

2A: 84A-22.10

LEGISLATIVE HISTORY CHECKLIST

WJSA 2A:84A-22.10 (Immunity from liability for peer-review actions)

LAWS OF 1979 CHAPTER 128

Bill No. S777

Sponsor(s) Hirkala

Date Introduced February 9, 1978

Committee: Assembly Commerce, Industry and Professions

Senate Institutions, Health and Welfare

Amended during passage Yes } ~~XX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly May 10, 1979

Senate October 5, 1978

Date of approval July 6, 1979

Following statements are attached if available:

Sponsor statement Yes ~~XX~~

Committee Statement: Assembly Yes ~~XX~~

Senate Yes ~~XX~~

Fiscal Note ~~XXSX~~ No

Veto message ~~XXSX~~ No

Message on signing ~~XXSX~~ No

Following were printed:

Reports ~~XXSX~~ No

Hearings ~~XXSX~~ No

S.903 (1976) mentioned in sponsor's statement (attached)

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SENATE, No. 777

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1978

By Senator HIRKALA

Referred to Committee on Institutions, Health and Welfare

******[AN ACT concerning certain peer-review committees in relation to confidentiality of matters under review and liability of members thereon, amending the title of "An act relating to the confidentiality of information and data secured by and in the possession of utilization review committees," approved December 21, 1970 (P. L. 1970, c. 313), so that the same shall read "An act relating to the confidentiality of information and data ***[secured]*** **exclusively generated** by and in the possession of certain review committees," and amending the body of said act.]****** ***An Act concerning peer-review committees *******and professional standards review organizations******* in relation to liability of members thereon and supplementing Title 2A of the New Jersey Statutes.***

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 ******[1. The title of P. L. 1970, c. 313 is amended to read as follows:
2 An act relating to the confidentiality of information and data
3 ***[secured]*** **exclusively generated** by and in the possession of
4 **[utilization]** *certain review committees.*]******

1 ******[2. Section 1 of P. L. 1970, c. 313 (C. 2A:84A-22.8) is amended
2 to read as follows:

3 1. Information and data **[secured]** *exclusively generated* by and
4 in the possession of utilization, *medical audit, tissue ***[or]*** ******,*
5 *mortality ***or peer-***review committees established by any certified*
6 *hospital or **[extended]** long term health care facility in the per-*
7 *formance of their duties shall not be revealed or disclosed in any*
8 *manner or under any circumstances **[by any member of such com-***
9 *mittee] **by any member of such committee or by the staff thereof***

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

10 except to: (a) a patient's attending physician, (b) *a member of*
 11 *the governing body or the chief administrative officer of the hospital*
 12 *or [extended] long term health care facility which it serves, (c)*
 13 *the medical executive committee, or comparable enforcement unit,*
 14 *of such hospital or [extended] long term health care facility, [or]*
 15 *(d) representatives of, including intermediaries or carriers for,*
 16 *government agencies in the performance of their duties, under the*
 17 *provisions of Federal and State law, as such duties relate to matters*
 18 *of health care reimbursement insurance, (e) a member of a pro-*
 19 *fessional standards review organization as established by P. L.*
 20 *92-603, or (f) any hospital service corporation, medical service*
 21 *corporation or insurance company with which said patient has*
 22 *pertinent coverage under a contract, policy or certificate the terms*
 23 *of which authorize the carrier to request and be given such informa-*
 24 *tion and data which may be used solely in determining the extent of*
 25 *payment for services rendered to the patient, or (g) any person*
 26 *pursuant to a court order.】** * [Names and addresses of the duly*
 27 *constituted members of a peer-review committee shall be deemed*
 28 *privileged information.]**

1 **[3. Section 2 of P. L. 1970, c. 313 (C. 2A:84A-22.9) is amended
 2 to read as follows:

3 2. No member of a utilization, *medical audit, tissue * [or] *, **
 4 *mortality *or peer-**review committee may be held liable for
 5 damages or otherwise prejudiced in any manner by reason of recom-
 6 mendations or findings made by said committee or for furnishing
 7 information or data obtained in the course of his duties as a
 8 member of a committee to the persons and officials mentioned in
 9 section 1 hereof.])**

1 **[4. (New section) A physician, dentist, podiatrist, optometrist,
 2 **psychologist,* chiropractor * [or] * *,* pharmacist*, nurse, dieti-*
 2A *tian, licensed administrator or representative of the public*]***

2B **1. Any person** who serves as a member of

3 a. A hospital or long term health care facility committee estab-
 4 lished to administer a utilization review plan for such hospital or
 5 long term health care facility; or

6 b. A hospital medical staff committee having the responsibility
 6A of evaluation and improvement of the quality of care rendered in
 6B such hospital; or

7 ***c. A professional standards review organization as estab-
 7A lished by P. L. 92-603; or

7B d. A hospital peer-review committee having the responsibility
 7C for the review of the qualifications and credentials of physicians
 7D or dentists seeking appointment or reappointment to the medical

8 *or dental staff of a hospital, or of questions of the clinical or ad-*
 8A *ministrative competence of physicians or dentists so appointed,*
 8B *or of matters concerning limiting the scope of hospital privileges*
 8C *of physicians or dentists on the staff, or of matters concerning the*
 8D *dismissal or discharge of same; or****

9 ***[c.]*** ***e.*** A peer-review committee or subcommittee
 10 thereof of a local, county or State medical, dental, podiatric, optome-
 11 tric, **psychological,** chiropractor or pharmaceutical society **or*
 12 *long term health care facility association**, or of any such society
 13 **or association** itself, when such society **or association** or com-
 13A mittee or subcommittee thereof is performing any peer-review
 13B function that is

14 (1) Described in subsections a. ***[and b.]*** ***, *b., c. and*
 14A *d.****, above of this section; or

15 (2) Involves any controversy or dispute between (a) a physician,
 16 dentist, podiatrist, optometrist, **psychologist,** chiropractor
 17 **[or]* **,* pharmacist*, nurse, dietitian or licensed administrator**
 18 and a patient concerning the diagnosis, treatment or care of such
 19 patient or the fees or charges therefor, **[or]** (b) a physician,
 20 dentist, podiatrist, optometrist, **psychologist,** chiropractor
 21 **[or]* **,* pharmacist*, nurse, dietitian or licensed administrator**
 22 and a provider of medical, dental, podiatric, optometric*, *psy-*
 23 *chological** or pharmaceutical benefits concerning any medical or
 24 health charges or fees of such physician, dentist, podiatrist,
 25 optometrist, **psychologist,** chiropractor **[or]* **,* pharmacist*,*
 26 *nurse, dietitian or licensed administrator, or (c) physicians,*
 27 *dentists, podiatrists, optometrists, psychologists, chiropractors,*
 28 *pharmacists, nurses, dietitians or licensed administrators* ***.****
 29 shall not be liable in damages to any person for any action taken
 30 or recommendation made by him within the scope of his function
 31 as a member of such committee, subcommittee or society in the
 32 performance of said peer-review functions, if such action or rec-
 33 ommendation was taken or made without malice and in the reason-
 34 able belief after reasonable investigation that such action or rec-
 35 ommendation was warranted upon the basis of facts disclosed.

1 ***[5.]*** **2.** This act shall take effect immediately.

23 pharmacist shall not be liable in damages to any person for any
 24 action taken or recommendation made by him within the scope of
 25 his function as a member of such committee, subcommittee or
 26 society in the performance of said peer-review functions, if such
 27 action or recommendation was taken or made without malice and in
 28 the reasonable belief after reasonable investigation that such action
 29 or recommendation was warranted upon the basis of facts disclosed.
 1 5. This act shall take effect immediately.

STATEMENT

The enactment of Federal law P. L. 92-603 has mandated peer-review for most hospital services. Peer-review committees of licensed professionals can assure that patients receive full—but not unnecessary—health services.

Protection against lawsuits by those under review is necessary to encourage health professionals to serve on such committees as the Federally-mandated Professional Service Review Organizations (PSRO) and in the Medicare, Medicaid and other health care programs. Without such protection professionals will fear to speak out against practices by their peers which may not serve the public interest.

This bill encourages such participation by providing immunity and nondisclosure for medical audit, tissue and mortality review committees in addition to the coverage already provided by law for utilization review committees. Disclosure of information and data is permitted by these committees to members of Professional Standards Review Organizations, members of governing bodies of hospitals, hospital service corporations and other carriers, and to civil litigants who first obtain court orders.

These amendments will bring New Jersey closer to the statutory protections provided by the majority of states. In addition, this bill will have no effect on the accessibility of any records or documents pertaining to the reduction, suspension or termination of a physician's privileges.

This bill is modeled after Senate Bill 903 of the 1976-77 session, and includes a number of amendments added by the Assembly. These amendments assure the confidentiality of peer-review information without keeping that information from litigants who can establish a legitimate interest. The only Assembly change not incorporated is a provision which would permit a litigant's lawyer to gain access to peer-review records without a court order.

ASSEMBLY COMMERCE, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 777

[OFFICIAL COPY REPRINT]

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 16, 1979

As amended this bill would exempt any person, including a professional or public representative, who serves as a member of (1) a utilization review committee of a hospital or long term health care facility, (2) a hospital medical staff committee concerning the evaluation and improvement of the quality of care, or (3) a peer-review committee of a local, county or State health care professional association or society, from liability for damages arising from his actions on such a committee. A health care professional who serves on a peer-review committee of a professional association or society would be granted immunity from liability arising from his duties in disputes or controversies between a health care professional and a patient, a health care professional and a provider of health care benefits and one professional and another. In order for the immunity provided by this bill to apply, the action or recommendation of such a committee member would have to be within the scope of his function on the committee and made without malice and in the reasonable belief that such action or recommendation was warranted on the basis of the facts disclosed.

The committee deleted by amendment sections 1, 2 and 3 of the bill. These sections amended an existing statute and concerned the confidentiality of information and data exclusively generated by and in the possession of utilization, medical audit, tissue, mortality and peer-review committees of hospitals or long term health care facilities.

The controversy over the deleted part of the bill centered around subsection (g) of section 2 in which access to this information and data is limited to "any person pursuant to a court order." At the present time under New Jersey law a litigant in a malpractice suit is allowed access through discovery to the minutes and data generated by a hospital's medical audit, tissue, mortality and peer-review committees. The change proposed in the bill would restrict such access.

The argument made by the supporters of such a restriction can be summed up by a quote in a document presented by them to the committee. "Constructive professional criticism cannot occur in an atmosphere of apprehension that one doctor's suggestion will be used as a denunciation of a colleague's conduct in a malpractice suit."

The opponents of such a restriction contend that the discovery process in relationship to such committees has not and will not result in the termination of the deliberations of such committees and that access to such information and data is essential to obtain equitable results for the plaintiff in a malpractice suit.

The committee was not prepared to support the restriction of these discovery rights without full evidence on whether such peer-review committees are effective, whether the presently allowed discovery has or will in the future adversely affect the deliberations and actions of such committees, and whether restricted access to such information would impair malpractice plaintiffs' access to evidence and, thereby, jeopardize or prevent recovery. At the same time, the members of the committee were in unanimous agreement on the need to avoid unnecessary delay in enacting the immunity provisions provided in section 4 of the bill.

SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE

STATEMENT TO
SENATE, No. 777
with Senate committee amendments

STATE OF NEW JERSEY

DATED: JULY 19, 1978

This bill would exempt certain health professionals from liability or damages arising from their actions as members of professional utilization review, advisory, evaluatory or peer-review committees.

Four substantive and several technical amendments were approved by the committee. One amendment adds psychologists, nurses, dietitians and licensed administrators to the list of health professionals who would be covered by the immunity from liability extended under the bill. Another amendment extends liability protection to representatives of the public serving on such peer-review committees.

The committee also deleted a sentence which provided that the names and addresses of members of a peer-review committee would be deemed privileged information. The committee felt that such information should be available to the public.

In the existing law, health professionals who serve on peer-review committees of a local, county or State professional society or association are also granted immunity from liability arising from their duties on such committees. One of the duties includes the involvement of such peer-review members in controversies or disputes between a health professional and a patient or a health professional and a provider of health care benefits. A committee amendment recognizes that controversies and disputes also arise between one professional and another and adds this to the list of controversies and disputes in which such peer-review committee may become involved and from which they may need liability protection.

[ASSEMBLY REPRINT]
SENATE, No. 903
[OFFICIAL COPY REPRINT]

with Assembly amendments adopted September 12, 1977

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Senators HIRKALA and FELDMAN

AN ACT concerning certain peer-review committees in relation to confidentiality of matters under review and liability of members thereon, amending the title of "An act relating to the confidentiality of information and data secured by and in the possession of utilization review committees," approved December 21, 1970 (P. L. 1970, c. 313), so that the same shall read "An act relating to the confidentiality of information and data secured by and in the possession of certain review committees," and amending the body of said act.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The title of P. L. 1970, c. 313 is amended to read as follows:
2 An act relating to the confidentiality of information and data
3 secured by and in the possession of **[utilization]** *certain* review
4 committees.

1 2. Section 1 of P. L. 1970, c. 313 (C. 2A:84A-22.8) is amended
2 to read as follows:

3 1. Information and data ****[secured]**** ***exclusively gen-*
4 *erated*** by and in the possession of utilization, *medical audit,*
5 *tissue or mortality* review committees established by any certified
6 hospital or ***[extended]*** **long term health** care facility in the
7 performance of their duties shall not be revealed or disclosed in
8 any manner or under any circumstances **[by any member of such**
8A **committee]** ***by any member of such committee or by the staff*
9 *thereof*** except to: (a) a patient's attending physician, (b) a
10 *member of the governing body or the chief administrative officer of*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

11 the hospital or ***[extended]*** *long term health** care facility which
 12 it serves, (c) the medical executive committee, or comparable
 13 enforcement unit, of such hospital or ***[extended]*** *long term*
 14 *health** care facility, **[or]** (d) representatives of, including inter-
 15 mediaries or carriers for, government agencies in the performance
 16 of their duties, under the provisions of Federal and State law, as
 17 *such duties relate to matters of health care reimbursement*
 18 ****[or]**** *insurance*, (e) a member of a professional standards
 19 review organization as established by P. L. 92-603, or (f) any
 19A hospital service corporation, medical service corporation or
 19B insurance company with which said patient has pertinent coverage
 20 under a contract, policy or certificate the terms of which authorize
 21 the carrier to request and be given such information and data which
 22 may be used solely in determining the extent of payment for ser-
 23 vices rendered to the patient**, (g) any person pursuant to a court
 24 order, or (h) representatives of civil litigants. Names and addresses
 25 of the duly constituted members of a Peer Review Committee shall
 26 be deemed privileged information**.

1 3. Section 2 of P. L. 1970, c. 313 (C. 2A:84A-22.9) is amended
 2 to read as follows:

3 2. No member of a utilization, *medical audit, tissue or mortality*
 4 review committee may be held liable for damages or otherwise
 5 prejudiced in any manner by reason of recommendations or find-
 6 ings made by said committee or for furnishing information or data
 7 obtained in the course of his duties as a member of a committee
 8 to the persons and officials mentioned in section 1 hereof.

1 4. (New section) A physician, dentist, podiatrist, optometrist*,
 2 *chiropractor** or pharmacist who serves as a member of

3 a. A hospital or ***[extended]*** *long term health** care facility
 4 committee established to administer a utilization review plan for
 5 such hospital or ***[extended]*** *long term health** care facility; or

6 b. A hospital medical staff committee having the responsibility
 7 of evaluation and improvement of the quality of care rendered in
 8 such hospital; or

9 c. A peer-review committee or subcommittee thereof of a local,
 10 county or State medical, dental, podiatric, optometric*, *chiro-*
 11 *practor** or pharmaceutical society, or of any such society itself,
 12 when such society or committee or subcommittee thereof is perform-
 13 ing any peer-review function that is

14 (1) Described in subsections a. and b., above, of this section; or

15 (2) Involves any controversy or dispute between (a) a physician,

16 dentist, podiatrist, optometrist*, *chiropractor** or pharmacist and a
17 patient concerning the diagnosis, treatment or care of such patient
18 or the fees or charges therefor, or (b) a physician, dentist,
19 podiatrist, optometrist*, *chiropractor** or pharmacist and a pro-
20 vider of medical, dental, podiatric, optometric or pharmaceutical
21 benefits concerning any medical or health charges or fees of such
22 physician, dentist, podiatrist, optometrist*, *chiropractor** or
23 pharmacist shall not be liable in damages to any person for any
24 action taken or recommendation made by him within the scope of
25 his function as a member of such committee, subcommittee or
26 society in the performance of said peer-review functions, if such
27 action or recommendation was taken or made without malice and in
28 the reasonable belief after reasonable investigation that such action
29 or recommendation was warranted upon the basis of facts disclosed.

1 5. This act shall take effect immediately.

27 without malice and in the reasonable belief after reasonable
28 investigation that such action or recommendation was warranted
29 upon the basis of facts disclosed.

1 5. This act shall take effect immediately.

STATEMENT

The recent enactment of a Federal law (P. L. 92-603) has mandated peer-review for most hospital services. Most states have provided for restrictions upon the use and disclosure of information and data which is the subject of a peer-review committee's consideration. Additionally, there exists a wide range of statutory protection against liability for those engaged in hospital quality review activities. These restrictions and protections are necessary to encourage the willing participation of physicians without fear of adverse legal consequences and to assure quality care. This bill provides coverage with respect to immunity and nondisclosure for medical audit, tissue and mortality review committees in addition to the coverage already provided for utilization review committees. It permits disclosure of information and data by these committees to members of professional standards review organizations established under Federal law and to members of governing bodies of hospitals. These amendments will bring New Jersey closer to the statutory protections provided by the majority of states.

The provisions of this bill will have no effect on the accessibility of any records or documents pertaining to the reduction, suspension or termination of a physician's privileges.

Peer-review committees are required and valuable mechanisms by which a group of licensed professional people, working together and accountable to each other, can assure that patients and clients will have fair access to, and proper use of, scarce and expensive facilities and services, and that use of and charges for such facilities and services will not constitute an abuse.

Protection for physicians who serve on utilization and other peer-review committees is particularly necessary to encourage their willing participation and effective implementation of the provisions of the Federally-mandated Professional Service Review Organization (PSRO), Medicare, Medicaid and other health care measures. Such protection is also necessary to assure effective and aggressive enforcement of principles of ethics and professional conduct, for the benefit of the public, by peer-review committees charged with these responsibilities.

This bill is similar to legislation already enacted in the states of California and New York, among others.

SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE

STATEMENT TO
SENATE, No. 903

—◆—
STATE OF NEW JERSEY
—◆—

DATED: APRIL 26, 1976

The statement appended to and printed with the bill adequately explains its provisions, except for the addition of certain amendments by the committee. These amendments change all references to "extended care facility" to "long-term health care facility" for the sake of accuracy and also add chiropractors to the list of those practitioners who are not to be held liable for actions taken or recommendations made by them in their capacity as members of peer-review committees.