

HOUSE BILL No. 1137

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2-163; IC 16-22-3-9.5; IC 16-22-8-39.5; IC 34-4-12.6.

Synopsis: County hospital privileges. Provides that a practitioner of chiropractic, optometry, or podiatry is eligible for privileges to provide patient care at a county hospital. Allows the hospital's governing board to establish certain standards and rules to govern a practitioner's practice in the hospital and the granting and retention of a practitioner's privileges. Allows a practitioner to appear before a peer review committee before being granted privileges and to have a hearing before a peer review committee before privileges are terminated. Exempts from civil liability the professional review activities of a peer review committee that are made in good faith.

Effective: January 1, 1999.

Kromkowski

January 8, 1998, read first time and referred to Committee on Public Health.

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Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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HOUSE BILL No. 1137



A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-163, AS AMENDED BY P.L.188-1995,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 1999]: Sec. 163. (a) "Health care provider", for purposes
4 of IC 16-21 and IC 16-41, means any of the following:

- 5 (1) An individual, a partnership, a corporation, a professional
- 6 corporation, a facility, or an institution licensed or legally
- 7 authorized by this state to provide health care or professional
- 8 services as a licensed physician, a psychiatric hospital, a hospital,
- 9 a health facility, an emergency ambulance service (IC 16-31-3),
- 10 a dentist, a registered or licensed practical nurse, a midwife, an
- 11 optometrist, a pharmacist, a podiatrist, a chiropractor, a physical
- 12 therapist, a respiratory care practitioner, an occupational therapist,
- 13 a psychologist, a paramedic, an emergency medical technician, or
- 14 an advanced emergency technician, or a person who is an officer,
- 15 employee, or agent of the individual, partnership, corporation,
- 16 professional corporation, facility, or institution acting in the
- 17 course and scope of the person's employment.



- 1 (2) A college, university, or junior college that provides health
 2 care to a student, a faculty member, or an employee, and the
 3 governing board or a person who is an officer, employee, or agent
 4 of the college, university, or junior college acting in the course
 5 and scope of the person's employment.
 6 (3) A blood bank, community mental health center, community
 7 mental retardation center, community health center, or migrant
 8 health center.
 9 (4) A home health agency (as defined in IC 16-27-1-2).
 10 (5) A health maintenance organization (as defined in
 11 IC 27-13-1-19).
 12 (6) A health care organization whose members, shareholders, or
 13 partners are health care providers under subdivision (1).
 14 (7) A corporation, partnership, or professional corporation not
 15 otherwise qualified under this subsection that:
 16 (A) provides health care as one (1) of the corporation's,
 17 partnership's, or professional corporation's functions;
 18 (B) is organized or registered under state law; and
 19 (C) is determined to be eligible for coverage as a health care
 20 provider under IC 27-12 for the corporation's, partnership's, or
 21 professional corporation's health care function.
 22 Coverage for a health care provider qualified under this
 23 subdivision is limited to the health care provider's health care
 24 functions and does not extend to other causes of action.
 25 **(b) "Health care provider", for purposes of IC 16-22-3-9.5 and**
 26 **IC 16-22-8-39.5, means an individual who holds a valid license**
 27 **under Indiana law to practice:**
 28 **(1) chiropractic;**
 29 **(2) optometry; or**
 30 **(3) podiatry.**
 31 ~~(b)~~ (c) "Health care provider", for purposes of IC 16-35:
 32 (1) has the meaning set forth in subsection (a); **and However, for**
 33 **purposes of IC 16-35, the term also**
 34 (2) includes a health facility (as defined in section 167 of this
 35 chapter).
 36 SECTION 2. IC 16-22-3-9.5 IS ADDED TO THE INDIANA CODE
 37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 38 JANUARY 1, 1999]: **Sec. 9.5. (a) The governing board may**
 39 **delineate privileges for the provision of patient care services by a**
 40 **health care provider.**
 41 **(b) A health care provider is eligible for privileges to provide**
 42 **patient care services, but the board shall establish and enforce**



1 reasonable standards and rules concerning a health care provider's
2 qualifications for the following:

- 3 (1) Practice in the hospital.
4 (2) The granting of privileges to a provider.
5 (3) The retention of privileges.

6 (c) The fact that an applicant for privileges to provide patient
7 care services is a health care provider may not serve as a basis for
8 denying the applicant privileges to provide patient care services
9 that are allowed under the professional license held by the
10 applicant.

11 (d) The board may determine the kinds of health care
12 procedures and treatments that are appropriate for an inpatient or
13 outpatient hospital setting.

14 (e) The standards and rules described in subsection (b) may, in
15 the interest of good patient care, allow the board to do the
16 following:

- 17 (1) Consider a health care provider's postgraduate education,
18 training, experience, and other facts concerning the provider
19 that may affect the provider's professional competence.
20 (2) Consider the scope of practice allowed under the
21 professional license held by a health care provider.
22 (3) Limit privileges for admitting patients to the hospital to
23 physicians licensed under IC 25-22.5.
24 (4) Limit responsibility for the management of a patient's care
25 to physicians licensed under IC 25-22.5.
26 (5) Limit or preclude a health care provider's performance of
27 x-rays or other imaging procedures in an inpatient or
28 outpatient hospital setting. However, this subdivision does not
29 affect the ability of a health care provider to order x-rays
30 under that provider's scope of practice.

31 (f) The standards and rules described in subsection (b) may
32 include a requirement for the following:

- 33 (1) Submitting proof that a health care provider is qualified
34 under IC 27-12-3-2.
35 (2) Performing patient care and related duties in a manner
36 that is not disruptive to the delivery of quality care in the
37 hospital setting.
38 (3) Maintaining standards of quality care that recognize the
39 efficient and effective utilization of hospital resources as
40 developed by the hospital's medical staff.

41 (g) The standards and rules described in subsection (b) must
42 allow a health care provider who applies for privileges an



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1 opportunity to appear before a peer review committee that is
 2 established by the board to make recommendations regarding
 3 applications for privileges by health care providers before the peer
 4 review committee makes its recommendations regarding the
 5 applicant's request for privileges.

6 (h) The board must provide for a hearing before a peer review
 7 committee for a health care provider whose privileges have been
 8 recommended for termination.

9 SECTION 3. IC 16-22-8-39.5 IS ADDED TO THE INDIANA
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JANUARY 1, 1999]: **Sec. 39.5. (a) The governing**
 12 **board may delineate privileges for the provision of patient care**
 13 **services by a health care provider.**

14 (b) A health care provider is eligible for privileges to provide
 15 patient care services, but the board shall establish and enforce
 16 reasonable standards and rules concerning a health care provider's
 17 qualifications for the following:

- 18 (1) Practice in the hospital.
- 19 (2) The granting of privileges to a provider.
- 20 (3) The retention of privileges.

21 (c) The fact that an applicant for privileges to provide patient
 22 care services is a health care provider may not serve as a basis for
 23 denying the applicant privileges to provide patient care services
 24 that are allowed under the professional license held by the
 25 applicant.

26 (d) The board may determine the kinds of health care
 27 procedures and treatments that are appropriate for an inpatient or
 28 outpatient hospital setting.

29 (e) The standards and rules described in subsection (b) may, in
 30 the interest of good patient care, allow the board to do the
 31 following:

- 32 (1) Consider a health care provider's postgraduate education,
 33 training, experience, and other facts concerning the provider
 34 that may affect the provider's professional competence.
- 35 (2) Consider the scope of practice allowed under the
 36 professional license held by a health care provider.
- 37 (3) Limit privileges for admitting patients to the hospital to
 38 physicians licensed under IC 25-22.5.
- 39 (4) Limit responsibility for the management of a patient's care
 40 to physicians licensed under IC 25-22.5.
- 41 (5) Limit or preclude a health care provider's performance of
 42 x-rays or other imaging procedures in an inpatient or



1 outpatient hospital setting. However, this subdivision does not
2 affect the ability of a health care provider to order x-rays
3 under that provider's scope of practice.

4 **(f) The standards and rules described in subsection (b) may**
5 **include a requirement for the following:**

6 **(1) Submitting proof that a health care provider is qualified**
7 **under IC 27-12-3-2.**

8 **(2) Performing patient care and related duties in a manner**
9 **that is not disruptive to the delivery of quality care in the**
10 **hospital setting.**

11 **(3) Maintaining standards of quality care that recognize the**
12 **efficient and effective utilization of hospital resources as**
13 **developed by the hospital's medical staff.**

14 **(g) The standards and rules described in subsection (b) must**
15 **allow a health care provider who applies for privileges an**
16 **opportunity to appear before a peer review committee that is**
17 **established by the board to make recommendations regarding**
18 **applications for privileges by health care providers, before the peer**
19 **review committee makes its recommendations regarding the**
20 **applicant's request for privileges.**

21 **(h) The board must provide for a hearing before a peer review**
22 **committee for a health care provider whose privileges have been**
23 **recommended for termination.**

24 SECTION 4. IC 34-4-12.6-1, AS AMENDED BY P.L.147-1997,
25 SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JANUARY 1, 1999]: Sec. 1. (a) As used in this chapter, "professional
27 health care provider" means:

- 28 (1) a physician licensed under IC 25-22.5;
29 (2) a dentist licensed under IC 25-14;
30 (3) a hospital licensed under IC 16-21;
31 (4) a podiatrist licensed under IC 25-29;
32 (5) a chiropractor licensed under IC 25-10;
33 (6) an optometrist licensed under IC 25-24;
34 (7) a psychologist licensed under IC 25-33;
35 (8) a pharmacist licensed under IC 25-26;
36 (9) a health facility licensed under IC 16-28-2;
37 (10) a registered or licensed practical nurse licensed under
38 IC 25-23;
39 (11) a physical therapist licensed under IC 25-27;
40 (12) a home health agency licensed under IC 16-27-1;
41 (13) a community mental health center (as defined in
42 IC 12-7-2-38);



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- 1 (14) a health care organization whose members, shareholders, or
 2 partners are:
- 3 (A) professional health care providers described in
 4 subdivisions (1) through (13);
- 5 (B) professional corporations comprised of health care
 6 professionals (as defined in IC 23-1.5-1-8); or
- 7 (C) professional health care providers described in
 8 subdivisions (1) through (13) and professional corporations
 9 comprised of persons described in subdivisions (1) through
 10 (13);
- 11 (15) a private psychiatric hospital licensed under IC 12-25;
- 12 (16) a preferred provider organization (including a preferred
 13 provider arrangement or reimbursement agreement under
 14 IC 27-8-11);
- 15 (17) a health maintenance organization (as defined in
 16 IC 27-13-1-19) or a limited service health maintenance
 17 organization (as defined in IC 27-13-34-4);
- 18 (18) a respiratory care practitioner certified under IC 25-34.5;
- 19 (19) an occupational therapist certified under IC 25-23.5;
- 20 (20) a state institution (as defined in IC 12-7-2-184);
- 21 (21) a clinical social worker who is licensed under
 22 IC 25-23.6-5-2;
- 23 (22) a managed care provider (as defined in IC 12-7-2-127(b)); or
- 24 (23) a nonprofit health care organization affiliated with a hospital
 25 that is owned or operated by a religious order, whose members are
 26 members of that religious order.
- 27 (b) As used in this chapter, "evaluation of patient care" relates to:
- 28 (1) the accuracy of diagnosis;
- 29 (2) the propriety, appropriateness, quality, or necessity of care
 30 rendered by a professional health care provider; and
- 31 (3) the reasonableness of the utilization of services, procedures,
 32 and facilities in the treatment of individual patients.
- 33 As used in this chapter, the term does not relate to charges for services
 34 or to methods used in arriving at diagnoses.
- 35 (c) As used in this chapter, "peer review committee" means a
 36 committee that:
- 37 (1) has the responsibility of evaluation of:
- 38 (A) qualifications of professional health care providers;
- 39 (B) patient care rendered by professional health care
 40 providers; or
- 41 (C) the merits of a complaint against a professional health care
 42 provider that includes a determination or recommendation

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1 concerning the complaint, and the complaint is based on the
 2 competence or professional conduct of an individual health
 3 care provider which competence or conduct affects or could
 4 affect adversely the health or welfare of a patient or patients;
 5 and

6 (2) meets the following criteria:

7 (A) The committee is organized:

8 (i) by a state, regional, or local organization of professional
 9 health care providers or by a nonprofit foundation created by
 10 the professional organization for purposes of improvement
 11 of patient care;

12 (ii) by the professional staff of a hospital, another health care
 13 facility, a nonprofit health care organization (under
 14 subsection (a)(23)), or a professional health care
 15 organization;

16 (iii) by state or federal law or regulation;

17 (iv) by a governing board of a hospital, a nonprofit health
 18 care organization (under subsection (a)(23)), or professional
 19 health care organization;

20 (v) as a governing board or committee of the board of a
 21 hospital, a nonprofit health care organization (under
 22 subsection (a)(23)), or professional health care organization;

23 (vi) by an organization, a plan, or a program described in
 24 subsection (a)(16) through (a)(17);

25 (vii) as a hospital or a nonprofit health care organization
 26 (under subsection (a)(23)) medical staff or a section of that
 27 staff; or

28 (viii) as a governing board or committee of the board of a
 29 professional health care provider (as defined in subsection
 30 (a)(16) through (a)(17)).

31 (B) At least fifty percent (50%) of the committee members are:

32 (i) individual professional health care providers, the
 33 governing board of a hospital, the governing board of a
 34 nonprofit health care organization (under subsection
 35 (a)(23)), or professional health care organization, or the
 36 governing board or a committee of the board of a
 37 professional health care provider (as defined in subsection
 38 (a)(16) through (a)(17)); or

39 (ii) individual professional health care providers and the
 40 committee is organized as an interdisciplinary committee to
 41 conduct evaluation of patient care services.

42 However, "peer review committee" does not include a medical review



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1 panel created under IC 27-12-10.

2 (d) As used in this chapter, "professional staff" means:

3 (1) all individual professional health care providers authorized to
4 provide health care in a hospital or other health care facility; or

5 (2) the multidisciplinary staff of a community mental health
6 center (as defined in IC 12-7-2-38).

7 (e) As used in this chapter, "personnel of a peer review committee"
8 means not only members of the committee but also all of the
9 committee's employees, representatives, agents, attorneys,
10 investigators, assistants, clerks, staff, and any other person or
11 organization who serves a peer review committee in any capacity.

12 (f) As used in this chapter, "in good faith" refers to an act taken
13 without malice after a reasonable effort to obtain the facts of the matter
14 and in the reasonable belief that the action taken is warranted by the
15 facts known. In all actions to which this chapter applies, good faith
16 shall be presumed, and malice shall be required to be proven by the
17 person aggrieved.

18 (g) As used in this chapter, "professional health care organization"
19 refers to an organization described in subsection (a)(14).

20 (h) As used in this chapter, "professional review activity" means
21 an activity of a peer review committee of a hospital licensed under
22 IC 16-21 with respect to a professional health care provider to:

23 (1) determine whether the professional health care provider
24 may have privileges with respect to the hospital;

25 (2) determine the scope or conditions of the privileges; or

26 (3) change or modify the privileges.

27 **The term includes the establishment and enforcement of standards**
28 **and rules by the governing board of a hospital concerning practice**
29 **in the hospital and the granting and retention of privileges within**
30 **the hospital.**

31 SECTION 5. IC 34-4-12.6-3 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 3. (a) There shall
33 be no liability on the part of, and no action of any nature shall arise
34 against, **an organization, a peer review committee, or** the personnel
35 of a peer review committee for any act, statement made in the confines
36 of the **organization or** committee, or proceeding **thereof of the**
37 **organization or committee** made in good faith in regard to:

38 (1) evaluation of patient care as that term is defined and limited
39 in section 1(b) of this chapter; or

40 (2) **professional review activity as defined and limited in**
41 **section 1(h) of this chapter.**

42 (b) Notwithstanding any other law, a peer review committee, an

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1 organization, or any other person who, in good faith and as a witness
 2 or in some other capacity, furnishes records, information, or assistance
 3 to a peer review committee that is engaged in:

- 4 (1) the evaluation of the qualifications, competence, or
 5 professional conduct of a professional health care provider; or
 6 (2) the evaluation of patient care;

7 is immune from any civil action arising from the furnishing of the
 8 records, information, or assistance, unless the person knowingly
 9 furnishes false records or information.

10 (c) The personnel of a peer review committee shall be immune from
 11 any civil action arising from any determination made in good faith in
 12 regard to evaluation of patient care as that term is defined and limited
 13 in section 1(b) of this chapter.

14 (d) No restraining order or injunction shall be issued against a peer
 15 review committee or any of the personnel ~~thereof of the committee~~ to
 16 interfere with the proper functions of the committee acting in good
 17 faith in regard to evaluation of patient care as that term is defined and
 18 limited in section 1(b) of this chapter.

19 (e) If the action of the peer review committee meets the standards
 20 specified by this chapter and the federal Health Care Quality
 21 Improvement Act of 1986, P.L.99-660, the following persons are not
 22 liable for damages under any federal, state, or local law with respect to
 23 the action:

- 24 (1) The peer review committee.
 25 (2) Any person acting as a member or staff to the peer review
 26 committee.
 27 (3) Any person under a contract or other formal agreement with
 28 the peer review committee.
 29 (4) Any person who participates with or assists the peer review
 30 committee with respect to the action.

31 (f) Subsection (e) does not apply to damages under any federal or
 32 state law relating to the civil rights of a person including:

- 33 (1) the federal Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq.;
 34 and
 35 (2) the federal Civil Rights Act, 42 U.S.C. 1981, et seq.

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