institution offering or providing health care services under a license issued pursuant to Section 1-706 of this title,

b. any ambulatory surgical center offering or providing health care services under a license issued pursuant to Section 2660 of this title, and

c. the clinical practices of accredited allopathic and osteopathic state medical schools;

4. "Health care professional" means any person authorized to practice allopathic medicine and surgery, osteopathic medicine, podiatric medicine, optometry, chiropractic, psychology, dentistry or a dental specialty under a license issued pursuant to Title 59 of the Oklahoma Statutes;

5. "Peer review information" means all records, documents and other information generated during the course of a peer review process, including any reports, statements, memoranda,

correspondence, record of proceedings, materials, opinions, findings, conclusions and recommendations, ~~credentialing data and recredentialing data,~~ but does not include:

a. the medical records of a patient whose health care in a health care facility is being reviewed,

b. incident reports and other like documents regarding health care services being reviewed, regardless of how the reports or documents are titled or captioned,

c. the identity of any individuals who have personal knowledge regarding the facts and circumstances surrounding the patient's health care in the health care facility,

d. factual statements regarding the patient's health care in the health care facility from any individuals who have personal knowledge regarding the facts and circumstances surrounding the patient's health care, which factual statements were generated outside the peer review process,

e. the identity of all documents and raw data previously created elsewhere and considered during the peer review process, ~~or~~

f. copies of all documents and raw data previously created elsewhere and considered during the peer review process, whether available elsewhere or not, or

g. credentialing or recredentialing data regarding the health care services being reviewed or who is the subject of a credentialing or recredentialing process; and

6. "Peer review process" means any process, program or proceeding, including a credentialing or recredentialing process, utilized by a health care facility or county medical society to assess, review, study or evaluate the credentials, competence, professional conduct or health care services of a health care professional.

B. 1. Peer review information shall be private, confidential and privileged:

a. except that a health care facility or county medical society shall be permitted to provide relevant peer review information to the state agency or board which licensed the health care professional who provided the health care services being reviewed in a peer review process or who is the subject of a credentialing or recredentialing process, with notice to the health care professional, and

b. except as provided in subsections C and D of this section.

2. Nothing in this section shall be construed to abrogate, alter or affect any provision in the Oklahoma Statutes which provides that information regarding liability insurance of a health care facility or health care professional is not discoverable or admissible.

C. In any civil action in which a patient or patient's legal representative has alleged that the patient has suffered injuries resulting from negligence by a health care professional in providing health care services to the patient in a health care facility, factual statements, presented during a peer review process utilized by such health care facility, regarding the patient's health care in the health care facility from individuals who have personal knowledge of the facts and circumstances surrounding the patient's health care shall ~~not~~ be subject to discovery, pursuant to the Oklahoma Discovery Code, upon affirmative showing that such statements are not otherwise available in any other manner.

D. 1. In any civil action in which a patient or patient's legal representative has alleged:

a. that the patient has suffered injuries resulting from negligence by a health care professional in providing health care services to the patient in a health care facility, or

b. that the health care facility was independently negligent as a result of permitting the health care professional to provide health care services to the patient in the health care facility,

the ~~credentialing and recredentialing data, and the~~ recommendations made and action taken as a result of any peer review process utilized by such health care facility regarding the health care professional prior to the date of the alleged negligence shall be subject to discovery pursuant to the Oklahoma Discovery Code.

2. Any information discovered pursuant to this subsection:

a. shall not be admissible as evidence until a judge or jury has ~~first~~ found the health care professional to have been negligent in providing health care services to the patient in such health care facility, and

b. shall not at any time include the identity or means by which to ascertain the identity of any other patient or health care professional.

E. No person involved in a peer review process may be permitted or required to testify regarding the peer review process in any civil proceeding or disclose by responses to written discovery requests any peer review information.

SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-1709.1, as amended by Section 2 of this act, is amended to read as follows:

Section 1-1709.1 A. As used in this section:

1. "Credentialing or recredentialing data" means:

a. the application submitted by a health care professional requesting appointment or reappointment to the medical staff of a health care facility or requesting clinical privileges or other permission to provide health care services at a health care facility,

b. any information submitted by the health care professional in support of such application,

c. any information, unless otherwise privileged, obtained by the health care facility during the credentialing or recredentialing process regarding such application, and

d. the decision made by the health care facility regarding such application;

2. "Credentialing or recredentialing process" means any process, program or proceeding utilized by a health care facility to assess, review, study or evaluate the credentials of a health care professional;

3. "Health care facility" means:

a. any hospital or related institution offering or providing health care services under a license issued pursuant to Section 1-706 of this title,

b. any ambulatory surgical center offering or providing health care services under a license issued pursuant to Section 2660 of this title, and

c. the clinical practices of accredited allopathic and osteopathic state medical schools;

4. "Health care professional" means any person authorized to practice allopathic medicine and surgery, osteopathic medicine, podiatric medicine, optometry, chiropractic, psychology, dentistry or a dental specialty under a license issued pursuant to Title 59 of the Oklahoma Statutes;

5. "Peer review information" means all records, documents and other information generated during the course of a peer review process, including any reports, statements, memoranda, correspondence, record of proceedings, materials, opinions, findings, conclusions and recommendations, credentialing data and recredentialing data, but does not include:

a. the medical records of a patient whose health care in a health care facility is being reviewed,

b. incident reports and other like documents regarding health care services being reviewed, regardless of how the reports or documents are titled or captioned,

c. the identity of any individuals who have personal knowledge regarding the facts and circumstances surrounding the patient's health care in the health care facility,

d. factual statements regarding the patient's health care in the health care facility from any individuals who have personal knowledge regarding the facts and circumstances surrounding the patient's health care, which factual statements were generated outside the peer review process,

e. the identity of all documents and raw data previously created elsewhere and considered during the peer review process, or

f. copies of all documents and raw data previously created elsewhere and considered during the peer review process, whether available elsewhere or not~~, or~~

~~g. credentialing or recredentialing data regarding the health care services being reviewed or who is the subject of a credentialing or recredentialing process~~; and

6. "Peer review process" means any process, program or proceeding, including a credentialing or recredentialing process, utilized by a health care facility or county medical society to assess, review, study or evaluate the credentials, competence, professional conduct or health care services of a health care professional.

B. 1. Peer review information shall be private, confidential and privileged~~:~~

~~a.~~ except that a health care facility or county medical society shall be permitted to provide relevant peer review information to the state agency or board which licensed the health care professional who provided the health care services being reviewed in a peer review process or who is the subject of a credentialing or recredentialing process, with notice to the health care professional~~, and~~

~~b. except as provided in subsections C and D of this section~~.

2. Nothing in this section shall be construed to abrogate, alter or affect any provision in the Oklahoma Statutes which

provides that information regarding liability insurance of a health care facility or health care professional is not discoverable or admissible.

C. In any civil action in which a patient or patient's legal representative has alleged that the patient has suffered injuries resulting from negligence by a health care professional in providing health care services to the patient in a health care facility, factual statements, presented during a peer review process utilized by such health care facility, regarding the patient's health care in the health care facility from individuals who have personal knowledge of the facts and circumstances surrounding the patient's health care shall not be subject to discovery~~, pursuant to the Oklahoma Discovery Code, upon affirmative showing that such statements are not otherwise available in any other manner~~.

D. 1. In any civil action in which a patient or patient's legal representative has alleged~~:~~

~~a. that the patient has suffered injuries resulting from negligence by a health care professional in providing health care services to the patient in a health care facility, or~~

~~b.~~ that the health care facility was independently negligent as a result of permitting the health care professional to provide health care services to the patient in the health care facility,

the credentialing and recredentialing data, and the recommendations made and action taken as a result of any peer review process utilized by such health care facility regarding the health care professional prior to the date of the alleged negligence shall be subject to discovery pursuant to the Oklahoma Discovery Code.

2. Any information discovered pursuant to this subsection:

a. shall not be admissible as evidence until a judge or jury has first found the health care professional to have been negligent in providing health care services to the patient in such health care facility, and

b. shall not at any time include the identity or means by which to ascertain the identity of any other patient or health care professional.

E. No person involved in a peer review process may be permitted or required to testify regarding the peer review process in any civil proceeding or disclose by responses to written discovery requests any peer review information.

SECTION 4. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The amendatory provisions contained in Section 2 of this act conform the statute to the holding in *Douglas v. Cox Retirement Properties, Inc.*, 2013 OK 37, 302 P.2d 789 (Okla. 2013). The amendatory provisions contained in Section 3 of this act conform the statute to the amendatory provisions of Enrolled House Bill No. 1603 of the 1st Session of the 52nd Oklahoma Legislature, c. 228, O.S.L. 2009.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 5th day of September, 2013.

Jean W. Murphy
Presiding Officer of the House
of Representatives

Passed the Senate the 9th day of September, 2013.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 9th day of September, 20 13, at 6:39 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 10th day of September, 20 13, at 4:25 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 10th day of September, 20 13, at 4:47 o'clock P M.

By: Chris Travis