

IN THE SENATE

SENATE BILL NO. 1271

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO HEALTH CARE; AMENDING SECTION 39-1392a, IDAHO CODE, TO REVISE A DEFINITION; AND AMENDING SECTION 39-1392e, IDAHO CODE, TO REVISE PROVISIONS REGARDING EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY.

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

SECTION 1. That Section 39-1392a, Idaho Code, be, and the same is hereby amended to read as follows:

39-1392a. DEFINITIONS. The following terms shall have the following meanings when used in this section:

(1) "Emergency medical services personnel" means emergency medical services providers certified by the department of health and welfare pursuant to section 56-1011 et seq., Idaho Code, and ambulance-based clinicians as defined in the rules governing emergency medical services as promulgated by the department of health and welfare.

(2) "Group medical practice" means a partnership, corporation, limited liability company, or other association formed for the purpose of offering health care services through physicians and other licensed or otherwise authorized health care providers who are partners, shareholders, members, employees, or contractors of such group medical practice.

(3) "Health care organization" means a hospital, in-hospital medical staff committee, medical society, managed care organization, licensed emergency medical service, group medical practice, residential care facility or skilled nursing facility.

(4) "Hospital" means a facility in Idaho licensed under sections 39-1301 through 39-1314, Idaho Code, and defined in section 39-1301(a)(1), Idaho Code.

(5) "In-hospital medical staff committees" means any individual doctor who is a hospital staff member, or any hospital employee, or any group of such doctors and/or hospital employees, who are duly designated a committee by hospital staff bylaws, by action of an organized hospital staff, or by action of the board of directors of a hospital, and which committee is authorized by said bylaws, staff or board of directors, to conduct research or study of hospital patient cases, or of medical questions or problems using data and information from hospital patient cases.

(6) "Licensed emergency medical service" means an ambulance service or a nontransport service licensed by the department of health and welfare pursuant to section 56-1011 et seq., Idaho Code.

(7) "Managed care organization" means a public or private person or organization which offers a managed care plan.

(8) "Managed care plan" means a contract of coverage given to an individual, family or group of covered individuals pursuant to which a member is entitled to receive a defined set of health care benefits through an orga-

1 nized system of health care providers in exchange for defined consideration  
2 and which requires the member to use, or creates financial incentives for the  
3 member to use, health care providers owned, managed, employed by or under  
4 contract with the managed care organization.

5 (9) "Medical society" means any duly constituted, authorized and rec-  
6 ognized professional society or entity made up of physicians licensed to  
7 practice medicine in Idaho, having as its purpose the maintenance of high  
8 quality in the standards of health care provided in Idaho or any region or  
9 segment of the state, operating with the approval of the Idaho state board  
10 of medicine, or any official committee appointed by the Idaho state board of  
11 medicine.

12 (10) "Patient care records" means written or otherwise recorded, pre-  
13 served and maintained records of the medical or surgical diagnostic, clini-  
14 cal, or therapeutic care of any patient treated by or under the direction of  
15 licensed professional personnel, including emergency medical services per-  
16 sonnel, in every health care organization subject to this act, whether as an  
17 inpatient or outpatient of the health care organization.

18 (11) "Peer review" means the collection, interpretation and analysis of  
19 data by a health care organization for the purpose of bettering the system  
20 of delivery of health care or to improve the provision of health care or to  
21 otherwise reduce patient morbidity and mortality and improve the quality of  
22 patient care. Peer review activities by a health care organization include,  
23 without limitation:

24 (a) Credentialing, privileging or affiliating of health care providers  
25 as members of, or providers for, a health care organization;

26 (b) Quality assurance and improvement, patient safety investigations  
27 and analysis, patient adverse outcome reviews, and root-cause analysis  
28 and investigation activities by a health care organization; and

29 (c) Professional review action, meaning an action or recommendation  
30 of a health care organization which is taken or made in the conduct of  
31 peer review, that is based on the competence or professional conduct of  
32 an individual physician or emergency medical services personnel where  
33 such conduct adversely affects or could adversely affect the health  
34 or welfare of a patient or the physician's privileges, employment or  
35 membership in the health care organization or in the case of emergency  
36 medical services personnel, the emergency medical services personnel's  
37 scope of practice, employment or membership in the health care organ-  
38 ization.

39 (12) "Peer review records" means all evidence of interviews, reports,  
40 statements, minutes, memoranda, notes, investigative graphs and compila-  
41 tions and the contents thereof, and all physical materials relating to peer  
42 review of any health care organization. "Peer review records" does not mean  
43 or include patient care records; provided however, that the records relating  
44 to the identification of which particular patient care records were selected  
45 for, or reviewed, examined or discussed in peer review by a health care or-  
46 ganization and the methodology used for selecting such records shall be con-  
47 sidered peer review records.

48 (13) "Skilled nursing facility" means a facility licensed under chapter  
49 13, title 39, Idaho Code, to provide skilled care to recipients.

1 SECTION 2. That Section 39-1392e, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 39-1392e. LIMITED EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY. (a) In  
4 the event of a claim or civil action against a physician, emergency medical  
5 services personnel, a hospital, a residential care facility or a skilled  
6 nursing facility arising out of a particular physician-patient, emer-  
7 gency medical services personnel-patient, hospital-patient ~~relationship,~~  
8 residential care facility-patient or skilled nursing facility-patient  
9 relationship, or which concerns the sufficiency of the delivery of particu-  
10 lar health care to a specific patient, any health care organization having  
11 information of the kind covered by section 39-1392b, Idaho Code, shall, when  
12 interrogated as hereinafter provided, advise any such claimant who is or was  
13 such a patient or who, in a representative capacity, acts on behalf of such  
14 patient or his heirs, as follows:

15 (1) Whether it has conducted or has in progress an inquiry, proceeding  
16 or disciplinary matter regarding the quality or propriety of the health  
17 care involved, which concerns the subject patient while he was under the  
18 care or responsibility of a member of such health care organization or  
19 while he was a patient in such hospital or facility; and, if so,

20 (2) Whether disposition of any kind resulted or will result therefrom;  
21 and, if so,

22 (3) What the disposition was, or, if not yet determined, approximately  
23 when it will be determined.

24 Such disclosure of information shall be limited to the health care organiza-  
25 tion's actions in connection with the physician, emergency medical services  
26 personnel, hospital or skilled nursing facility against whom such claim is  
27 asserted.

28 (b) Such a claimant shall likewise be entitled to inquire of such health  
29 care organization respecting the names and addresses of persons who such  
30 health care organization knows to have direct knowledge of the provision  
31 of the health care in question, such inquiry to be limited, however, to the  
32 particular patient and the particular times and occasions germane to the  
33 specific occurrences on which the claim is based; provided, names shall  
34 not be disclosed respecting persons who have gained secondary knowledge or  
35 formed opinions respecting the matter solely by participating as witnesses,  
36 officials, investigators or otherwise on, for, or in connection with such  
37 a health care organization committee, staff, governing board or the state  
38 board of medicine.

39 (c) Such limited, conditional discovery and disclosure of information  
40 as provided above shall be allowed only in response to inquiries directed  
41 to such a health care organization, and then only if initially propounded  
42 by a claimant of the type above described. If the matter is in litigation,  
43 inquiry may be by customary means of discovery under the Idaho rules of civil  
44 procedure, or, if pending in a United States court, then under discovery  
45 as allowed by its applicable rules; provided, pendency of the claim in the  
46 United States court or before any other tribunal shall not operate to broaden  
47 the exception to the rules of privilege, confidentiality and immunity set  
48 down in this act.

1 (d) Such disclosures may be voluntarily made without judicial order or  
2 formal discovery if all disciplined, accused or investigated physicians or  
3 emergency medical services personnel consent thereto, and if privileged or  
4 confidential information regarding any other patient, physician, emergency  
5 medical services personnel, or person will not be disclosed thereby. When  
6 the terms of this paragraph are complied with, such voluntary disclosures  
7 may be made without civil liability therefor as if in due response to valid  
8 judicial process or order.

9 (e) If any claimant makes such inquiry of any such health care organi-  
10 zation, he shall be deemed to have consented to like inquiry and disclosure  
11 rights for the benefit of all parties against whom he asserts such claim or  
12 brings such suit or action, and all other persons who are parties to such ac-  
13 tion, and thereafter all such persons and parties may invoke the provisions  
14 of this section, seeking and securing specific information as herein pro-  
15 vided for the benefit of such claimant, to the same extent as the same is al-  
16 lowed to such claimant.

17 (f) If any physician, emergency medical services personnel, patient,  
18 person, organization or entity whose conduct, care, chart, behavior, health  
19 or standards of ethics or professional practice is the subject of investiga-  
20 tion, comment, testimony, dispositive order of any kind or other written or  
21 verbal utterance or publication or act of any such health care organization  
22 or any member or committee thereof in the course of research, study, disci-  
23 plinary proceeding or investigation of the sort contemplated by this act,  
24 makes claim or brings suit on account of such health care organization ac-  
25 tivity, then, in the defense thereof, confidentiality and privilege shall be  
26 deemed waived by the making of such claim, and such health care organization  
27 and the members of their staffs and committees shall be allowed to use and  
28 resort to such otherwise protected information for the purpose of present-  
29 ing proof of the facts surrounding such matter, and this provision shall ap-  
30 ply whether such claim be for equitable or legal relief or for intentional or  
31 unintentional tort of any kind and whether pressed by a patient, physician,  
32 emergency medical services personnel, or any other person, but such waiver  
33 shall only be effective in connection with the disposition or litigation of  
34 such claim, and the court shall, in its discretion, enter appropriate orders  
35 protecting, and as fully as it reasonably can do so, preserving the confiden-  
36 tiality of such materials and information.