WEST VIRGINIA CODE CHAPTER 30 ARTICLE 3C

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§30-3C-1. Definitions.

As used in this article:

“Document” means any information, data, reports, or records prepared by or on behalf of a health care provider and includes mental impressions, analyses, and/or work product.

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

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

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

“Review organization” means any committee, organization, individual, or group of individuals engaging in peer review, including, without limitation, a hospital medical executive committee and/or subcommittee thereof, a hospital utilization review committee, a hospital tissue committee, a medical audit committee, a health insurance review committee, a health maintenance organization review committee, hospital, medical, dental, and health service corporation review committee, a hospital plan corporation review committee, a professional health service plan review committee or organization, a dental review

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committee, a physicians' advisory committee, a podiatry advisory committee, a nursing advisory committee, any committee or organization established pursuant to a medical assistance program, the Joint Commission on Accreditation of Health Care Organizations or similar accrediting body or any entity established by such accrediting body or to fulfill the requirements of such accrediting body, any entity established pursuant to state or federal law for peer review purposes, and any committee established by one or more state or local professional societies or institutes, to gather and review information relating to the care and treatment of patients for the purposes of: (i) Evaluating and improving the quality of health care rendered; (ii) reducing morbidity or mortality; or (iii) establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care. It shall also mean any hospital board committee or organization reviewing the professional qualifications or activities of its medical staff or applicants for admission thereto, and any professional standards review organizations established or required under state or federal statutes or regulations.

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§30-3C-2. Immunity from liability.

(a) Notwithstanding any other provision of law, no person providing information to any review organization shall be held, by reason of having provided such information, to be civilly liable under any law, unless:

(1) Such information is unrelated to the performance of the duties and functions of such review organization, or (2) such information is false and the person providing such information knew, or had reason to believe, that such information was false.

(b) A review organization or any member, agent or employee thereof who, in the absence of malice and gross negligence, acts upon or furnishes counsel, services or information to a review organization shall be immune from liability for loss or injury to the person whose activities are being reviewed.

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§30-3C-3. Confidentiality of records.

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

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

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

(3) Review organization documents;

(4) Quality control and performance improvement documents;

(5) Documents satisfying regulatory obligations related to quality assurance and performance improvement; and

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

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

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

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

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§30-3C-4. Liability for court costs and attorney fees in certain civil actions.

Any party or parties who institute an action as a result of a peer review may be liable for court costs and reasonable attorney's fees, if the defendant substantially prevails and if the action, or the plaintiff's conduct during the litigation of the action, was frivolous, unreasonable, without foundation, or in bad faith.

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

Information available from original sources are not to be construed as immune from discovery or use in any civil action merely because they were included in any report or analysis related to improving the quality, delivery, or efficiency of health care or for the purpose of credentialing or reviewing health care providers. Documents contained in peer review files are not discoverable on the basis that they were not created as part of the peer review process; rather, the document must be produced from the original source: Provided, That if the party seeking production can show that obtaining source documents will be unduly burdensome, the court may, in its discretion, order production of the nonprivileged documents contained in the peer review file.

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