

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 434

BY SENATORS TRUMP AND BOSO

[Introduced January 31, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §30-3C-1 and §30-3C-3 of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto a new section, designated §30-3C-
 3 5, all relating to discovery in certain proceedings; defining terms; specifying certain
 4 documents that are not subject to discovery; and addressing original source materials.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. HEALTH CARE QUALITY IMPROVEMENT PROTECTION.

§30-3C-1. Definitions.

1 As used in this article:

2 (a) "Document" means any information, data, reports or records prepared by or on behalf
 3 of a health care provider and includes mental impressions, analyses, and / or work product.

4 ~~"Health care professionals" means individuals who are licensed to practice in any health~~
 5 ~~care field and individuals, who, because of their education, experience or training participate as~~
 6 ~~members of or consultants to a review organization~~

7 (b) "Health care facility" means any clinic, hospital, pharmacy, nursing home, assisted
 8 living facility, residential care community, end-stage renal disease facility, home health agency,
 9 child welfare agency, group residential facility, behavioral health care facility or comprehensive
 10 community mental health center, intellectual/developmental disability center or program, or other
 11 ambulatory health care facility, in and licensed, regulated or certified by the State of West Virginia
 12 under state or federal law and any state-operated institution or clinic providing health care and
 13 any related entity to the health care facility as that term is defined in §55-7B-1 et seq. of this code.

14 (c) "Health care provider" means a person, partnership, corporation, professional limited
 15 liability company, health care facility, entity or institution licensed by, or certified in, this state or
 16 another state, to provide health care or professional health care services, including a physician,
 17 osteopathic physician, physician assistant, advanced practice registered nurse, health care
 18 facility, dentist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor,
 19 physical therapist, speech-language pathologist, audiologist, occupational therapist, psychologist,

20 pharmacist, technician, certified nursing assistant, emergency medical service personnel,
21 emergency medical services authority or agency, any person supervised by or acting under the
22 direction of a licensed professional, any person taking actions or providing service or treatment
23 pursuant to or in furtherance of a physician's plan of care, a health care facility's plan of care,
24 medical diagnosis or treatment; or an officer, employee or agent of a health care provider acting
25 in the course and scope of the officer's, employee's or agent's employment.

26 (d) "Peer review" means the procedure for evaluation by health care ~~professionals~~
27 providers of the quality, delivery, and efficiency of services ordered or performed by other health
28 care professionals, including practice analysis, inpatient hospital and extended care facility
29 utilization review, medical audit, ambulatory care review, claims review and patient safety review,
30 preparation for or simulation of audits or surveys of any kind, and all forms of quality
31 assurance/performance improvement whether or not required by any statute, rule, or regulation
32 applicable to a health care facility or health care provider.

33 ~~"Professional society" includes medical, psychological, nursing, dental, optometric,~~
34 ~~pharmaceutical, chiropractic and podiatric organizations having as members at least a majority of~~
35 ~~the eligible licentiates in the area or health care facility or agency served by the particular~~
36 ~~organization~~

37 (e) "Review organization" means any committee or organization engaging in peer review,
38 including a hospital utilization review committee, a hospital tissue committee, a medical audit
39 committee, a health insurance review committee, a health maintenance organization review
40 committee, hospital, medical, dental and health service corporation review committee, a hospital
41 plan corporation review committee, a professional health service plan review committee or
42 organization, a dental review committee, a physicians' advisory committee, a podiatry advisory
43 committee, a nursing advisory committee, any committee or organization established pursuant to
44 a medical assistance program, the joint commission on accreditation of health care organizations
45 or similar accrediting body or any entity established by such accrediting body or to fulfill the

46 requirements of such accrediting body, any entity established pursuant to state or federal law for
47 peer review purposes, and any committee established by one or more state or local professional
48 societies or institutes, to gather and review information relating to the care and treatment of
49 patients for the purposes of: (i) Evaluating and improving the quality of health care rendered; (ii)
50 reducing morbidity or mortality; or (iii) establishing and enforcing guidelines designed to keep
51 within reasonable bounds the cost of health care. It shall also mean any hospital board committee
52 or organization reviewing the professional qualifications or activities of its medical staff or
53 applicants for admission thereto, and any professional standards review organizations
54 established or required under state or federal statutes or regulations.

§30-3C-3. Health care services; confidentiality of information.

1 ~~The proceedings and records of a review organization shall be confidential and privileged~~
2 ~~and shall not be subject to subpoena or discovery proceedings or be admitted as evidence in any~~
3 ~~civil action arising out of the matters which are subject to evaluation and review by such~~
4 ~~organization and no person who was in attendance at a meeting of such organization shall be~~
5 ~~permitted or required to testify in any such civil action as to any evidence or other matters~~
6 ~~produced or presented during the proceedings of such organization or as to any findings,~~
7 ~~recommendations, evaluations, opinions or other actions of such organization or any members~~
8 ~~thereof: *Provided,* That information, documents or records otherwise available from original~~
9 ~~sources are not to be construed as immune from discovery or use in any civil action merely~~
10 ~~because they were presented during proceedings of such organization, nor should any person~~
11 ~~who testifies before such organization or who is a member of such organization be prevented~~
12 ~~from testifying as to matters within his knowledge, but the witness shall not be asked about his~~
13 ~~testimony before such an organization or opinions formed by him as a result of said organization~~
14 ~~hearings: *Provided, however,* That an individual may execute a valid waiver authorizing the~~
15 ~~release of the contents of his file pertaining to his own acts or omissions, and such waiver shall~~
16 ~~remove the confidentiality and privilege of said contents otherwise provided by this section:~~

17 ~~Provided further, That upon further review by any other review organization, upon judicial review~~
18 ~~of any finding or determination of a review organization or in any civil action filed by an individual~~
19 ~~whose activities have been reviewed, any testimony, documents, proceedings, records and other~~
20 ~~evidence adduced before any such review organization shall be available to such further review~~
21 ~~organization, the court and the individual whose activities have been reviewed. The court shall~~
22 ~~enter such protective orders as may be appropriate to provide for the confidentiality of the records~~
23 ~~provided the court by a review organization and all papers and records relating to the proceedings~~
24 ~~had before the reviewing court~~

25 Any document prepared by or on behalf of a health care provider for the purpose of
26 improving the quality, delivery or efficiency of health care or for the purpose of credentialing or
27 reviewing health care providers is confidential and shall not be subject to discovery in a civil action
28 or administrative proceeding. Such documents include:

29 (1) Applications for employment, privileges, or credentials;

30 (2) Incident reports;

31 (3) Documents related to proceedings for hiring, disciplining, terminating, credentialing,
32 issuing staff privileges, renewing staff privileges or alleged misconduct of a health care provider;

33 (4) Review organizations' documents;

34 (5) Quality control documents;

35 (6) Documents satisfying regulatory obligations related to quality assurance and
36 performance improvement; and

37 (7) Reviews, audits and recommendations of consultants or other persons or entities
38 engaged in the performance of peer review.

§30-3C-5. Original source; waivers; further proceedings

1 Information available from original sources are not to be construed as immune from
2 discovery or use in any civil action merely because they were included in any report or analysis
3 related to improving the quality, delivery or efficiency of health care or for the purpose of

- 4 credentialing or reviewing health care providers. However, no court may compel production of
5 documents contained in peer review files on the basis that they were not created as part of the
6 peer review process; rather, the document must be produced from the original source.

NOTE: The purpose of this bill is to specify documents that are not subject to discovery in certain proceedings.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.