



February 9, 2011

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## SENATE BILL No. 174

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DIGEST OF SB 174 (Updated February 8, 2011 12:33 pm - DI yl)

**Citations Affected:** IC 25-22.5; IC 34-6; IC 34-18; IC 34-30.

**Synopsis:** Defines "accountable care organization". Exempts accountable care organizations from the corporate practice of medicine limitation. Includes accountable care organizations in application of the laws concerning medical malpractice and peer review.

**Effective:** Upon passage.

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**Miller**

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January 5, 2011, read first time and referred to Committee on Rules and Legislative Procedure.  
February 8, 2011, amended; reassigned to Committee on Health and Provider Services.

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SB 174—LS 6147/DI 13+



February 9, 2011

First Regular Session 117th General Assembly (2011)

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 a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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## SENATE BILL No. 174



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

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

- 1 SECTION 1. IC 25-22.5-1-2, AS AMENDED BY P.L.177-2009,
- 2 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 UPON PASSAGE]: Sec. 2. (a) This article, as it relates to the unlawful
- 4 or unauthorized practice of medicine or osteopathic medicine, does not
- 5 apply to any of the following:
- 6 (1) A student in training in a medical school approved by the
- 7 board, or while performing duties as an intern or a resident in a
- 8 hospital under the supervision of the hospital's staff or in a
- 9 program approved by the medical school.
- 10 (2) A person who renders service in case of emergency where no
- 11 fee or other consideration is contemplated, charged, or received.
- 12 (3) A paramedic (as defined in IC 16-18-2-266), an emergency
- 13 medical technician-basic advanced (as defined in
- 14 IC 16-18-2-112.5), an emergency medical technician-intermediate
- 15 (as defined in IC 16-18-2-112.7), an emergency medical
- 16 technician (as defined in IC 16-18-2-112), or a person with
- 17 equivalent certification from another state who renders advanced

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- 1 life support (as defined in IC 16-18-2-7) or basic life support (as
- 2 defined in IC 16-18-2-33.5):
- 3 (A) during a disaster emergency declared by the governor
- 4 under IC 10-14-3-12 in response to an act that the governor in
- 5 good faith believes to be an act of terrorism (as defined in
- 6 IC 35-41-1-26.5); and
- 7 (B) in accordance with the rules adopted by the Indiana
- 8 emergency medical services commission or the disaster
- 9 emergency declaration of the governor.
- 10 (4) Commissioned medical officers or medical service officers of
- 11 the armed forces of the United States, the United States Public
- 12 Health Service, and medical officers of the United States
- 13 Department of Veterans Affairs in the discharge of their official
- 14 duties in Indiana.
- 15 (5) An individual who is not a licensee who resides in another
- 16 state or country and is authorized to practice medicine or
- 17 osteopathic medicine there, who is called in for consultation by an
- 18 individual licensed to practice medicine or osteopathic medicine
- 19 in Indiana.
- 20 (6) A person administering a domestic or family remedy to a
- 21 member of the person's family.
- 22 (7) A member of a church practicing the religious tenets of the
- 23 church if the member does not make a medical diagnosis,
- 24 prescribe or administer drugs or medicines, perform surgical or
- 25 physical operations, or assume the title of or profess to be a
- 26 physician.
- 27 (8) A school corporation and a school employee who acts under
- 28 IC 34-30-14 (or IC 34-4-16.5-3.5 before its repeal).
- 29 (9) A chiropractor practicing the chiropractor's profession under
- 30 IC 25-10 or to an employee of a chiropractor acting under the
- 31 direction and supervision of the chiropractor under IC 25-10-1-13.
- 32 (10) A dental hygienist practicing the dental hygienist's profession
- 33 under IC 25-13.
- 34 (11) A dentist practicing the dentist's profession under IC 25-14.
- 35 (12) A hearing aid dealer practicing the hearing aid dealer's
- 36 profession under IC 25-20.
- 37 (13) A nurse practicing the nurse's profession under IC 25-23.
- 38 However, a certified registered nurse anesthetist (as defined in
- 39 IC 25-23-1-1.4) may administer anesthesia if the certified
- 40 registered nurse anesthetist acts under the direction of and in the
- 41 immediate presence of a physician.
- 42 (14) An optometrist practicing the optometrist's profession under

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- 1 IC 25-24.
- 2 (15) A pharmacist practicing the pharmacist's profession under
- 3 IC 25-26.
- 4 (16) A physical therapist practicing the physical therapist's
- 5 profession under IC 25-27.
- 6 (17) A podiatrist practicing the podiatrist's profession under
- 7 IC 25-29.
- 8 (18) A psychologist practicing the psychologist's profession under
- 9 IC 25-33.
- 10 (19) A speech-language pathologist or audiologist practicing the
- 11 pathologist's or audiologist's profession under IC 25-35.6.
- 12 (20) An employee of a physician or group of physicians who
- 13 performs an act, a duty, or a function that is customarily within
- 14 the specific area of practice of the employing physician or group
- 15 of physicians, if the act, duty, or function is performed under the
- 16 direction and supervision of the employing physician or a
- 17 physician of the employing group within whose area of practice
- 18 the act, duty, or function falls. An employee may not make a
- 19 diagnosis or prescribe a treatment and must report the results of
- 20 an examination of a patient conducted by the employee to the
- 21 employing physician or the physician of the employing group
- 22 under whose supervision the employee is working. An employee
- 23 may not administer medication without the specific order of the
- 24 employing physician or a physician of the employing group.
- 25 Unless an employee is licensed or registered to independently
- 26 practice in a profession described in subdivisions (9) through
- 27 (18), nothing in this subsection grants the employee independent
- 28 practitioner status or the authority to perform patient services in
- 29 an independent practice in a profession.
- 30 (21) A hospital licensed under IC 16-21 or IC 12-25.
- 31 (22) A health care organization whose members, shareholders, or
- 32 partners are individuals, partnerships, corporations, facilities, or
- 33 institutions licensed or legally authorized by this state to provide
- 34 health care or professional services as:
- 35 (A) a physician;
- 36 (B) a psychiatric hospital;
- 37 (C) a hospital;
- 38 (D) a health maintenance organization or limited service
- 39 health maintenance organization;
- 40 (E) a health facility;
- 41 (F) a dentist;
- 42 (G) a registered or licensed practical nurse;

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- 1 (H) a midwife;
- 2 (I) an optometrist;
- 3 (J) a podiatrist;
- 4 (K) a chiropractor;
- 5 (L) a physical therapist; or
- 6 (M) a psychologist.
- 7 (23) A physician assistant practicing the physician assistant
- 8 profession under IC 25-27.5.
- 9 (24) A physician providing medical treatment under
- 10 IC 25-22.5-1-2.1.
- 11 (25) An attendant who provides attendant care services (as
- 12 defined in IC 16-18-2-28.5).
- 13 (26) A personal services attendant providing authorized attendant
- 14 care services under IC 12-10-17.1.
- 15 **(27) An accountable care organization (as defined in**
- 16 **IC 34-18-2-3.1).**
- 17 (b) A person described in subsection (a)(9) through (a)(18) is not
- 18 excluded from the application of this article if:
- 19 (1) the person performs an act that an Indiana statute does not
- 20 authorize the person to perform; and
- 21 (2) the act qualifies in whole or in part as the practice of medicine
- 22 or osteopathic medicine.
- 23 (c) An employment or other contractual relationship between an
- 24 entity described in:
- 25 (1) subsection (a)(21) through (a)(22); **or**
- 26 (2) **subsection (a)(27);**
- 27 and a licensed physician does not constitute the unlawful practice of
- 28 medicine under this article if the entity does not direct or control
- 29 independent medical acts, decisions, or judgment of the licensed
- 30 physician. However, if the direction or control is done by the entity
- 31 under IC 34-30-15 (or IC 34-4-12.6 before its repeal), the entity is
- 32 excluded from the application of this article as it relates to the unlawful
- 33 practice of medicine or osteopathic medicine.
- 34 (d) This subsection does not apply to a prescription or drug order for
- 35 a legend drug that is filled or refilled in a pharmacy owned or operated
- 36 by a hospital licensed under IC 16-21. A physician licensed in Indiana
- 37 who permits or authorizes a person to fill or refill a prescription or drug
- 38 order for a legend drug except as authorized in IC 16-42-19-11 through
- 39 IC 16-42-19-19 is subject to disciplinary action under IC 25-1-9. A
- 40 person who violates this subsection commits the unlawful practice of
- 41 medicine under this chapter.
- 42 (e) A person described in subsection (a)(8) shall not be authorized

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1 to dispense contraceptives or birth control devices.

2 SECTION 2. IC 34-6-2-1.3 IS ADDED TO THE INDIANA CODE  
3 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE  
4 UPON PASSAGE]: **Sec. 1.3. "Accountable care organization" has**  
5 **the meaning set forth in IC 34-18-2-3.1.**

6 SECTION 3. IC 34-6-2-99 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 99. (a) "Peer  
8 review committee", for purposes of IC 34-30-15, means a committee  
9 that:

- 10 (1) has the responsibility of evaluation of:
  - 11 (A) qualifications of professional health care providers;
  - 12 (B) patient care rendered by professional health care  
13 providers; or
  - 14 (C) the merits of a complaint against a professional health care  
15 provider that includes a determination or recommendation  
16 concerning the complaint, and the complaint is based on the  
17 competence or professional conduct of an individual health  
18 care provider, whose competence or conduct affects or could  
19 affect adversely the health or welfare of a patient or patients;  
20 and
- 21 (2) meets the following criteria:
  - 22 (A) The committee is organized:
    - 23 (i) by a state, regional, or local organization of professional  
24 health care providers or by a nonprofit foundation created by  
25 the professional organization for purposes of improvement  
26 of patient care;
    - 27 (ii) by the professional staff of a hospital, another health care  
28 facility, a nonprofit health care organization (under section  
29 117(23) of this chapter), **an accountable care organization,**  
30 or a professional health care organization;
    - 31 (iii) by state or federal law or regulation;
    - 32 (iv) by a governing board of a hospital, a nonprofit health  
33 care organization (under section 117(23) of this chapter), **an**  
34 **accountable care organization,** or a professional health  
35 care organization;
    - 36 (v) as a governing board or committee of the board of a  
37 hospital, a nonprofit health care organization (under section  
38 117(23) of this chapter), **an accountable care organization,**  
39 or a professional health care organization;
    - 40 (vi) by an organization, a plan, or a program described in  
41 section 117(16) through 117(17) of this chapter;
    - 42 (vii) as a hospital, **an accountable care organization,** or a

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1 nonprofit health care organization (under section 117(23) of  
 2 this chapter) medical staff or a section of that staff; or  
 3 (viii) as a governing board or committee of the board of a  
 4 professional health care provider (as defined in section  
 5 117(16) through 117(17) of this chapter).  
 6 (B) At least fifty percent (50%) of the committee members are:  
 7 (i) individual professional health care providers, the  
 8 governing board of a hospital, the governing board of a  
 9 nonprofit health care organization (under section 117(23) of  
 10 this chapter), or professional health care organization, **the**  
 11 **governing board of an accountable care organization**, or  
 12 the governing board or a committee of the board of a  
 13 professional health care provider (as defined in section  
 14 117(16) through 117(17) of this chapter); or  
 15 (ii) individual professional health care providers and the  
 16 committee is organized as an interdisciplinary committee to  
 17 conduct evaluation of patient care services.  
 18 (b) However, "peer review committee" does not include a medical  
 19 review panel created under IC 34-18-10 (or IC 27-12-10 before its  
 20 repeal).  
 21 SECTION 4. IC 34-6-2-117, AS AMENDED BY P.L.197-2007,  
 22 SECTION 92, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 UPON PASSAGE]: Sec. 117. "Professional health care provider", for  
 24 purposes of IC 34-30-15, means:  
 25 (1) a physician licensed under IC 25-22.5;  
 26 (2) a dentist licensed under IC 25-14;  
 27 (3) a hospital licensed under IC 16-21;  
 28 (4) a podiatrist licensed under IC 25-29;  
 29 (5) a chiropractor licensed under IC 25-10;  
 30 (6) an optometrist licensed under IC 25-24;  
 31 (7) a psychologist licensed under IC 25-33;  
 32 (8) a pharmacist licensed under IC 25-26;  
 33 (9) a health facility licensed under IC 16-28-2;  
 34 (10) a registered or licensed practical nurse licensed under  
 35 IC 25-23;  
 36 (11) a physical therapist licensed under IC 25-27;  
 37 (12) a home health agency licensed under IC 16-27-1;  
 38 (13) a community mental health center (as defined in  
 39 IC 12-7-2-38);  
 40 (14) a health care organization whose members, shareholders, or  
 41 partners are:  
 42 (A) professional health care providers described in

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- 1 subdivisions (1) through (13);
- 2 (B) professional corporations comprised of health care
- 3 professionals (as defined in IC 23-1.5-1-8); or
- 4 (C) professional health care providers described in
- 5 subdivisions (1) through (13) and professional corporations
- 6 comprised of persons described in subdivisions (1) through
- 7 (13);
- 8 (15) a private psychiatric hospital licensed under IC 12-25;
- 9 (16) a preferred provider organization (including a preferred
- 10 provider arrangement or reimbursement agreement under
- 11 IC 27-8-11);
- 12 (17) a health maintenance organization (as defined in
- 13 IC 27-13-1-19) or a limited service health maintenance
- 14 organization (as defined in IC 27-13-34-4);
- 15 (18) a respiratory care practitioner licensed under IC 25-34.5;
- 16 (19) an occupational therapist licensed under IC 25-23.5;
- 17 (20) a state institution (as defined in IC 12-7-2-184);
- 18 (21) a clinical social worker who is licensed under
- 19 IC 25-23.6-5-2;
- 20 (22) a managed care provider (as defined in IC 12-7-2-127(b));
- 21 (23) a nonprofit health care organization affiliated with a hospital
- 22 that is owned or operated by a religious order, whose members are
- 23 members of that religious order; or
- 24 (24) a nonprofit health care organization with one (1) or more
- 25 hospital affiliates; or

26 **(25) an accountable care organization.**

27 SECTION 5. IC 34-6-2-118 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 118. "Professional  
 29 staff", for purposes of IC 34-30-15, means:

- 30 (1) all individual professional health care providers authorized to
- 31 provide health care:
  - 32 (A) in a hospital or other health care facility; or
  - 33 (B) for an accountable care organization; or
- 34 (2) the multidisciplinary staff of a community mental health
- 35 center (as defined in IC 12-7-2-38).

36 SECTION 6. IC 34-18-2-3.1 IS ADDED TO THE INDIANA CODE  
 37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 38 UPON PASSAGE]: Sec. 3.1. "Accountable care organization"  
 39 means a group of health care providers:

- 40 (1) that is associated with a defined population of patients;
- 41 (2) that is accountable for the quality and cost of care that is
- 42 delivered to the population described in subdivision (1); and

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- 1           **(3) through which the health care providers share in savings**
- 2           **created by:**
- 3                 **(A) improving the quality; and**
- 4                 **(B) reducing growth of the cost;**
- 5           **of care delivered to the population described in subdivision**
- 6           **(1).**

7           **The term includes an entity that is eligible to participate in a**  
 8           **program established under 42 U.S.C. 1395jjj.**

9           SECTION 7. IC 34-18-2-14 IS AMENDED TO READ AS  
 10          FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. "Health care  
 11          provider" means any of the following:

- 12           (1) An individual, a partnership, a limited liability company, a  
 13           corporation, a professional corporation, a facility, or an institution  
 14           licensed or legally authorized by this state to provide health care  
 15           or professional services as a physician, psychiatric hospital,  
 16           hospital, health facility, emergency ambulance service  
 17           (IC 16-18-2-107), dentist, registered or licensed practical nurse,  
 18           physician assistant, midwife, optometrist, podiatrist, chiropractor,  
 19           physical therapist, respiratory care practitioner, occupational  
 20           therapist, psychologist, paramedic, emergency medical  
 21           technician-intermediate, emergency medical technician-basic  
 22           advanced, or emergency medical technician, or a person who is an  
 23           officer, employee, or agent of the individual, partnership,  
 24           corporation, professional corporation, facility, or institution acting  
 25           in the course and scope of the person's employment.
- 26           (2) A college, university, or junior college that provides health  
 27           care to a student, faculty member, or employee, and the governing  
 28           board or a person who is an officer, employee, or agent of the  
 29           college, university, or junior college acting in the course and  
 30           scope of the person's employment.
- 31           (3) A blood bank, community mental health center, community  
 32           mental retardation center, community health center, or migrant  
 33           health center.
- 34           (4) A home health agency (as defined in IC 16-27-1-2).
- 35           (5) A health maintenance organization (as defined in  
 36           IC 27-13-1-19).
- 37           (6) A health care organization whose members, shareholders, or  
 38           partners are health care providers under subdivision (1).
- 39           (7) A corporation, limited liability company, partnership, or  
 40           professional corporation not otherwise qualified under this section  
 41           that:
- 42                 (A) as one (1) of its functions, provides health care;

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1 (B) is organized or registered under state law; and  
 2 (C) is determined to be eligible for coverage as a health care  
 3 provider under this article for its health care function.  
 4 Coverage for a health care provider qualified under this  
 5 subdivision is limited to its health care functions and does not  
 6 extend to other causes of action.  
 7 **(8) An accountable care organization.**  
 8 SECTION 8. IC 34-30-15-1, AS AMENDED BY P.L.101-2007,  
 9 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 UPON PASSAGE]: Sec. 1. (a) All proceedings of a peer review  
 11 committee are confidential.  
 12 (b) All communications to a peer review committee shall be  
 13 privileged communications.  
 14 (c) Neither the personnel of a peer review committee nor any  
 15 participant in a committee proceeding shall reveal any content of:  
 16 (1) communications to;  
 17 (2) the records of; or  
 18 (3) the determination of;  
 19 a peer review committee outside of the peer review committee.  
 20 (d) However, the governing board of:  
 21 (1) a hospital;  
 22 (2) a professional health care organization;  
 23 (3) a preferred provider organization (including a preferred  
 24 provider arrangement or reimbursement agreement under  
 25 IC 27-8-11); or  
 26 (4) a health maintenance organization (as defined in  
 27 IC 27-13-1-19) or a limited service health maintenance  
 28 organization (as defined in IC 27-13-34-4); or  
 29 **(5) an accountable care organization;**  
 30 may disclose the final action taken with regard to a professional health  
 31 care provider without violating the provisions of this section.  
 32 (e) Upon approval by the health care facility's governing body, the  
 33 peer review committee of a health care facility (as defined in  
 34 IC 16-40-5-2, **expired**) may submit or disclose to the agency (as  
 35 defined in IC 16-40-5-1, **expired**) the following for purposes of patient  
 36 safety or quality of health care matters under IC 16-40-5 (**expired**):  
 37 (1) Communications to the peer review committee.  
 38 (2) Peer review committee proceedings.  
 39 (3) Peer review committee records.  
 40 (4) Determinations by the peer review committee.  
 41 Information and materials submitted or disclosed to the agency under  
 42 this subsection are confidential and privileged from use as evidence in

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1 an administrative or judicial proceeding, and notwithstanding  
 2 IC 16-40-5 (**expired**) the agency may not release the information or  
 3 material outside the agency. However, the agency may issue a report  
 4 that is based upon information or materials submitted or disclosed to  
 5 the agency by a peer review committee if the report or any other  
 6 information issued does not disclose the identity of the health care  
 7 facility, health care provider, or patient. Information and materials may  
 8 be submitted or disclosed to the agency under this subsection without  
 9 violating this section or waiving the confidentiality and privilege  
 10 attached to the communications, proceedings, records, determinations,  
 11 or deliberations of the peer review committee.

12 (f) Upon its determination, the governing body of a hospital may  
 13 report, as part of the hospital's quality assessment and improvement  
 14 program, a determination of a peer review committee of the hospital  
 15 regarding an adverse event concerning patient care to the state  
 16 department of health or another state agency without:

- 17 (1) violating this section; or
- 18 (2) waiving the confidentiality and privilege attached to the  
 19 communications, proceedings, records, determinations, or  
 20 deliberations of the peer review committee.

21 SECTION 9. IC 34-30-15-8 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a)  
 23 Communications to, the records of, and determinations of a peer review  
 24 committee may only be disclosed to:

- 25 (1) the peer review committee of:
  - 26 (A) a hospital;
  - 27 (B) a nonprofit health care organization (described in  
 28 IC 34-6-2-117(23));
  - 29 (C) a preferred provider organization (including a preferred  
 30 provider arrangement or reimbursement agreement under  
 31 IC 27-8-11);
  - 32 (D) a health maintenance organization (as defined in  
 33 IC 27-13-1-19) or a limited service health maintenance  
 34 organization (as defined in IC 27-13-34-4); or
  - 35 (E) another health facility; or
  - 36 **(F) an accountable care organization;**
- 37 (2) the disciplinary authority of the professional organization of  
 38 which the professional health care provider under question is a  
 39 member; or
- 40 (3) the appropriate state board of registration and licensure that  
 41 the committee considers necessary for recommended disciplinary  
 42 action;

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1 and shall otherwise be kept confidential for use only within the scope  
2 of the committee's work, unless the professional health care provider  
3 has filed a prior written waiver of confidentiality with the peer review  
4 committee.

5 (b) However, if a conflict exists between this section and  
6 IC 27-13-31, the provisions of IC 27-13-31 control.

7 SECTION 10. IC 34-30-15-21 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a)  
9 Notwithstanding sections 1 through 14 of this chapter:

- 10 (1) a professional health care provider;
- 11 (2) a peer review committee; and
- 12 (3) the governing board of:
  - 13 (A) a hospital;
  - 14 (B) a preferred provider organization (including a preferred  
15 provider arrangement or reimbursement agreement under  
16 IC 27-8-11);
  - 17 (C) a health maintenance organization (as defined in  
18 IC 27-13-1-19) or a limited service health maintenance  
19 organization (as defined in IC 27-13-34-4); **or**
  - 20 (D) a professional health care organization; **or**
  - 21 **(E) an accountable care organization;**

22 may use information obtained by peer review committees for legitimate  
23 internal business purposes.

24 (b) Legitimate internal business uses of information obtained by a  
25 peer review committee include the following:

- 26 (1) Quality review and assessment.
- 27 (2) Utilization review and management.
- 28 (3) Risk management and incident reporting.
- 29 (4) Safety, prevention, and correction.
- 30 (5) Reduction of morbidity and mortality.
- 31 (6) Scientific, statistical, and educational purposes.
- 32 (7) Legal defense.

33 SECTION 11. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 174, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

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

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Health and Provider Services.

(Reference is to SB 174 as introduced.)

LONG, Chairperson

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