

IC 34-30-15

Chapter 15. Health Care: Privileged Communications of Health Care Provider Peer Review Committees

IC 34-30-15-1

Confidentiality; peer review committee proceedings

Sec. 1. (a) All proceedings of a peer review committee are confidential.

(b) All communications to a peer review committee shall be privileged communications.

(c) Neither the personnel of a peer review committee nor any participant in a committee proceeding shall reveal any content of:

- (1) communications to;
- (2) the records of; or
- (3) the determination of;

a peer review committee outside of the peer review committee.

(d) However, the governing board of:

- (1) a hospital;
- (2) a professional health care organization;
- (3) a preferred provider organization (including a preferred provider arrangement or reimbursement agreement under IC 27-8-11); or
- (4) a health maintenance organization (as defined in IC 27-13-1-19) or a limited service health maintenance organization (as defined in IC 27-13-34-4);

may disclose the final action taken with regard to a professional health care provider without violating the provisions of this section.

(e) Upon approval by the health care facility's governing body, the peer review committee of a health care facility (as defined in IC 16-40-5-2, expired) may submit or disclose to the agency (as defined in IC 16-40-5-1, expired) the following for purposes of patient safety or quality of health care matters under IC 16-40-5 (expired):

- (1) Communications to the peer review committee.
- (2) Peer review committee proceedings.
- (3) Peer review committee records.
- (4) Determinations by the peer review committee.

Information and materials submitted or disclosed to the agency under this subsection are confidential and privileged from use as evidence in an administrative or judicial proceeding, and notwithstanding IC 16-40-5 (expired) the agency may not release the information or material outside the agency. However, the agency may issue a report that is based upon information or materials submitted or disclosed to the agency by a peer review committee if the report or any other information issued does not disclose the identity of the health care facility, health care provider, or patient. Information and materials may be submitted or disclosed to the agency under this subsection without violating this section or waiving the confidentiality and

privilege attached to the communications, proceedings, records, determinations, or deliberations of the peer review committee.

(f) Upon its determination, the governing body of a hospital may report, as part of the hospital's quality assessment and improvement program, a determination of a peer review committee of the hospital regarding an adverse event concerning patient care to the state department of health or another state agency without:

- (1) violating this section; or
- (2) waiving the confidentiality and privilege attached to the communications, proceedings, records, determinations, or deliberations of the peer review committee.

As added by P.L.1-1998, SEC.26. Amended by P.L.101-2007, SEC.4; P.L.42-2011, SEC.71.

IC 34-30-15-2

Confidentiality; peer review committee proceedings; persons attending

Sec. 2. Except as otherwise provided in this chapter, a person who attends a peer review committee proceeding shall not be permitted or required to disclose:

- (1) any information acquired in connection with or in the course of a proceeding;
- (2) any opinion, recommendation, or evaluation of the committee; or
- (3) any opinion, recommendation, or evaluation of any committee member.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-3

Confidentiality; otherwise discoverable information

Sec. 3. (a) Information that is otherwise discoverable or admissible from original sources is not immune from discovery or use in any proceeding merely because it was presented during proceedings before a peer review committee.

(b) A member, an employee, an agent of a committee or other person appearing before the committee may not be prevented from testifying:

- (1) as to matters within the person's knowledge; and
- (2) in accordance with the other provisions of this chapter.

(c) However, the witness cannot be questioned about this testimony or other proceedings before the committee or about opinions formed by the witness as a result of committee hearings.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-4

Health care providers under investigation; access to records

Sec. 4. (a) A professional health care provider under investigation shall be permitted at any time to see any records accumulated by a

peer review committee pertaining to the provider's personal practice.

(b) The provider shall be offered the opportunity to appear before the peer review committee with adequate representation to hear all charges and findings concerning the provider's practice and to offer rebuttal information.

(c) The rebuttal information shall be a part of the record before any disclosure of the charges and findings under this chapter is made.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-5

Health care providers under investigation; hearings

Sec. 5. (a) As used in this section, "conflicted medical staff member" means a professional health care provider who is a member of a hospital's medical staff and who is determined by the hospital to be:

- (1) in direct economic competition with the professional health care provider against whom the charges have been brought; or
- (2) reasonably unavailable to serve on a peer review committee of the medical staff.

(b) Except as provided in section 6(b) of this chapter, if charges are brought against a professional health care provider in a hospital that, if sustained by the governing board of the hospital, could result in an action against a physician required to be reported to the medical licensing board under IC 16-21-2-6 or a similar disciplinary action against any other health care provider, the professional health care provider is entitled to:

- (1) one (1) evidentiary hearing before a peer review committee of the medical staff; and
- (2) one (1) appeal before the governing board of the hospital or a committee appointed by the governing board.

(c) If a hospital determines that a peer review committee of the medical staff may not be formed without appointing a conflicted medical staff member, the hospital:

- (1) may not appoint the conflicted medical staff member to the peer review committee; and
- (2) shall appoint a professional health care provider who:
 - (A) holds the same professional license as the provider against whom the charges have been brought; and
 - (B) is not a member of the hospital's medical staff;to serve on the peer review committee.

(d) The professional health care provider appointed under subsection (c)(2) may not be in direct economic competition with the professional health care provider against whom the charges have been brought.

As added by P.L.1-1998, SEC.26. Amended by P.L.127-1999, SEC.1.

IC 34-30-15-6

Health care providers under investigation; appeals

Sec. 6. (a) Any appeal granted to a professional health care provider under section 5 of this chapter may be held before a committee of the board of trustees or the full board of trustees of the hospital in which the care under investigation was provided.

(b) The right to a hearing and appeal under this chapter in regard to cases involving care provided for hospitals, health care facilities, and health care organizations is confined to professional health care providers who are granted or who have applied for privileges as independent practitioners. That right is not applicable to any professional health care provider who works in the hospital or health care facility solely as an employee or as the employee of another independent professional health care provider.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-7

Health care providers under investigation; health maintenance organizations

Sec. 7. (a) This section applies to:

- (1) a health maintenance organization (as defined in IC 27-13-1-19); or
- (2) a limited service health maintenance organization (as defined in IC 27-13-34-4).

(b) Before:

- (1) taking corrective action against a professional health care provider who is under contract with but not employed by the health maintenance organization or limited service health maintenance organization; or
- (2) taking action to terminate a contract with a professional health care provider who is not employed by the health maintenance organization or limited service health maintenance organization;

based upon an evaluation of patient care rendered by the professional health care provider, the organization shall grant the health care provider affected by the action one (1) evidentiary hearing before a peer review committee of the organization and, at the health provider's request, an appeal of the peer review committee's decision.

(c) Unless otherwise agreed to by the organization and the health care provider, the appeal must be limited to a review of the record of the hearing before the peer review committee and a review of all or part of the peer review committee's decision.

(d) The appeal must be held before the governing board of the organization or, at the governing board's discretion, before a committee of the governing board.

(e) The health care provider is entitled to submit written materials in support of the appeal and, at the discretion of the governing board or committee of the board conducting the appeal, the health care provider may be allowed to present oral argument in support of the appeal.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-8

Confidentiality; persons information may be disclosed to

Sec. 8. (a) Communications to, the records of, and determinations of a peer review committee may only be disclosed to:

- (1) the peer review committee of:
 - (A) a hospital;
 - (B) a nonprofit health care organization (described in IC 34-6-2-117(23));
 - (C) a preferred provider organization (including a preferred provider arrangement or reimbursement agreement under IC 27-8-11);
 - (D) a health maintenance organization (as defined in IC 27-13-1-19) or a limited service health maintenance organization (as defined in IC 27-13-34-4);
 - (E) a provider organization (as defined in IC 16-18-2-296) that is not owned by a hospital that includes the provider organization's provision of services as part of the hospital's peer review committee review;
 - (F) another health facility; or
 - (G) a medical school located in Indiana of which the professional health care provider who is the subject of the peer review is a faculty member;
- (2) the disciplinary authority of the professional organization of which the professional health care provider under question is a member; or
- (3) the appropriate state board of registration and licensure that the committee considers necessary for recommended disciplinary action;

and shall otherwise be kept confidential for use only within the scope of the committee's work, unless the professional health care provider has filed a prior written waiver of confidentiality with the peer review committee.

(b) However, if a conflict exists between this section and IC 27-13-31, the provisions of IC 27-13-31 control.

As added by P.L.1-1998, SEC.26. Amended by P.L.204-2015, SEC.2; P.L.79-2016, SEC.3.

IC 34-30-15-9

Waiver of privilege

Sec. 9. Except in cases of required disclosure to the professional health care provider under investigation, no records or determinations of or communications to a peer review committee shall be:

- (1) subject to subpoena or discovery; or
- (2) admissible in evidence;

in any judicial or administrative proceeding, including a proceeding

under IC 34-18-11 (or IC 27-12-11 before its repeal), without a prior waiver executed by the committee.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-10

Invoking privilege

Sec. 10. Except in cases as authorized in this chapter, the evidentiary privileges created by this chapter shall be invoked by all witnesses and organizations in all judicial and administrative proceedings unless the witness or organization first has a waiver of the privilege executed in writing, on behalf of the peer review committee holding the privilege, by its chairman, vice chairman, or secretary.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-11

Limited waiver of privilege for attorney general investigation

Sec. 11. If a waiver of the privilege is executed on behalf of the peer review committee in favor of the attorney general for the purpose of conducting an investigation under IC 25-1-7, the records of, determinations of, or communications to a peer review committee are confidential and privileged under this section, except for the attorney general's use in an investigation to identify information otherwise discoverable or admissible from original sources under section 3 of this chapter.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-12

Subpoena powers of attorney general

Sec. 12. This chapter does not prevent the attorney general from obtaining by subpoena as part of an investigation under IC 25-1-7 for a violation under IC 25-1-9:

- (1) the application for privileges or employment completed by the professional staff member under investigation regardless of whether the member is the subject of peer review committee proceedings;
- (2) except for reports prepared as part of a peer review investigation, incident reports prepared contemporaneously to document the circumstances of an accident or unusual occurrence involving a professional staff member regardless of whether the member is the subject of peer review committee proceedings; or
- (3) information otherwise discoverable from original sources, that is not the communications to, records of, or determinations of a peer review committee;

from a professional health care provider.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-13

Subpoena powers of attorney general; requirements

Sec. 13. A subpoena issued by the attorney general to obtain the records necessary to an investigation shall identify with reasonable particularity the documents sought and the specific professional health care provider under investigation.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-14

Immunities inapplicable to persons violating confidentiality requirements

Sec. 14. The immunities granted by sections 15 through 20 of this chapter shall not extend to any person who violates the confidentiality requirements of sections 1 through 13 of this chapter.

As added by P.L.1-1998, SEC.26. Amended by P.L.1-1999, SEC.74; P.L.97-2004, SEC.123.

IC 34-30-15-15

Immunity; peer review committee proceedings

Sec. 15. There is no liability on the part of, and no action of any nature shall arise against, the personnel of a peer review committee for any act, statement made in the confines of the committee, or proceeding of the committee made in good faith in regard to evaluation of patient care as that term is defined and limited in IC 34-6-2-44.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-16

Immunity; disclosure of information to peer review committee

Sec. 16. Notwithstanding any other law, a peer review committee, an organization, or any other person who, in good faith and as a witness or in some other capacity, furnishes records, information, or assistance to a peer review committee that is engaged in:

- (1) the evaluation of the qualifications, competence, or professional conduct of a professional health care provider; or
- (2) the evaluation of patient care;

is immune from any civil action arising from the furnishing of the records, information, or assistance, unless the person knowingly furnishes false records or information.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-17

Immunity; good faith determinations regarding evaluation of patient care

Sec. 17. The personnel of a peer review committee shall be immune from any civil action arising from any determination made in good faith in regard to evaluation of patient care as that term is defined and limited in IC 34-6-2-44.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-18

Injunctive relief unavailable

Sec. 18. No restraining order or injunction shall be issued against a peer review committee or any of the personnel thereof to interfere with the proper functions of the committee acting in good faith in regard to evaluation of patient care as that term is defined and limited in IC 34-6-2-44.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-19

Immunity; compliance with federal Health Care Quality Improvement Act

Sec. 19. If the action of the peer review committee meets the standards specified by this chapter and the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. 11101 et seq., the following persons are not liable for damages under any federal, state, or local law with respect to the action:

- (1) The peer review committee.
- (2) Any person acting as a member or staff to the peer review committee.
- (3) Any person under a contract or other formal agreement with the peer review committee.
- (4) Any person who participates with or assists the peer review committee with respect to the action.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-20

Immunity; inapplicable to civil rights laws

Sec. 20. Section 19 of this chapter does not apply to damages under any federal or state law relating to the civil rights of a person including:

- (1) the federal Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq.; and
- (2) the federal Civil Rights Act, 42 U.S.C. 1981, et seq.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-21

Use of information for internal business purposes

Sec. 21. (a) Notwithstanding sections 1 through 14 of this chapter:

- (1) a professional health care provider;
- (2) a peer review committee; and
- (3) the governing board of:
 - (A) a hospital;
 - (B) a preferred provider organization (including a preferred provider arrangement or reimbursement agreement under IC 27-8-11);

(C) a health maintenance organization (as defined in IC 27-13-1-19) or a limited service health maintenance organization (as defined in IC 27-13-34-4); or

(D) a professional health care organization;

may use information obtained by peer review committees for legitimate internal business purposes.

(b) Legitimate internal business uses of information obtained by a peer review committee include the following:

- (1) Quality review and assessment.
- (2) Utilization review and management.
- (3) Risk management and incident reporting.
- (4) Safety, prevention, and correction.
- (5) Reduction of morbidity and mortality.
- (6) Scientific, statistical, and educational purposes.
- (7) Legal defense.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-22

Discovery of financial incentives offered provider

Sec. 22. Evidence of any financial incentive offered to or withheld from:

- (1) a private psychiatric hospital licensed under IC 12-25; or
- (2) a preferred provider organization (including a preferred provider arrangement or reimbursement agreement under IC 27-8-11);

is subject to discovery under Indiana Rules of Trial Procedure unless specifically protected by statute.

As added by P.L.1-1998, SEC.26.

IC 34-30-15-23

Good faith presumed; malice must be proven

Sec. 23. In all actions to which this chapter applies, good faith shall be presumed, and malice shall be required to be proven by the person aggrieved.

As added by P.L.1-1998, SEC.26.