

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 434**

SENATORS TRUMP AND BOSO, *original sponsors*

[Passed March 10, 2018; in effect 90 days from passage]



1 AN ACT 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 confidential and not subject to discovery; providing that a person who  
5 testifies before a review organization or is a member of a review organization shall not be  
6 required to testify or asked about his or her testimony; providing that peer review  
7 proceedings, communications, and documents of a review organization are confidential  
8 and privileged and shall not be subject to discovery; providing that an individual may be  
9 given access to documents used as basis for an adverse professional review action,  
10 subject to a protective order as may be appropriate; providing that privilege is not deemed  
11 to be waived unless the review organization executes a written waiver; and addressing  
12 original source materials.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 3C. HEALTH CARE PEER REVIEW ORGANIZATION PROTECTION.**

**§30-3C-1. Definitions.**

1 As used in this article:  
2 “Document” means any information, data, reports, or records prepared by or on behalf of  
3 a health care provider and includes mental impressions, analyses, and/or work product.  
4 “Health care facility” means any clinic, hospital, pharmacy, nursing home, assisted living  
5 facility, residential care community, end-stage renal disease facility, home health agency, child  
6 welfare agency, group residential facility, behavioral health care facility or comprehensive  
7 community mental health center, intellectual/developmental disability center or program, or other  
8 ambulatory health care facility, in and licensed, regulated, or certified by the State of West Virginia  
9 under state or federal law and any state-operated institution or clinic providing health care and  
10 any related entity to the health care facility as that term is defined in §55-7B-1 *et seq.* of this code.  
11 “Health care provider” means a person, partnership, corporation, professional limited

12 liability company, health care facility, entity or institution licensed by, or certified in, this state or  
13 another state, to provide health care or professional health care services, including a physician,  
14 osteopathic physician, physician's assistant, advanced practice registered nurse, health care  
15 facility, dentist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor,  
16 physical therapist, speech-language pathologist, audiologist, occupational therapist, psychologist,  
17 pharmacist, technician, certified nursing assistant, emergency medical services personnel,  
18 emergency medical services authority or agency, any person supervised by or acting under the  
19 direction of a licensed professional, any person taking actions or providing service or treatment  
20 pursuant to or in furtherance of a physician's plan of care, a health care facility's plan of care,  
21 medical diagnosis, or treatment; or an officer, employee, or agent of a health care provider acting  
22 in the course and scope of the officer's, employee's, or agent's employment.

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

30 "Review organization" means any committee, organization, individual or group of  
31 individuals engaging in peer review, including, without limitation, a hospital medical executive  
32 committee and/or subcommittee thereof, a hospital utilization review committee, a hospital tissue  
33 committee, a medical audit committee, a health insurance review committee, a health  
34 maintenance organization review committee, hospital, medical, dental, and health service  
35 corporation review committee, a hospital plan corporation review committee, a professional health  
36 service plan review committee or organization, a dental review committee, a physicians' advisory  
37 committee, a podiatry advisory committee, a nursing advisory committee, any committee or

38 organization established pursuant to a medical assistance program, the joint commission on  
39 accreditation of health care organizations or similar accrediting body or any entity established by  
40 such accrediting body or to fulfill the requirements of such accrediting body, any entity established  
41 pursuant to state or federal law for peer review purposes, and any committee established by one  
42 or more state or local professional societies or institutes, to gather and review information relating  
43 to the care and treatment of patients for the purposes of: (i) Evaluating and improving the quality  
44 of health care rendered; (ii) reducing morbidity or mortality; or (iii) establishing and enforcing  
45 guidelines designed to keep within reasonable bounds the cost of health care. It shall also mean  
46 any hospital board committee or organization reviewing the professional qualifications or activities  
47 of its medical staff or applicants for admission thereto, and any professional standards review  
48 organizations established or required under state or federal statutes or regulations.

**§30-3C-3. Confidentiality of records.**

1 (a) Any document prepared by or on behalf of a health care provider for the purpose of  
2 improving the quality, delivery, or efficiency of health care or for the purpose of credentialing or  
3 reviewing health care providers is confidential and privileged and shall not be subject to discovery  
4 in a civil action or administrative proceeding. Such documents include, without limitation:

5 (1) Nursing home, as referred to in §55-7B-6(e) of this code, incident or event reports,  
6 except reports pertaining to the plaintiff of that civil action, or reports of same or similar incidents  
7 within a reasonable time frame of the events at issue in the civil action, containing only factual  
8 information, but excluding personal identification information;

9 (2) Documents related to review organization proceedings for hiring, disciplining,  
10 terminating, credentialing, issuing staff privileges, renewing staff privileges, or alleged misconduct  
11 of a health care provider;

12 (3) Review organization documents;

13 (4) Quality control and performance improvement documents;

14 (5) Documents satisfying regulatory obligations related to quality assurance and

15 performance improvement; and

16 (6) Reviews, audits, and recommendations of consultants or other persons or entities  
17 engaged in the performance of peer review.

18 (b) A person who testifies before a review organization, or who is a member of a review  
19 organization shall not be required to testify regarding, or be asked about, his or her testimony  
20 before such review organization, deliberations of the review organization, or opinions formed as  
21 a result of the review organization's proceedings. A person who testifies before a review  
22 organization, or who is a member of such organization, shall not be prevented from testifying in  
23 court or an administrative hearing as to matters within his or her personal knowledge.

24 (c) All peer review proceedings, communications, and documents of a review organization  
25 and all records developed or obtained during an investigation conducted pursuant to §30-3-1 *et*  
26 *seq.*, §30-3E-1 *et seq.*, and/or §30-14-1 *et seq.* of this code shall be confidential and privileged  
27 and shall not be subject to discovery in any civil action or administrative proceeding: *Provided,*  
28 That an individual may be given access to any document that was used as the basis for an  
29 adverse professional review action against him or her, subject to such protective order as may be  
30 appropriate to maintain the confidentiality of the information contained therein. Privilege is not  
31 deemed to be waived unless the review organization executes a written waiver authorizing the  
32 release of such peer review proceedings, communications, or documents.

33 (d) Nothing in this section shall limit the disclosure of peer review proceedings,  
34 communications, and documents by a review organization or a health care facility to a medical  
35 licensing board pursuant to the provisions of §30-3-1 *et seq.* and §30-14-1 *et seq.* of this code.

**§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. Documents contained in peer review files are

5 not discoverable on the basis that they were not created as part of the peer review process; rather,  
6 the document must be produced from the original source: *Provided*, That if the party seeking  
7 production can show that obtaining source documents will be unduly burdensome, the court may,  
8 in its discretion, order production of the nonprivileged documents contained in the peer review  
9 file.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2018.

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*Governor*