

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

**SESSION LAW 2004-149  
HOUSE BILL 669**

AN ACT TO AMEND THE DEFINITION OF A "PRIMARY CARE HOSPITAL" TO REFLECT FEDERAL REQUIREMENTS, TO IMPROVE THE QUALITY OF PATIENT CARE, TO PROTECT PATIENT-PHYSICIAN RELATIONSHIPS AND TO LIMIT MEDICAL DIRECTORS LIABILITY.

The General Assembly of North Carolina enacts:

**PART I. CHANGE DEFINITION OF PRIMARY CARE HOSPITAL  
TO REFLECT FEDERAL REQUIREMENTS.**

**SECTION 1.1.** G.S. 131E-76 reads as rewritten:

**"§ 131E-76. Definitions.**

As used in this article, unless otherwise specified:

- (1) "Commission" means the North Carolina Medical Care Commission.
- (2) "Governing body" means the Board of Trustees, Board of Directors, partnership, corporation, association, person or group of persons who maintain and control the hospital. The governing body may or may not be the owner of the properties in which the hospital services are provided.
- (3) "Hospital" means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, and adult care homes licensed under G.S. 131D-2.
- (4) "Infirmary" means a unit of a school, or similar educational institution, which has the primary purpose to provide limited short-term health and nursing services to its students.
- (5) "Medical review committee" means a committee of a State or local professional society, of a medical staff of a licensed hospital or a committee of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of, or necessity for hospitalization or health care, including medical staff credentialing.
- (6) "~~Primary care hospital~~" "Critical access hospital" means a hospital which has been designated as a ~~primary care~~ critical access hospital by the North Carolina Department of Health and Human Services, Office of Rural Health and Resource Development. To be designated as a ~~primary care~~ critical access hospital under this subdivision, the hospital must ~~be located in a rural community, provide primary care inpatient services that do not include inpatient surgery, and provide outpatient services which may include outpatient surgery.~~ A primary

~~care hospital shall have a maximum annual average daily census of 15 patients and may have psychiatric and long term care distinct part units. A primary care hospital must be part of a rural hospital network.~~ meet the requirements of federal law for certification as a critical access hospital.

- (7) "Rural hospital network" means an alliance of members that shall include at least one ~~primary care critical access hospital~~ and one other hospital. To qualify as a rural hospital network, the ~~members critical access hospital~~ must submit a comprehensive, written memorandum of understanding to the Department of Health and Human Services for the Department's approval. The memorandum of understanding must include provisions for patient referral and transfer, a plan for network-wide emergency services, and a plan for sharing patient information and services between hospital members including medical staff credentialing, risk management, quality assurance, and peer review."

## **PART II. MEASURES TO IMPROVE THE QUALITY OF PATIENT CARE.**

**SECTION 2.1.** G.S. 131E-101 is amended by adding a new subdivision to

read:

- "(8) "Quality assurance committee" means a committee, agency, or department of a state or local professional organization, of a medical staff of a licensed hospital, nursing home, of nurses or aides on the staff of a nursing home, or adult care home, of physicians having privileges within the nursing home, or adult care home, or of a peer review corporation or organization that is formed for the purpose of evaluating the quality, cost of, or necessity for health care services under applicable federal and State statutes, regulations, and rules."

**SECTION 2.2.** G.S. 131E-107 reads as rewritten:

**"§ 131E-107. Medical Quality assurance, medical, or peer review committees.**

(a) A member of a duly appointed ~~medical~~ quality assurance, medical or peer review committee shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or performed within the scope of the functions of the committee, if the committee member acts without malice or fraud, and if such peer review committee is approved and operates in accordance with G.S. 131E-108.

(b) The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against a nursing home or a provider of professional health services that results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings."

**SECTION 2.3.** Chapter 131D of the General Statutes is amended by adding a new section to read:

**"§ 131D-21.2. Quality assurance, medical, or peer review committees.**

(a) A member of a duly appointed quality assurance, medical, or peer review committee shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee, if the committee member acts without malice or fraud, and if such peer review committee is approved and operates in accordance with G.S. 131D-21.1.

(b) The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against a nursing home or a provider of professional health services that results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings."

**SECTION 2.4.** G.S. 131E-76(5) reads as rewritten:

(5) "Medical review committee" means a committee of a State or local professional society, of a medical staff of a licensed hospital or a committee of a peer review corporation or organization which is any of the following committees formed for the purpose of evaluating the quality, cost of, or necessity for hospitalization or health care, including medical staff credentialing-credentialing:

a. A committee of a state or local professional society.

b. A committee of a medical staff of a hospital.

c. A committee of a hospital or hospital system, if created by the governing board or medical staff of the hospital or system or operating under written procedures adopted by the governing board or medical staff of the hospital or system.

d. A committee of a peer review corporation or organization."

**SECTION 2.5.** G.S. 131E-95 reads as rewritten:

**"§ 131E-95. Medical review committee.**

(a) A member of a duly appointed medical review committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(b) The proceedings of a medical review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, " 'Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against a hospital, an ambulatory surgical facility licensed under Chapter 131E of the General Statutes, or a provider of professional health services which results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any

evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about ~~his~~the person's testimony before the committee or any opinions formed as a result of the committee hearings.

(c) Information that is confidential and is not subject to discovery or use in civil actions under ~~subsection (b) of this section~~ may be released to a professional standards review organization that performs any accreditation or certification ~~function including the Joint Commission on Accreditation of Healthcare Organizations.~~ Information released under this ~~subdivision-subsection~~ shall be limited to that which is reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or certification. Information released under this ~~subdivision-subsection~~ retains its confidentiality and is not subject to discovery or use in any civil actions as provided under ~~subsection (b) of this section~~, and the standards review organization shall keep the information confidential subject to ~~that subsection.~~ this section."

**SECTION 2.6.** G.S. 90-21.22A reads as rewritten:

**"§ 90-21.22A. Medical review and quality assurance committees.**

(a) As used in this section, the following terms mean:

(1) "~~medical~~ Medical review committee"committee. – A ~~means~~ a committee composed of health care providers licensed under this Chapter that is formed for the purpose of evaluating the quality of, cost of, or necessity for health care services, including provider credentialing. "Medical review committee" does not mean a medical review committee established under G.S. 131E-95.

(2) "Quality assurance committee." – Risk management employees of an insurer licensed to write medical professional liability insurance in this State, who work in collaboration with health care providers licensed under this Chapter, and insured by that insurer, to evaluate and improve the quality of health care services.

(b) A member of a duly appointed medical review or quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(c) The proceedings of a medical review or quality assurance committee, the records and materials it produces, and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, 131E-309, or 58-2-100; and shall not be subject to discovery or introduction into evidence in any civil action against a provider of health care services who directly provides services and is licensed under this Chapter, a PSO licensed under Article 17 of Chapter 131E of the General Statutes, an ambulatory surgical facility licensed under Chapter 131E of the General Statutes, or a hospital licensed under Chapter 122C or Chapter 131E of the General Statutes or that is owned or operated by the State, which civil action results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely

because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee may testify in a civil action but cannot be asked about ~~his or her~~ the person's testimony before the committee or any opinions formed as a result of the committee hearings.

(d) This section applies to a medical review committee, including a medical review committee appointed by one of the entities licensed under Articles I through 67 of Chapter 58 of the General Statutes.

(e) Subsection (c) of this section does not apply to proceedings initiated under G.S. 58-50-61 or G.S. 58-50-62."

**SECTION 2.7.** G.S. 122C-191(e) reads as rewritten:

"(e) For purposes of peer review functions only:

- (1) A member of a duly appointed quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee.
- (2) The proceedings of a quality assurance committee, the records and materials it produces, and the material it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records' defined," and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and nothing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review process, but cannot be asked about ~~his~~ the person's testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings.
- (3) Peer review information that is confidential and is not subject to discovery or use in civil actions under ~~subdivision (2) of this subsection~~ this section may be released to a professional standards review organization that contracts with an agency of this State or the federal government to perform any accreditation or certification ~~function.~~ function, including the Joint Commission on Accreditation of Healthcare Organizations. Information released under this subdivision shall be limited to that which is reasonably necessary and relevant to

the standards review organization's determination to grant or continue accreditation or certification. Information released under this subdivision retains its confidentiality and is not subject to discovery or use in any civil actions as provided under ~~subdivision (2) of this subsection, this subsection,~~ and the standards review organization shall keep the information confidential subject to ~~that subdivision.~~this section."

**SECTION 2.8.** G.S. 122C-30 reads as rewritten:

**"§ 122C-30. Peer review committee; immunity from liability; confidentiality.**

For purposes of peer review functions of a ~~hospital facility~~ licensed under the provisions of this Chapter:

- (1) A member of a duly appointed peer review committee or quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee; and
- (2) Proceedings of a peer review or quality assurance committee, the records and materials it produces, and the material it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records' defined," and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and nothing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review or quality assurance process, but cannot be asked about ~~his~~ the person's testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings."

**SECTION 2.9.** Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

**"§ 90-21.18A. Medical directors; liability limitation.**

A medical director of a licensed nursing home shall not be named a defendant in an action pursuant to this Article except under any of the following circumstances:

- (1) Where allegations involve a patient under the direct care of the medical director.
- (2) Where allegations involve willful or intentional misconduct, recklessness, or gross negligence in connection with the failure to

supervise, or other acts performed or failed to be performed, by the medical director in a supervisory or consulting role."

**PART III. MEASURES TO PROTECT PATIENT-PHYSICIAN RELATIONSHIPS.**

**SECTION 3.1.** Article 4 of Chapter 8C of the General Statutes is amended by adding a new section to read:

**"Rule 413. Medical actions; statements to ameliorate or mitigate adverse outcome.**

Statements by a health care provider apologizing for an adverse outcome in medical treatment, offers to undertake corrective or remedial treatment or actions, and gratuitous acts to assist affected persons shall not be admissible to prove negligence or culpable conduct by the health care provider in an action brought under Article 1B of Chapter 90 of the General Statutes."

**PART IV. EFFECTIVE DATES.**

**SECTION 4.1.** This act is effective when it becomes law. Sections 2.9 and 3.1 apply to causes of action arising on or after that date.

In the General Assembly read three times and ratified this the 16<sup>th</sup> day of July, 2004.

s/ Beverly E. Perdue  
President of the Senate

s/ Richard T. Morgan  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 4:26 p.m. this 2<sup>nd</sup> day of August, 2004