

A Bill for an Act Relating to Peer Review.

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

SECTION 1. The legislature finds that in 1999, the Institute of Medicine estimated that medical errors contribute to forty-four thousand to ninety-eight thousand deaths per year, making it the eighth leading cause of death, higher than motor vehicle accidents, breast cancer, and AIDS. The annual cost to hospitals stemming from medical errors has been conservatively estimated to range from \$17,000,000,000 to \$29,000,000,000.

Nationally, the response has been to design medical error reporting systems that encourage full and open reporting of medical errors and adverse outcomes while protecting the data collection and reporting process. To date, there is no centralized medical error reporting system, and little reliable data are available to identify Hawaii's patient safety issues at the statewide level. There are no baseline data to identify trends and compare Hawaii's data with national data.

However, the data are accessible to plaintiffs' attorneys. Accordingly, if health care providers and public and private organizations involved in the data and reporting process are not protected, it is unlikely that full and open reporting will occur.

In response, most states have protected patient safety data by protecting health care provider activities that fall within the statutory definition of "peer review." These laws promote review, discussion, and critique of medical care processes in an environment protected from recrimination or discovery. However, the legislature finds that Hawaii's current peer review protection law (section 624-25.5, Hawaii Revised Statutes) is narrow in scope and does not provide adequate protections for hospitals, physicians, and other health care providers to encourage open discussions about medical errors and adverse outcomes. Before a medical error reporting system can become operational in Hawaii, statutory protection for the generation and reporting of information is required.

The purpose of this Act is to provide the necessary protections for physicians, hospitals, and other health care providers to enable a medical error reporting system to be established and functional in the State.

SECTION 2. Section 624-25.5, Hawaii Revised Statutes, is amended to read as follows:

"§624-25.5 Proceedings and records of peer review committees and quality assurance committees. (a) As used in this section:

"Health care review organization" means any organization that gathers and reviews information relating to the procedures and outcomes of health care providers and the care and treatment of patients for the purposes of evaluating and improving quality and efficiency of health care.

"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] that delivers or arranges for the delivery of health services, and [which] that 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, occupation, or a speciality 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.

“Quality assurance committee” means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital, clinic, long-term care facility, skilled nursing facility, assisted living facility, home care agency, hospice, 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.~~] in the health care delivery system to reduce the risk of harm to patients and improve patient safety or otherwise improve the quality of care delivered to patients, and to convene meetings for the presentation and critique of cases for educational purposes.

(b) Neither the proceedings nor the records of peer review committees, or quality assurance committees shall be subject to discovery. For the purposes of this section, “records of 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] that 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, 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.

(c) Information and data relating to a medical error reporting system that is compiled and submitted by a medical provider to a health care review organization for the purpose of evaluating and improving the quality and efficiency of health care, when done through a peer review committee or hospital quality assurance committee, shall not be subject to discovery.

For purposes of this subsection, the information and data protected shall include proceedings and records of a peer review committee, hospital quality assurance committee, or health care review organization that include recordings, transcripts, minutes, and summaries of meetings, conversations, notes, materials, or reports created for, by, or at the direction of a peer review committee, quality assurance committee, or a health care review organization when related to a medical error reporting system.

Information and data protected from discovery shall not include incident reports, occurrence reports, statements, or similar reports that state facts concerning

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a specific situation and shall not include records made in the regular course of business by a hospital or other provider of health care, including patient medical records. 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 reviewed or considered by a medical provider for submission to, or were in fact submitted to, a health care review organization.

~~[(e)]~~ (d) The prohibitions contained in this section shall not apply to medical, dental, or optometric society committees that exceed ten per cent of the membership of the society, nor to any committee if any person serves upon the committee when the person's own conduct or practice is being reviewed.

~~[(d)]~~ (e) The prohibitions contained in this section shall apply to investigations and discovery conducted by the board of medical examiners, except as required by sections 92-17, 453-8.7, or 663-1.7(e).''

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

SECTION 5. This Act shall take effect on July 1, 2004.

(Approved May 5, 2004.)