

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

SENATE BILL 777

4
5 By: Senators Burnett, Laverty

For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE QUALITY IMPROVEMENT FOR
9 SERVICES TO CHILDREN AND ADULTS WITH DEVELOPMENTAL
10 DISABILITIES ACT; AND FOR OTHER PURPOSES.

Subtitle

14 AN ACT TO ESTABLISH THE QUALITY
15 IMPROVEMENT FOR SERVICES TO CHILDREN AND
16 ADULTS WITH DEVELOPMENTAL DISABILITIES
17 ACT.

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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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22 SECTION 1. Arkansas Code Title 20, Chapter 48, Subchapter 7 is amended
23 to add an additional section to read as follows:

24 20-48-706. Records of and testimony before committees reviewing and
25 evaluating quality of care – Division of Developmental Disabilities Services.

26 (a)(1)(A) The proceedings, minutes, records, or reports of organized
27 committees of the Division of Developmental Disabilities Services of the
28 Department of Human Services having the responsibility for reviewing and
29 evaluating the quality of care provided to individuals with developmental
30 disabilities in any program administered by the division for the purpose of
31 reducing morbidity or mortality, other than those records described in
32 subsection (c) of this section, compiled or accumulated by the administrative
33 staff of the committees in connection with a review or evaluation, together
34 with all communications or reports originating in the committees, are not
35 subject to discovery under the Arkansas Rules of Civil Procedure or the
36 Freedom of Information Act of 1967, § 25-19-101 et seq., or admissible in any



1 legal proceeding and shall be absolutely privileged communications.

2 (B) The submission of proceedings, minutes, records,
3 reports, and communications under subdivision (a)(1)(A) of this section to a
4 governing board shall not operate as a waiver of the privilege.

5 (2) Testimony as to events occurring during the activities of
6 the committees shall not be subject to discovery under the Arkansas Rules of
7 Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et
8 seq., nor be admissible in any legal proceeding.

9 (b) This section does not prevent disclosure of data under subsection
10 (a) of this section to appropriate state or federal regulatory agencies that
11 by statute or regulation are entitled to access to the data.

12 (c) Neither this section nor § 20-9-308 applies to original provider
13 records, incident reports, or other records with respect to the care or
14 treatment of any patient or shall affect the discoverability or admissibility
15 of the records.

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17 SECTION 2. Arkansas Code Title 20, Chapter 48 is amended to add an
18 additional subchapter to read as follows:

19 20-48-1001. Purpose – Findings.

20 (a) The purpose of a quality improvement committee in a nonprofit
21 community program as defined in § 20-48-101 is to evaluate and improve the
22 quality of care rendered to clients of the program.

23 (b) The General Assembly finds the nonprofit community program.

24 (1) Confidentiality of committee proceedings and records is key
25 to improving the quality of care in nonprofit community programs by promoting
26 thorough and candid discussions for a full review and analysis of care
27 processes; and

28 (2) The work of a committee is an ongoing process in which
29 individuals from various disciplines meet as a committee to:

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

31 (B) Prevent deviations from care practices to the extent
32 possible;

33 (C) Track, trend, and identify care concerns, including
34 without limitation mortality review; and

35 (D) Correct inappropriate care processes.

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1 20-48-1002. Applicability – Scope.

2 (a) This subchapter applies to nonprofit community programs as those
3 entities are defined in § 20-48-101.

4 (b) This subchapter does not expand, limit, or constrict any other
5 privilege, particularly a privilege under § 20-9-502, § 20-9-503, or § 16-46-
6 105.

7
8 20-48-1003. Liability of Quality Improvement Committee members –
9 Construction.

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

14 (b) This subchapter does not confer immunity from liability on an
15 individual while performing services other than as a member of a committee.

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17 20-48-1004. Creation -- Proceedings and records confidential.

18 (a)(1) A nonprofit community program may appoint members to serve as a
19 duly appointed Quality Improvement Committee in which individuals from
20 various disciplines meet as a committee to:

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

22 (B) Prevent deviations from care practices to the extent
23 possible;

24 (C) Track, trend, and identify care concerns, including
25 without limitation mortality review; and

26 (D) Correct inappropriate care processes.

27 (2)(A) The proceedings of and records that are created by or for
28 the committee of a nonprofit community program are not subject to discovery
29 or introduction into evidence in a civil action against a provider of
30 professional health services arising out of the matters that are subject to
31 evaluation and review by the committee.

32 (B) Appointments to the committee and the dates of the
33 meetings shall be documented and maintained.

34 (3)(A) A nonprofit community program may retain a professional
35 consultant to assist the committee in studying quality-of-care concerns.

36 (B) Any oral or written reports of the consultants to the

1 committee are privileged and not subject to discovery or introduction into
2 evidence in a civil action against a provider of professional health
3 services.

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

6 (4) A person who was in attendance at a meeting of the committee
7 shall not be permitted or required to testify in a civil action as to the
8 following:

9 (A) Evidence or other matters produced or presented during
10 the proceedings of the committee; or

11 (B) Findings, recommendations, evaluations, opinions, or
12 other actions of the committee or any members of the committee made or taken
13 in the quality assurance role.

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

16 (A) Records or reports made in the regular course of
17 business by a nonprofit community program or other health care provider that
18 are not created by or for the committee;

19 (B) Records or reports otherwise available from original
20 sources, including without limitation the medical records of specific
21 residents;

22 (C) Records or reports required to be kept by applicable
23 law or regulation that are not created by or for the committee;

24 (D) Incident and accident reports;

25 (E) The nonprofit community program's operating budgets;

26 or

27 (F) Records of the committee's meeting dates.

28 (2) Without waiving any privilege, appointments to the committee
29 are available to the Attorney General's Medicaid Fraud Control Unit.

30 (3) A person who testifies before the committee or who is a
31 member of the committee shall not be prevented from testifying as to matters
32 within his or her knowledge, but the witness shall not be asked about his or
33 her testimony before the committee or about opinions formed by him or her as
34 a result of the committee hearings.

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36 20-48-1005. Duty to advise Quality Improvement Committees.

1 Upon a request of a Quality Improvement Committee reviewing care
2 provided by a nonprofit community program, a physician, administrator, nurse,
3 therapist, direct support professional, or other individual engaged in work
4 in or about the nonprofit community program and having information or
5 knowledge relating to the care provided by the nonprofit community program
6 shall advise the committee concerning all the relevant facts or information
7 possessed by the individual concerning the quality of care provided by the
8 nonprofit community program.

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