

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 719**

S. P. 249

In Senate, February 9, 1981

Referred to the Committee on Health and Institutional Services. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Gill of Cumberland.

Cosponsor: Senator Brown of Washington.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT to Encourage Peer Review Activities in Health Care by Protecting Individuals Participating in Peer Review and by Protecting the Records of Peer Review Organizations.**

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Be it enacted by the People of the State of Maine, as follows:

14 MRSA c. 8 is enacted to read:

**CHAPTER 8**

**IMMUNITY OF PEER REVIEW ACTIVITIES IN HEALTH CARE**

**§ 181. Short title**

This chapter shall be known and may be cited as the "Peer Review Protection Act."

**§ 182. Definitions**

As used in this chapter, unless the context otherwise indicates the following terms have the following meanings.

1. **Health care facility.** "Health care facility" means a hospital, nursing home or another facility licensed by the State to provide inpatient health care services for periods in excess of 24 consecutive hours.

**2. Peer review.** “Peer review” means the procedure for evaluation by professional health care providers of the quality and efficiency of services ordered or performed by other professional health care providers, including practice analysis, inpatient health care facility utilization review, medical audit, ambulatory care review, claims review and the compliance of a health care facility operated by a professional health care provider with the standards set by an association of health care providers and with applicable laws, rules and regulations.

**3. Professional health care provider.** “Professional health care provider” means individuals who, or organizations which, are licensed or approved to practice or operate in the health care field under the laws of the State, including, but not limited to the following:

- A. Physicians;
- B. Dentists;
- C. Podiatrists;
- D. Chiropractors;
- E. Optometrists;
- F. Psychologists;
- G. Pharmacists;
- H. Registered or practical nurses;
- I. Physical therapists;
- J. Occupational therapists;
- K. Speech therapists;
- L. Social workers;
- M. Administrators of health care facilities; or
- N. A corporation or other organization operating a licensed health care facility.

**4. Professional society.** “Professional society” means an organization having as members at least a majority of the eligible licensees, whether they are persons or organizations, in the area served, which organization represents professional health care providers, as defined.

**5. Review organization.** “Review organization” means any committee or group engaging in peer review, including the Professional Standards Review Organization, a hospital utilization review committee, a hospital tissue committee, a health insurance review committee, a health planning corporation review committee, a professional health service plan review committee, a dental

review committee, a physician's advisory committee, a nursing advisory committee, any committee established pursuant to the medical assistance program and any committee established by one or more state or local professional societies to gather and review information relating to the care and treatment of patients for the purposes of:

- A. Evaluating and improving the quality of health care rendered;
- B. Reduced morbidity or mortality; or
- C. Establishing and enforcing guidelines designed to keep the cost of health care within reasonable bounds.

It also means any hospital board or committee reviewing the professional qualifications or activities of its medical staff or applicants for admission thereto.

It also means a committee or an association of professional health care providers reviewing the operation of health care facilities.

#### § 183. Immunity from liability

1. Person providing information. Notwithstanding any other provision of law, no person providing information to any review organization may be held, by reason of having provided the information, to have violated any criminal law, or to be civilly liable under any law, unless:

- A. The information is unrelated to the performance of the duties and functions of the review organization; or
- B. The information is false and the person providing the information knew, or had reason to believe, that the information was false.

2. Member or employee of or counsel to review organization. Members or employees of or counsels to review organizations are immune from liability as follows.

A. No individual who is a member, director, trustee, officer, employee or agent of any review organization or who furnishes professional counsel or services to the organization may be held, by reason of the performance by him or any duty, function or activity authorized or required of review organizations, liable for civil damages, injunctive actions or criminal actions that may arise as a result of his acts or omissions, which he reasonably believed were within the scope of his duties for the review organization and if those actions or omissions were in good faith, without gross negligence, malice or fraud.

B. No review organization may be liable in any civil action or injunctive action for actions or omissions relating to its review responsibilities, unless such actions or omissions involve gross negligence, fraud or malice.

#### § 184. Confidentiality of review organization's records

The proceedings and all review data and information acquired, controlled or

**maintained, either directly or under contract, of a review organization shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a professional health care provider arising out of the matters which are the subject of evaluation and review by the review committee. No person who was in attendance at a meeting of a review committee may be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the review committee meeting or proceeding or as to any findings, recommendations, evaluations, opinions or other actions of the committee or any members of the committee, provided that information, documents or records otherwise available from original sources are not to be construed as immune from discovery or used in any civil action merely because they were presented during proceedings of that review committee, nor should any person who testifies before the review committee or who is a member of that committee be prevented from testifying as to matters within this knowledge, but the witness cannot be asked about his testimony before such a committee or opinions formed by him as a result of the review committee meeting or proceeding.**

**No person may disclose what transpired at any meeting or other review proceeding of a review organization to any individual, corporation, association, organization or other entity except to the extent necessary to effectively conduct the review activities of the organization.**

#### **§ 185. Exceptions**

**1. Records of action. Records of action taken by a review organization along with its reasons are exempt from the confidentiality provisions of section 184, provided this section shall not be interpreted to allow disclosure of any data or information either describing the deliberations leading to the action or the facts upon which the action is based.**

**2. Data or information which does not identify individuals by name or identifying characteristics. Aggregate data or information which does not identify individuals by name or identifying characteristics is exempt from the confidentiality provisions of section 184. Publication or dissemination of the data or information shall not affect the confidentiality of the data or information upon which the disseminated data or information has been based, in whole or in part.**

**3. Disclosure of review data. A review organization may disclose review data or information to law enforcement agencies or professional licensing agencies on written request where the requesting agency demonstrates its legal authority to inquire regarding that information or data as well, as its authority and agreement to protect the confidentiality of the data requested.**

#### **§ 186. Right of examination**

**No data or information disclosable under any of the exemptions to nondisclosure contained in section 185 may be disclosed unless, at least 15 days prior to the disclosure, any individual who may be adversely affected by an action directly**

resulting from the disclosure has been provided a reasonable opportunity to examine the information or data to be disclosed and to affix signed comments to the information or data, provided that no such right to examine data or information shall be granted where the disclosure is related to any investigation of possible violations of law being conducted by any government agency with authority for the investigation, provided, further, that data with respect to an individual who is or has been a recipient of medical services shall not be disclosed to the individual if an independent medical professional designated by the individual determines that disclosure would not be in the best interests of the individual.

#### STATEMENT OF FACT

This bill encourages full and candid participation in peer review activities by health care providers by protecting from liability individuals and organizations participating in peer review in good faith and without malice and by protecting the records of peer review organizations except to the extent they are required by law enforcement or professional licensing agencies.