Bill as Introduced

HB 1390 - AS INTRODUCED

2001 SESSION

01-2386
01/09

HOUSE BILL ***1390***

AN ACT relative to quality assurance information.

SPONSORS: Rep. Wendelboe, Belk 2

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies the confidentiality of quality assurance information.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

01-2386
01/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT relative to quality assurance information.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Proceedings of Hospital Committees; Quality Assurance Program; Confidentiality. Amend RSA 151:13-a, III to read as follows:

II. Records of a hospital committee organized to evaluate matters relating to the care and treatment of patients or to reduce morbidity and mortality and testimony by hospital trustees, medical staff, employees, or other committee attendees relating to activities of the quality assurance committee 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[~~, except that in the case of a legal action brought by a quality assurance committee to revoke or restrict a physician's license or hospital staff privileges, or in a proceeding alleging repetitive malicious action and personal injury brought against a physician, a committee's records shall be discoverable~~]. ***However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil or administrative action merely because they were presented to a quality assurance program, and any person who supplies information or testifies as part of a quality assurance program, or who is a member of a quality assurance program committee, may not be prevented from testifying as to matters within his or her knowledge, but such witness may not be asked about his or her testimony before such program, or opinions formed by him or her, as a result of committee participation. Further, a program's records shall be discoverable in either of the following cases:***

(a) A judicial or administrative proceeding brought by a quality assurance committee to revoke or restrict the license or certification of a physician or hospital staff member; or

(b) A proceeding alleging repetitive malicious action and personal injury brought against a physician.

2 Proceedings of Home Health Care Provider Quality Assurance Program; Confidentiality. Amend RSA 151:13-b, II to read as follows:

II. Records of a quality assurance program, including those of its functional components and committees, as defined by the home health care provider's quality assurance plans, and testimony by persons participating in or appearing before the quality assurance program or its functional components or committees, relating to the activities of the quality assurance program 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. However, ***information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil or administrative action merely because they were presented to a quality assurance program, and any person who supplies information or testifies as part of a quality assurance program, or who is a member of a quality assurance program committee, may not be prevented from testifying as to matters within his or her knowledge, but such witness may not be asked about his or her testimony before such program, or opinions formed by him or her, as a result of committee participation. Further***, a program's records shall be discoverable in either of the following cases:

(a) A legal action brought by a home health care provider to revoke or restrict a staff member's license or certification; or

(b) A proceeding alleging repetitive malicious action and personal injury brought against a staff member.

3 Proceedings of Quality Assurance Program; Nursing Homes; Confidentiality. Amend RSA 151-A:16, II to read as follows:

II. Records of a nursing home's quality assurance program, including those of its functional components and committees as defined by the nursing home's quality assurance plans, organized to evaluate matters relating to the care and treatment of patients and to improve the quality of care provided and testimony by members on the board of directors of the nursing home, medical and clinical staff, employees, or the committee attendees relating to activities of the quality assurance program 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. [~~However, in the case of legal action brought by a nursing home, or its quality assurance program, or its board of directors, to revoke or restrict a staff member's license, certification, or nursing home privileges, or in a proceeding alleging repetitive malicious action and personal injury brought against a staff member, a nursing home's records shall be discoverable.~~] ***However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil or administrative action merely because they were presented to a quality assurance program, and any person who supplies information or testifies as part of a quality assurance program, or who is a member of a quality assurance program committee, may not be prevented from testifying as to matters within his or her knowledge, but such witness may not be asked about his or her testimony before such program, or opinions formed by him or her, as a result of committee participation. Further, a program's records shall be discoverable in either of the following cases:***

(a) A judicial or administrative proceeding brought by a nursing home, its quality assurance program, or its board of directors, to revoke or restrict the license or certification of a staff member; or

(b) A proceeding alleging repetitive malicious action and personal injury brought against a staff member.

4 Proceedings of Quality Assurance Program; Ambulatory Surgical Facilities; Confidentiality. Amend RSA 151-D:2, I to read as follows:

I. Records of an ambulatory care clinic's quality assurance program, including those of its functional components and committees as defined by the organization's quality assurance plans, organized to evaluate matters relating to the care and treatment of patients and to improve the quality of care provided, and testimony by members on the board of directors of the ambulatory care clinic, medical and clinical staff, employees, or other committee attendees relating to activities of the quality assurance program 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. [~~However, in the case of a legal action brought by an ambulatory care clinic, its quality assurance program, or its board of directors, to revoke or restrict a physician's or staff member's license, certification, or ambulatory care clinic privileges, or in a proceeding alleging repetitive malicious action and personal injury brought against a physician, an ambulatory care clinic's record shall be discoverable.~~] ***However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil or administrative action merely because they were presented to a quality assurance program, and any person who supplies information or testifies as part of a quality assurance program, or who is a member of a quality assurance program committee, may not be prevented from testifying as to matters within his or her knowledge, but such witness may not be asked about his or her testimony before such program, or opinions formed by him or her, as a result of committee participation. Further, a program's records shall be discoverable in either of the following cases:***

(a) A judicial or administrative proceeding brought by an ambulatory care clinic, its quality assurance program, or its board of directors, to revoke or restrict the license or certification of a physician or staff member; or

(b) A proceeding alleging repetitive malicious action and personal injury brought against a physician.

5 Proceedings of Quality Assurance Program; Community Mental Health Program; Confidentiality. Amend RSA 135-C:63-a, II to read as follows:

II. Except as provided under RSA 135-C:5, II, records of a community mental health program's quality assurance program, including those of its functional components and committees as defined by the organization's quality assurance plans, organized to evaluate matters relating to the care and treatment of patients and to improve the quality of care provided and testimony by members on the board of directors of the community mental health program, medical and clinical staff, employees, or other committee attendees relating to activities of the quality assurance program 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. [~~However, in the case of a legal action brought by a community mental health program, its quality assurance program, or its board of directors, to revoke or restrict a staff member's license, certification, or community mental health program privileges, or in a proceeding alleging repetitive malicious action and personal injury brought against a staff member, a program's records shall be discoverable.~~] ***However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil or administrative action merely because they were presented to a quality assurance program, and any person who supplies information or testifies as part of a quality assurance program, or who is a member of a quality assurance program committee, may not be prevented from testifying as to matters within his or her knowledge, but such witness may not be asked about his or her testimony before such program, or opinions formed by him or her, as a result of committee participation. Further, a program's records shall be discoverable in either of the following cases:***

(a) A judicial or administrative proceeding brought by a community mental health program, its quality assurance program, or its board of directors to revoke or restrict the license or certification of a staff member; or

(b) A proceeding alleging repetitive malicious action and personal injury brought against a staff member.

6 Effective Date. This act shall take effect January 1, 2003.

Amendments

Rep. Elliott, Hills 2
January 30, 2002
2002-2368h
01/09

Amendment to HB 1390

Amend the bill by replacing section 1 with the following:

1 Proceedings of Hospital Committees; Quality Assurance Program; Confidentiality. Amend RSA 151:13-a, II to read as follows:

II. Records of a hospital committee organized to evaluate matters relating to the care and treatment of patients or to reduce morbidity and mortality and testimony by hospital trustees, medical staff, employees, or other committee attendees relating to activities of the quality assurance committee 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[~~, except that in the case of a legal action brought by a quality assurance committee to revoke or restrict a physician's license or hospital staff privileges, or in a proceeding alleging repetitive malicious action and personal injury brought against a physician, a committee's records shall be discoverable~~]. ***However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil or administrative action merely because they were presented to a quality assurance program, and any person who supplies information or testifies as part of a quality assurance program, or who is a member of a quality assurance program committee, may not be prevented from testifying as to matters within his or her knowledge, but such witness may not be asked about his or her testimony before such program, or opinions formed by him or her, as a result of committee participation. Further, a program's records shall be discoverable in either of the following cases:***

(a) A judicial or administrative proceeding brought by a quality assurance committee to revoke or restrict the license or certification of a physician or hospital staff member; or

(b) A proceeding alleging repetitive malicious action and personal injury brought against a physician.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1390 Date January 29, 2002

Committee Judiciary

**** Please Print All Information ****

Name	Address	Phone	Representing	(check one)	
				Pro	Con
[illegible]					

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1390

BILL TITLE: relative to quality assurance information

DATE: January 29, 2002

LOB ROOM: 208 **Time Public Hearing Called to Order:** 10:05 a.m.

Time Adjourned: 11:13 a.m.

(please circle if present)

Committee Members: Reps. Mock, L. Jean, Jacobson, Bergin, Rowe, Ford, Dudley, Soltani, P. Woods, Rice, Leishman, Elliott, Reid, Wall, J. Pratt, Craig, J. Wood, Potter, Espiefs and Franklin

Bill Sponsors: Rep. Wendelboe

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Leishman
- Introduced bill for sponsor because sponsor was running late.
- Requested no questions

Kevin Dugan, NH Trial Lawyers Assn. – supports
- He quickly testified that at last session a quality assurance bill was introduced and the physicians were accidentally left out

NOTE: At this time and with the permission of the Chair, Mr. Dugan yielded to the prime sponsor, who has arrived.

Rep. Wendelboe, sponsor
- Briefly described the bill and explained the technical changes in the law
- Opened herself to questions, believing that would be a more helpful way to proceed through this housekeeping measure
- Questions were asked by Reps. Mock, Jean, Craig, Elliott, Potter, and Leishman

NOTE: At this time, the Chair recognized and recalled Mr. Dugan to complete his testimony.

Kevin Dugan (continued)
- What the law will do is allow information pertaining to mishaps or procedures that have a negative outcome to be investigated by the hospital in a manner which is beneficial to future patients, but would not allow for the hospital to stamp everything "quality assurance committee" and making it unavailable for discovery for future litigation

- The current practice is that hospitals, whenever there is a negative outcome, immediately stamp all documents with "quality assurance committee", and under current law, they refuse to turn it over to the harmed parties' litigators, requiring them to go to court to obtain the documents
- Some judges allow for the information to come forward and others do not
- What this bill specifically does is that it maintains that any information obtained as a result of a quality assurance review is not available to the litigants; however, any person having first-hand knowledge of the events would still be required to provide information that they have to the litigants
- Refer to Chapter Law 329 from last session
- This bill changes five laws so that all the medical quality assurance boards use the same standards
- Questions were asked by Reps. Jean, Craig, Pratt, Elliott ,Franklin, Potter, Espiefs, and Mock

Martin Gross
- He wants to second the testimony of Kevin Dugan
- He wanted the committee to know that quality assurance does not just happen when something goes wrong; they also look at preventative measures and try to prevent things from going wrong
- Quality assurance needs to be done freely, without threat of harm (i.e., lawsuit) to the quality assurance committee
- The current changes are based on a Florida law that works well
- The current law exempts nurses, but left out physicians
- Questions were asked by Reps. Jean, Pratt, Leishman, Craig, Franklin, and Potter

Pink Cards:
- Rep. Wendelboe, sponsor. Supports the bill.
- Kevin Dugan, representing NH Trial Lawyers Association, 1819 Elm Street, Manchester, 627-1819. Supports the bill.
- Martin Gross, present to obtain information re: previous legislation. No indication of support or opposition.

Respectfully submitted,

Rep. Larry G. Elliott
Assistant Committee Clerk

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on 1390

BILL TITLE: **relative to quality assurance information**

DATE: February 6, 2002

LOB ROOM: 208

Amendments:

Sponsor: Rep. Elliott	OLS Document #:	2002	2368h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Craig **APPROVE AMENDMENT 2368h ONLY**

Seconded by Rep. Pratt

Vote: 17-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Craig

Seconded by Rep. Pratt

Vote: 17-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Terri C. Dudley, Clerk

OFFICE OF THE HOUSE CLERK

2001 SESSION

:DICIARY

ıl #: HB 1390 Title: relative to quality assurance information

H Date: 01/29/2002 Exec Session Date: 02/06/2002

Motion: Approve Amendment Only Amendment #: 2002-2368h

MEMBER	YEAS	NAYS
Hock, Henry P, Chairman	✓	
ian, Loren J, Vice Chairman	✓	
Jacobson, Alf E	✓	
Bergin, Peter F	✓	
Lowe, Robert H	✓	
Ford, Nancy M	✓	
Dudley, Terri C	✓	
Soltani, Tony F	✓	
Woods, Phyllis L	✓	
Rice, Thomas	✓	
Leishman, Peter R	✓	
Elliott, Larry G	—	
Reid, Christopher P	✓	
Wall, Janet G	✓	
Pratt, John M	✓	
Craig, James W	✓	
Wood, Jane	—	
Potter, Frances D	✓	
Espiefs, Peter S	✓	
Franklin, Peter E	—	
TOTAL VOTE:	17	0

Printed: 12/27/2000

OFFICE OF THE HOUSE CLERK

2001 SESSION

:DICIARY

il #: 1390 Title: relative to quality assurance information

H Date: 01/29/2002 Exec Session Date: 02/06/2002

lotion: OTP/A Amendment #: 2002-2368h

MEMBER	YEAS	NAYS
lock, Henry P, Chairman	✓	
an, Loren J, Vice Chairman	✓	
cobson, Alf E	✓	
ergin, Peter F	✓	
owe, Robert H	✓	
ord, Nancy M	✓	
udley, Terri C	✓	
oltani, Tony F	✓	
Voods, Phyllis L	✓	
ice, Thomas	✓	
eishman, Peter R	✓	
lliott, Larry G	—	
Reid, Christopher P	✓	
Wall, Janet G	✓	
Pratt, John M	✓	
Craig, James W	✓	
Wood, Jane	—	
Potter, Frances D	✓	
Espiefs, Peter S	✓	~~✓~~
Franklin, Peter E	—	

TOTAL VOTE: 17 1

Printed: 12/27/2000

Committee Report

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 1390**

TITLE: relative to quality assurance information

DATE: February 6, 2002 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill is a means of correcting an imbalance that has developed between a patient's right to his or her medical records and the need for confidentiality of the proceedings of hospital quality assurance program records. In civil cases, some patient records are currently shielded from discovery by hospitals by cloaking them in the confidentiality afforded proceedings of a quality assurance program, even if those records were otherwise discoverable. This bill provides that a hospital can no longer shield patient records merely because they have been presented to a quality assurance program. However, testimony taken in conjunction with a quality assurance program will remain confidential. The bill allows patients access to their records while protecting a hospital's legitimate need to evaluate and investigate its prices, procedures and staff through quality assurance programs.

Vote 17-0.

Rep. James W. Craig
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Judiciary

HB 1390, relative to quality assurance information **OUGHT TO PASS WITH AMENDMENT**

Rep. James W. Craig for Judiciary: This bill is a means of correcting an imbalance that has developed between a patient's right to his or her medical records and the need for confidentiality of the proceedings of hospital quality assurance program records. In civil cases, some patient records are currently shielded from discovery by hospitals by cloaking them in the confidentiality afforded proceedings of a quality assurance program, even if those records were otherwise discoverable. This bill provides that a hospital can no longer shield patient records merely because they have been presented to a quality assurance program. However, testimony taken in conjunction with a quality assurance program will remain confidential. The bill allows patients access to their records while protecting a hospital's legitimate need to evaluate and investigate its prices, procedures and staff through quality assurance programs. **Vote 17-0.**

HB 1390

THIS BILL IS A MEANS OF CORRECTING AN IMBALANCE THAT HAS DEVELOPED BETWEEN A PATIENT'S RIGHT TO HIS OR HER MEDICAL RECORDS AND THE NEED FOR CONFIDENTIALITY OF THE PROCEEDINGS OF HOSPITAL QUALITY ASSURANCE PROGRAM RECORDS.

IN CIVIL CASES, SOME PATIENT RECORDS ARE CURRENTLY SHIELDED FROM DISCOVERY BY HOSPITALS BY CLOAKING THEM IN THE CONFIDENTIALITY AFFORDED PROCEEDINGS OF A QUALITY ASSURANCE PROGRAM, EVEN IF THOSE RECORDS WERE OTHERWISE DISCOVERABLE. THIS BILL PROVIDES THAT A HOSPITAL CAN NO LONGER SHIELD PATIENT RECORDS MERELY BECAUSE THEY HAVE BEEN PRESENTED TO A QUALITY ASSURANCE PROGRAM. HOWEVER, TESTIMONY TAKEN IN CONJUNCTION WITH A QUALITY ASSURANCE PROGRAM WILL REMAIN CONFIDENTIAL.

THE BILL ALLOWS PATIENTS ACCESS TO THEIR RECORDS WHILE PROTECTING A HOSPITAL'S LEGITIMATE NEED TO EVALUATE AND INVESTIGATE ITS POLICIES, PROCEDURES AND STAFF THROUGH QUALITY ASSURANCE PROGRAMS.

JIM CRAIG