

2012 Kansas Statutes

65-4915. Peer review; health care providers, services and costs; definitions; authority of peer review officer or committee; records and testimony of information contained therein privileged; licensing agency disciplinary proceedings; exceptions. (a) As used in this section:

- (1) "Health care provider" means: (A) Those persons and entities defined as a health care provider under K.S.A. 40-3401, and amendments thereto; and (B) a dentist licensed by the Kansas dental board, a dental hygienist licensed by the Kansas dental board, a professional nurse licensed by the board of nursing, a practical nurse licensed by the board of nursing, a mental health technician licensed by the board of nursing, a physical therapist licensed by the state board of healing arts, a physical therapist assistant certified by the state board of healing arts, an occupational therapist licensed by the state board of healing arts, an occupational therapy assistant licensed by the state board of healing arts, a respiratory therapist licensed by the state board of healing arts, a physician assistant licensed by the state board of healing arts and attendants and ambulance services certified by the emergency medical services board.
 - (2) "Health care provider group" means:
 - (A) A state or local association of health care providers or one or more committees thereof;
 - (B) the board of governors created under K.S.A. 40-3403, and amendments thereto;
 - (C) an organization of health care providers formed pursuant to state or federal law and authorized to evaluate medical and health care services;
 - (D) a review committee operating pursuant to K.S.A. 65-2840c, and amendments thereto;
 - (E) an organized medical staff of a licensed medical care facility as defined by K.S.A. 65-425, and amendments thereto, an organized medical staff of a private psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto, or an organized medical staff of a state psychiatric hospital or state institution for people with intellectual disability, as follows: Larned state hospital, Osawatimie state hospital, Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center;
 - (F) a health care provider;
 - (G) a professional society of health care providers or one or more committees thereof;
 - (H) a Kansas corporation whose stockholders or members are health care providers or an association of health care providers, which corporation evaluates medical and health care services;
 - (I) an insurance company, health maintenance organization or administrator of a health benefits plan which engages in any of the functions defined as peer review under this section; or
 - (J) the university of Kansas medical center.
 - (3) "Peer review" means any of the following functions:
 - (A) Evaluate and improve the quality of health care services rendered by health care providers;
 - (B) determine that health services rendered were professionally indicated or were performed in compliance with the applicable standard of care;
 - (C) determine that the cost of health care rendered was considered reasonable by the providers of professional health services in this area;
 - (D) evaluate the qualifications, competence and performance of the providers of health care or to act upon matters relating to the discipline of any individual provider of health care;
 - (E) reduce morbidity or mortality;
 - (F) establish and enforce guidelines designed to keep within reasonable bounds the cost of health care;
 - (G) conduct of research;
 - (H) determine if a hospital's facilities are being properly utilized;
 - (I) supervise, discipline, admit, determine privileges or control members of a hospital's medical staff;
 - (J) review the professional qualifications or activities of health care providers;
 - (K) evaluate the quantity, quality and timeliness of health care services rendered to patients in the facility;
 - (L) evaluate, review or improve methods, procedures or treatments being utilized by the medical care facility or by health care providers in a facility rendering health care.
 - (4) "Peer review officer or committee" means:
 - (A) An individual employed, designated or appointed by, or a committee of or employed, designated or appointed by, a health care provider group and authorized to perform peer review; or
 - (B) a health care provider monitoring the delivery of health care at correctional institutions under the jurisdiction of the secretary of corrections.
- (b) Except as provided by K.S.A. 60-437, and amendments thereto, and by subsections (c) and (d), the reports, statements, memoranda, proceedings, findings and other records submitted to or generated by peer review committees or officers shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding. Information contained in such records shall not be discoverable or admissible at trial in the form of testimony by an individual who participated in the peer review process. The peer review officer or committee creating or initially receiving the record is the holder of the privilege established by this section. This privilege may be claimed by the legal entity creating the peer review committee or officer, or by the commissioner of insurance for any records or proceedings of the board of governors.
- (c) Subsection (b) shall not apply to proceedings in which a health care provider contests the revocation, denial, restriction or termination of staff privileges or the license, registration, certification or other authorization to practice of the health care provider. A licensing agency in conducting a disciplinary proceeding in which admission of any peer review committee report, record or testimony is proposed shall hold the hearing in closed session when any such report, record or testimony is disclosed. Unless otherwise provided by law, a licensing agency conducting a disciplinary proceeding may close only that portion of the hearing in which disclosure of a report or record privileged under this section is proposed. In closing a portion of a hearing as provided by this section, the presiding officer may exclude any person from the hearing location except the licensee, the licensee's attorney, the agency's attorney, the witness, the court reporter and appropriate staff support for either counsel. The licensing agency shall make the portions of the agency record in which such report or record is disclosed subject to a protective order prohibiting further disclosure of such report or record. Such report or record shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity. No person in attendance at a closed portion of a disciplinary proceeding shall at a subsequent civil, criminal or administrative hearing, be required to testify regarding the existence or content of a report or record privileged under this section which was

disclosed in a closed portion of a hearing, nor shall such testimony be admitted into evidence in any subsequent civil, criminal or administrative hearing. A licensing agency conducting a disciplinary proceeding may review peer review committee records, testimony or reports but must prove its findings with independently obtained testimony or records which shall be presented as part of the disciplinary proceeding in open meeting of the licensing agency. Offering such testimony or records in an open public hearing shall not be deemed a waiver of the peer review privilege relating to any peer review committee testimony, records or report.

(d) Nothing in this section shall limit the authority, which may otherwise be provided by law, of the commissioner of insurance, the state board of healing arts or other health care provider licensing or disciplinary boards of this state to require a peer review committee or officer to report to it any disciplinary action or recommendation of such committee or officer; to transfer to it records of such committee's or officer's proceedings or actions to restrict or revoke the license, registration, certification or other authorization to practice of a health care provider; or to terminate the liability of the fund for all claims against a specific health care provider for damages for death or personal injury pursuant to subsection (i) of K.S.A. 40-3403, and amendments thereto. Reports and records so furnished shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding other than a disciplinary proceeding by the state board of healing arts or other health care provider licensing or disciplinary boards of this state.

(e) A peer review committee or officer may report to and discuss its activities, information and findings to other peer review committees or officers or to a board of directors or an administrative officer of a health care provider without waiver of the privilege provided by subsection (b) and the records of all such committees or officers relating to such report shall be privileged as provided by subsection (b).

(f) Nothing in this section shall be construed to prevent an insured from obtaining information pertaining to payment of benefits under a contract with an insurance company, a health maintenance organization or an administrator of a health benefits plan.

History: L. 1984, ch. 238, § 7; L. 1987, ch. 176, § 7; L. 1988, ch. 236, § 1; L. 1993, ch. 171, § 1; L. 1996, ch. 5, § 1; L. 1997, ch. 149, § 1; L. 1999, ch. 87, § 5; L. 2000, ch. 162, § 22; L. 2002, ch. 203, § 18; L. 2003, ch. 128, § 25; L. 2012, ch. 91, § 51; L. 2012, ch. 166, § 12; July 1.

Revisor's Note:

Section was also amended by L. 2012, ch. 3, § 1, but that version was repealed by L. 2012, ch. 166, § 24.