HOUSE BILL 1158
By Dennis

SENATE BILL 484

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 11 and Title 63, Chapters 1 and 6, relative to patient safety and quality.

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

SECTION 1. Tennessee Code Annotated, Section 63-6-219, is amended by deleting the section in its entirety.

SECTION 2. This Act shall be known and may be cited as the "Tennessee Patient Safety and Quality Improvement Act of 2011".

SECTION 3. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

68-11-272.

(a) It is the policy of the state of Tennessee to encourage the improvement of patient safety and quality and the evaluation of the quality, safety, cost, processes and necessity of health care services by hospitals, health care facilities and health care providers. Tennessee further recognizes that certain protections must be available to these entities to ensure that they are able to effectively pursue these measures.

(b) As used in this section:

(1) "Heath care organization" means any:

(A) Health care facility licensed or regulated under title 68 and any related system;

(B) Hospital licensed under title 68 and any related hospital system;

(C) Hospital licensed under title 33 and any related hospital system;

(D) Entity owned by or providing ancillary or allied health services to, or on behalf of, a hospital, hospital system, or health care facility licensed or regulated under title 68;

(E) Entity that contracts with a health care organization to perform any of the functions of a quality improvement committee;

(F) Patient safety organization listed as such by the federal secretary of health and human services pursuant to § 924 of the Patient Safety and Quality Improvement Act of 2005, P.L. 109-41, as amended;

(G) Professional assistance program providing, or attempting to provide, intervention, counseling, referral or other assistance to any health care provider or family of a health care provider directly related to and including the alcohol or drug impairment of a health care provider;

(H) Professional health care foundation; or

(I) Accountable care organization as defined by § 3022 of the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended;

(2) "Health care provider" means any health care professional licensed, certified or regulated under title 63 or title 68 or any other clinical staff of a health care organization;

(3) "Hospital system" means two (2) or more hospitals that are subject to the control and direction of one (1) common owner, or an entity under a management contract, responsible for the operational decisions of the entire system or that have integrated administrative functions and medical staff that

report to one (1) governing body as the result of a formal legal or contractual obligation;

(4) "Quality improvement committee" or "QIC" means a committee formed by a health care organization for the purpose of evaluating the safety, quality, processes, costs, or necessity of health care services by performing functions including, but not limited to:

(A) Evaluation and improvement of the quality of health care services rendered;

(B) Determination that health services rendered were professionally indicated or were performed in compliance with the applicable standards of care;

(C) Determination that the cost of health care rendered was considered reasonable;

(D) Evaluation of the qualifications, competence and performance of health care providers or action upon matters relating to the discipline of any individual health care provider;

(E) Reduction of morbidity or mortality;

(F) Establishment and enforcement of guidelines designed to keep the cost of health care within reasonable bounds;

(G) Research;

(H) Evaluation of whether facilities are being properly utilized;

(I) Supervision, discipline, admission, and the determination of privileges of health care providers;

(J) Review of professional qualifications or activities of health care providers;

(K) Evaluation of the quantity, quality and timeliness of health care services rendered to patients;

(L) Evaluation, review or improvement of methods, procedures or treatments being utilized;

(M) Participation in utilization review activities, including participation in review activities within the facility or hospital system and activities in conjunction with an insurer or utilization review agent under title 56, chapter 6, part 7; or

(N) Activities to determine the health care organization's compliance with state or federal regulations; and

(5) "Records" means records of interviews and all reports, statements, minutes, memoranda, charts, statistics, and other documentation generated in connection with activities of a QIC.

(c)

(1) Records of a QIC and testimony or statements by health care organization officers, directors, trustees, health care provider staff, administrative staff, employees or other committee members or attendees relating to activities of the QIC shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena or admission into evidence in any judicial or administrative proceeding. Any person who supplies information, testifies or makes statements as part of a QIC may not be required to provide information as to the information, testimony or statements provided to or made before such a committee or opinions formed by such person as a result of committee participation.

(2) Any information, documents or records otherwise available from original sources, which are not produced for use by a QIC or which are not produced by persons acting on behalf of a QIC, shall not be construed as immune from discovery or use in any judicial or administrative proceedings merely because such information, documents or records were presented during proceedings of such committee.

(d) No health care organization officer, director, trustee, health care provider staff, administrative staff, employee or other committee members or attendees shall be held liable in any action for damages or other relief arising from the provision of information to a QIC or in any judicial or administrative proceeding.

(e) Nothing in this section shall be construed to conflict with any federal protection of records provided under the federal Health Care Quality Improvement Act or the federal Patient Safety Act.

SECTION 4. Tennessee Code Annotated, Title 63, Chapter 1, Part 1, is amended by adding the following as a new section:

63-1-150.

(a) This section shall not apply to §§ 63-10-402 - 405; 63-9-114; 63-4-118; 63-11-220; 63-5-131; 63-12-138; and 68-11-272.

(b) It is the policy of the state of Tennessee to encourage the improvement of patient safety and quality and the evaluation of the quality, cost, processes and necessity of health care services by health care providers and by other entities. Tennessee further recognizes that certain protections must be available to these providers and entities to ensure that they are able to effectively pursue these measures.

(c) As used in this section:

(1) "Health care organization" means any:

(A) State or local health professional association or society;

(B) Professional assistance program providing, or attempting to provide, intervention, counseling, referral or other assistance to any health care provider or family of a health care provider directly related to and including the alcohol or drug impairment of a health care provider;

(C) Health care provider malpractice support group;

(D) Group practice that is engaged in the provision of health care services;

(E) Entity engaged in the provision of health care provider services or health care provider staffing to licensed health care entities, including hospitals;

(F) Professional health care foundation;

(G) Individual practice association made up of practices the members of which are engaged in the provision of health care;

(H) Accountable care organization as defined by § 3022 of the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended;

(I) Entity that contracts with a health care organization to perform any of the functions of a quality improvement committee; or

(J) Any patient safety organization listed as such by the federal secretary of health and human services pursuant to § 924 of the Patient Safety and Quality Improvement Act of 2005, P.L. 109-41, as amended;

(2) "Health care provider" means any health care professional licensed, certified or regulated under title 63 or any other clinical staff of a health care organization;

(3) "Quality improvement committee" or “QIC” means a committee formed by a health care organization for the purpose of evaluating the safety, quality, processes, costs, or necessity of health care services by performing functions including, but not limited to:

(A) Evaluation and improvement of the quality of health care services rendered;

(B) Determination that health services rendered were professionally indicated or were performed in compliance with applicable standards of care;

(C) Determination that the cost of health care rendered was considered reasonable;

(D) Evaluation of the qualifications, competence and performance of health care providers or action upon matters relating to the discipline of any individual health care provider;

(E) Reduction of morbidity or mortality;

(F) Establishment and enforcement of guidelines designed to keep the cost of health care within reasonable bounds;

(G) Research;

(H) Evaluation of whether facilities are being properly utilized;

(I) Supervision, discipline, admission, and the determination of privileges of health care provider staff;

(J) Review of professional qualifications or activities of health care providers;

(K) Evaluation of the quantity, quality and timeliness of health care services rendered to patients;

(L) Evaluation, review or improvement of methods, procedures or treatments being utilized;

(M) Intervention, support or rehabilitative referrals or services to health care providers;

(N) Evaluation as to whether to report an unusual incident pursuant to § 63-6-221 or § 63-9-117 or to evaluate and improve the quality of health care rendered by health care providers related to the submission of an unusual incident report;

(O) Activities to determine the health care organization's compliance with state or federal regulations; or

(P) Participation in utilization review activities, including participation in review activities within the health care organization and activities in conjunction with an insurer or utilization review agent under title 56, chapter 6, part 7; and

(4) "Records" means records of interviews and all reports, statements, minutes, memoranda, charts, statistics, and other documentation generated in connection with the activities of a QIC.

(d)

(1) Records of a QIC and testimony or statements by health care organization officers or directors, health care provider staff, administrative staff, employees or other committee members or attendees relating to activities of the QIC shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena or admission into evidence in any judicial or administrative proceeding. Any person who supplies information, testifies or makes statements as part of a QIC may not be required to provide information as

to the information, testimony or statements provided to or made before such a committee or opinions formed by such person as a result of committee participation.

(2) Any information, documents or records otherwise available from original sources, which are not produced for use by a QIC or which are not produced by persons acting on behalf of a QIC, shall not be construed as immune from discovery or use in any judicial or administrative proceedings merely because such information, documents or records were presented during proceedings of such committee.

(e) No health care organization officer or director, health care provider staff, administrative staff, employees or other committee members or attendees shall be held liable in any action for damages or other relief arising from the provision of information to a QIC or in any judicial or administrative proceeding.

(f) A professional assistance program also advocates for health care professionals before other QICs, health care entities, private and governmental insurance carriers, national or local certification and accreditation bodies, and the state health related boards of this or any other state. The disclosure of confidential, privileged QIC information to such entities during advocacy or as a report to the health related boards, or to the affected health care provider under review, does not constitute either a waiver of confidentiality or privilege.

SECTION 5. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to that end the provisions of this section are declared to be severable.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.