



HOUSE BILL 2259

By Helton-Haynes

AN ACT to amend Tennessee Code Annotated, Title 68,
Chapter 11, relative to quality improvement
committees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-11-272(b), is amended by adding the following as new, appropriately designated subdivisions:

() "Adverse healthcare incident" means an objective and definable outcome arising from or related to patient care that results in the death or physical injury of a patient;

() "Open discussion":

(A) Means any communication that is made under this section and includes memoranda, work product, documents, and other materials that are prepared for, or submitted in the course of or in connection with, communications under this section; and

(B) Does not include any communications, memoranda, work product, documents, or other materials that are otherwise subject to discovery and that were not prepared specifically for use pursuant to this subdivision (b)();

SECTION 2. Tennessee Code Annotated, Section 68-11-272(c), is amended by adding the following as new subdivisions:

(4) A good faith disclosure of information related to an activity of a QIC made by a healthcare provider or healthcare organization to a patient or family member of a patient is not a waiver of the privilege and confidentiality protections provided under this

section. Such disclosures are considered separate from a QIC proceeding and do not affect the privilege attributed to the QIC documentation.

(5) A healthcare provider and healthcare organization are not required to disclose findings, determinations, or conclusions of a QIC during a legal, administrative, or other proceeding. Participation in or the outcomes from the QIC review must remain confidential and privileged unless otherwise mandated by federal law.

(6)

(1) A healthcare provider or healthcare organization may voluntarily engage in open, post-adverse healthcare incident communications with a patient or the patient's family regarding the incident. Such communications are not an admission of liability and are protected from discovery, as described in subdivision (c)(1).

(2) A healthcare provider or healthcare organization engaging in voluntary communications as described in subdivision (c)(6), is immune from liability for the contents of the communication, as long as the communication is undertaken in good faith.

(7)

(A) If an adverse healthcare incident occurs, then a healthcare provider or healthcare organization may elect to engage in an open discussion with a patient or invite a patient to participate in the open discussion with the purpose of addressing the incident and proposing resolutions. In a situation where the patient is incapacitated or deceased, a healthcare provider or a healthcare organization may engage in an open discussion with a patient's family member or legal representative. For a minor patient, the open discussion must include the patient's guardian.

(B) The following conditions apply to an open discussion pursuant to subdivision (c)(7)(A):

(i) Any communication made during the open discussion process is:

(a) Privileged and confidential;

(b) Not subject to discovery, subpoena, or use as evidence in any judicial, administrative, or arbitration proceeding; and

(c) Encouraged to include offers of settlement or corrective actions without implying fault or liability;

(ii) An individual with whom a healthcare provider or healthcare organization engages in the open discussion process following an adverse healthcare incident, including a patient and any other affected person, must be advised of the patient's right to legal counsel before participating in the open discussion;

(iii) The healthcare provider or healthcare organization shall notify an individual with whom such provider or organization attempts to engage in an open discussion with in writing that participation in an open discussion does not extend a statute of limitation for filing a lawsuit unless agreed to in writing by each party; and

(iv) Unless otherwise agreed upon by the patient, only a party involved in the adverse healthcare incident and the party's representatives, including legal counsel, may participate in the open discussion process.

(8)

(A) A party wishing to waive confidentiality on open discussion materials must provide an express waiver in writing. The waiver must clearly identify the materials involved and specify the scope of the waiver.

(B) The waiver must include:

- (i) A list of the specific materials covered by the waiver;
- (ii) A statement of the purpose for waiving confidentiality;
- (iii) An acknowledgment of the waiver's implications; and
- (iv) The duration of the waiver, if applicable.

(C) The waiver must be signed and dated by an authorized representative. An authorized representative may utilize an electronic signature.

(D) The waiver may be revoked at any time through written notice, and such revocation becomes effective upon receipt, except where the waiver has been relied upon for a material action.

(E) This requirement does not apply when disclosures are mandated by law or court order.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. 1 to HB2259

Terry
Signature of Sponsor

AMEND Senate Bill No. 2413*

House Bill No. 2259

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 68-11-272(b), is amended by adding the following as new, appropriately designated subdivisions:

() "Adverse healthcare incident" means an objective and definable outcome arising from or related to patient care that results in the death or injury of a patient;

() "Open discussion":

(A) Means any communication that is made under this section and includes memoranda, work product, documents, and other materials that are prepared for, or submitted in the course of or in connection with, communications under this section; and

(B) Does not include any communications, memoranda, work product, documents, or other materials that are otherwise subject to discovery and that were not prepared specifically for use pursuant to this subdivision (b)();

SECTION 2. Tennessee Code Annotated, Section 68-11-272(c), is amended by adding the following as new subdivisions:

(4) A good faith disclosure of information related to an activity of a QIC made by a healthcare provider or healthcare organization to a patient or family member of a patient in an open discussion is not a waiver of the privilege and confidentiality protections provided under this section. Such disclosures are considered separate and apart from a QIC proceeding and do not affect the privilege attributed to the QIC documentation.

(5)

(A) A healthcare provider and healthcare organization are not required to disclose findings, determinations, or conclusions of a QIC during a legal, administrative, or other proceeding.

(B) The outcomes from the QIC review must remain confidential and privileged unless otherwise provided by state or federal law, in which case, the disclosure of any QIC proceeding materials, findings, or conclusions made solely to comply with state or federal law does not waive the confidentiality, privilege, or the restricted use of QIC materials, findings, or conclusions as prohibited in this section.

(6)

(A) A healthcare provider or healthcare organization may voluntarily engage in an open discussion. Any communications during an open discussion are not an admission of liability and are protected from discovery, as described in subdivision (c)(1).

(B) A healthcare provider or healthcare organization may engage in voluntary communications, as described in subdivision (c)(6)(A), and is immune from liability as a result of the open discussion as long as the communication is undertaken in good faith and in compliance with subdivision (c)(7).

(7)

(A) If an adverse healthcare incident occurs, then a healthcare provider or healthcare organization may elect to engage in an open discussion with a patient or invite a patient to participate in the open discussion with the purpose of addressing the incident and proposing resolutions. In a situation where the patient is incapacitated or deceased, a healthcare provider or a healthcare organization may engage in an open discussion with a patient's family member or

legal representative. For a minor patient, the open discussion must include the patient's guardian.

(B) The following conditions apply to an open discussion pursuant to subdivision (c)(7)(A):

(i) Any communication made during the open discussion process is:

(a) Privileged and confidential; and

(b) Not subject to discovery, subpoena, or use as evidence in any judicial, administrative, or arbitration proceeding;

(ii) An individual with whom a healthcare provider or healthcare organization engages in the open discussion process following an adverse healthcare incident, including a patient and any other affected person, must sign a written acknowledgment after an adverse healthcare incident occurs before an open discussion takes place; and

(iii) Unless otherwise agreed upon by the patient, only a party involved in the adverse healthcare incident and the party's representatives, including legal counsel, may participate in the open discussion process.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.