

ACT 279

S.B. NO. 835

A Bill for an Act Relating to Physicians.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 624-25.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) As used in this section:

“Licensed health maintenance organization” means a health maintenance organization licensed in Hawaii under chapter 432D.

“Peer review committee” means a committee created by a professional society, or by the medical, dental, optometric, or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to maintain the professional standards of persons engaged in its profession, occupation, specialty, or practice established by the bylaws of the society, hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network.

“Preferred provider organization” or “preferred provider network” means a partnership, association, corporation, or other entity which delivers or arranges for the delivery of health services, and which has entered into a written service arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy.

[(1)] “Professional society” or “society” means any association or other organization of persons engaged in the same profession [or]₂ occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice[;].

[(2)] “Peer review committee” means a committee created by a professional society, or by the medical, dental, optometric, or administrative staff of a licensed hospital or clinic whose function is to maintain the professional standards established by the bylaws of the society, hospital, or clinic of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital or clinic; and

(3) “Hospital or clinic quality] “Quality assurance committee” means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital [or], clinic, health maintenance organization, preferred provider organization, or preferred provider network providing medical, dental, or optometric care, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.

(b) Neither the proceedings nor the records of peer review committees, or [hospital or clinic] quality assurance committees shall be subject to discovery. For the purposes of this section, “records of [hospital or clinic] quality assurance committees” are limited to recordings, transcripts, minutes, summaries, and reports of committee meetings and conclusions contained therein. Information protected shall not include incident reports, occurrence reports, or similar reports which state facts concerning a specific situation, or records made in the regular course of business by a hospital or other provider of health care. Original sources of information, documents, or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were presented to, or prepared at

the direction of, [such] the committees. Except as hereinafter provided, no person in attendance at a meeting of the committee shall be required to testify as to what transpired at the meeting. The prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at the meeting who is a party to an action or proceeding the subject matter of which was reviewed at the meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.”

SECTION 2. Section 663-1.7, Hawaii Revised Statutes, is amended by amending subsections (a), (b), (c), (d), and (e) to read as follows:

“(a) As used in this section[, “professional”]; [“society” or “society” means any association or other organization of persons engaged in the same profession or occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice; “peer review committee” means a committee created by a professional society, or by the medical or administrative staff of a licensed hospital or clinic, whose function is to maintain the professional standards established by the bylaws of the society, hospital, or clinic of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital or clinic; “ethics committee” means a committee that may be an interdisciplinary committee appointed by the administrative staff of a licensed hospital, whose function is to consult, educate, review, and make decisions regarding ethical questions, including decisions on life-sustaining therapy; and “hospital or clinic quality assurance committee” means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital or clinic, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.]

“Ethics committee” means a committee that may be an interdisciplinary committee appointed by the administrative staff of a licensed hospital, whose function is to consult, educate, review, and make decisions regarding ethical questions, including decisions on life-sustaining therapy.

“Licensed health maintenance organization” means a health maintenance organization licensed in Hawaii under chapter 432D.

“Peer review committee” means a committee created by a professional society, or by the medical or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to maintain the professional standards of persons engaged in its profession, occupation, specialty, or practice established by the bylaws of the society, hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network.

“Preferred provider organization” and “preferred provider network” means a partnership, association, corporation, or other entity which delivers or arranges for the delivery of health services, and which has entered into a written service arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy.

“Professional society” or “society” means any association or other organization of persons engaged in the same profession or occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the profes-

sional standards of the persons engaged in its profession or occupation or specialty practice.

“Quality assurance committee” means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.

(b) There shall be no civil liability for any member of a peer review committee, ethics committee, or [hospital or clinic] quality assurance committee, or for any person who files a complaint with or appears as a witness before [such] those committees, for any acts done in the furtherance of the purpose for which the peer review committee, ethics committee, or [hospital or clinic] quality assurance committee was established; provided that:

- (1) The member, witness, or complainant acted without malice; and
- (2) In the case of a member, the member was authorized to perform in the manner in which the member did.

(c) There shall be no civil liability for any person who participates with or assists a peer review committee or [hospital or clinic] quality assurance committee, or for any person providing information to a peer review committee or [hospital or clinic] quality assurance committee for any acts done in furtherance of the purpose for which the peer review committee or [hospital or clinic] quality assurance committee was established, unless such information is false and the person providing it knew such information was false.

(d) This section shall not be construed to confer immunity from liability upon any professional society, hospital, [or] clinic, health maintenance organization, preferred provider organization, or preferred provider network, nor shall it affect the immunity of any shareholder or officer of a professional corporation; provided that there shall be no civil liability for any professional society [or], hospital [or], clinic, health maintenance organization, preferred provider organization, or preferred provider network in communicating any conclusions reached by one of its peer review committees, ethics committees, or [hospital or clinic] quality assurance committees relating to the conformance with professional standards of any person engaged in the profession or occupation of which the membership of the communicating professional society consists, to a peer review committee, an ethics committee, or [hospital or clinic] quality assurance committee of another professional society [or], hospital [or], clinic, health maintenance organization, preferred provider organization, or preferred provider network whose membership is comprised of persons engaged in the same profession or occupation, or to a duly constituted governmental board or commission or authority having as one of its duties the licensing of persons engaged in that same profession or to a government agency charged with the responsibility for administering a program of medical assistance in which services are provided by private practitioners.

(e) The final peer review committee of a medical society, hospital, [or] clinic, health maintenance organization, preferred provider organization, or preferred provider network, or other health care facility shall report in writing every adverse decision made by it to the department of commerce and consumer affairs; provided that final peer review committee means that body whose actions are final with respect to a particular case; and provided further that in any case where there are levels of review nationally or internationally, the final peer review committee for the purposes of this subsection shall be the final committee in this State. The [hospital or clinic] quality assurance committee shall report in writing to the department of commerce and consumer affairs any information which identifies patient care by any person engaged in a profession or occupation which does not meet hospital [or],

clinic, health maintenance organization, preferred provider organization, or preferred provider network standards and which results in disciplinary action unless such information is immediately transmitted to an established peer review committee. The report shall be filed within thirty business days following an adverse decision. The report shall contain information on the nature of the action, its date, the reasons for, and the circumstances surrounding the action; provided that specific patient identifiers shall be expunged. If a potential adverse decision was superseded by resignation or other voluntary action that was requested or bargained for in lieu of medical disciplinary action, the report shall so state. The department shall prescribe forms for the submission of reports required by this section. Failure to comply with this subsection shall be a violation punishable by a fine of not less than \$100 for each member of the committee.”

SECTION 3. Section 671D-4, Hawaii Revised Statutes, is amended by amending the definitions of “clinical privileges”, “health care entity”, and “professional review action” to read as follows:

““Clinical privileges” includes privileges, membership on the medical staff[,] or panel, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

“Health care entity” means:

- (1) A hospital that is licensed by the State to provide health care services;
- (2) An entity, including a licensed health maintenance organization, preferred provider organization, or preferred provider network, or group medical practice, that [provides] is involved in providing health care services and that follows a formal peer review process for the purpose of furthering quality health care as may be determined under rules or guidelines which may be adopted under section 671D-13 [of this chapter];
- (3) A professional society or committee thereof of physicians or other licensed health care practitioners that follows a formal peer review process for the purpose of furthering quality health care as may be determined under rules or guidelines which may be adopted under section 671D-13 [of this chapter];

provided that “health care entity” shall not include a professional society or committee thereof if, within the previous five years, the society has been found by the Federal Trade Commission or any court to have engaged in any anticompetitive practice which had the effect of restricting the practice of licensed health care practitioners.

“Professional review action” means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician which conduct affects or could affect adversely the health or welfare of a patient or patients, and adversely affects the clinical privileges, or membership in a professional society[,] or provider panel, of the physician. [Such] This term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. For purposes of this chapter an action shall not be considered to be based on the competence or professional conduct of a physician if the action is primarily based on any of the following:

- (1) The physician’s association, or lack of association, with a professional society or association;

- (2) The physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business;
- (3) The physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis;
- (4) A physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional; or
- (5) Any other matter that does not relate to the competence or professional conduct of a physician.'

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 21, 1997.)