

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2323

To amend title 38, United States Code, to clarify the coverage and protection provided to medical quality assurance records by section 5705 of that title.

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## IN THE SENATE OF THE UNITED STATES

JULY 26 (legislative day, JULY 20), 1994

Mr. ROCKEFELLER (by request) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to clarify the coverage and protection provided to medical quality assurance records by section 5705 of that title.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. BAN ON DISCLOSURE OF MEDICAL QUALITY AS-**  
4        **SURANCE INFORMATION.**

5        Subsection (a) of section 5705 of title 38, United  
6        States Code, is amended—

7                (1) by inserting “(1)” after “(a)”; and

8                (2) by adding at the end the following:

9                “(2)(A) Except as provided in subsection (b), no part  
10        of any medical quality assurance record or document de-

1 scribed in subsection (a)(1) may be subject to discovery  
2 or admitted into evidence in any judicial or administrative  
3 proceeding.

4 “(B) An individual who reviews or creates medical  
5 quality assurance records or documents for the Depart-  
6 ment or who participates in any proceeding that reviews  
7 or creates such records or documents may not be per-  
8 mitted or required to testify in any judicial or administra-  
9 tive proceeding with respect to such records or documents  
10 or with respect to any finding, recommendation, evalua-  
11 tion, opinion, or action taken by such person in connection  
12 with such records or documents except as provided in this  
13 section.”.

14 **SEC. 2. DISCLOSURE AUTHORITY.**

15 (a) CLARIFICATION OF COVERAGE.—Subsection  
16 (b)(1) of section 5705 of title 38, United States Code, is  
17 amended by striking out “or document” in the matter  
18 above subparagraph (A) and inserting in lieu thereof “,  
19 document, or testimony”.

20 (b) DISCLOSURE FOR PROFESSIONAL USE.—Such  
21 subsection is further amended by adding at the end the  
22 following:

23 “(E) In an administrative or judicial proceeding  
24 commenced by a criminal or civil law enforcement  
25 agency or instrumentality referred to in subpara-

1 graph (C), but only concerning the subject of such  
2 proceeding.

3 “(F) To a governmental board or agency or to  
4 a professional health care society or organization, if  
5 such record or document is needed by the board,  
6 agency, society, or organization to issue a profes-  
7 sional license or credential to or to monitor the com-  
8 pliance with professional standards of any health  
9 care provider who is or was an employee of the De-  
10 partment.

11 “(G) To a hospital, medical center, or other in-  
12 stitution that provides health care services, if such  
13 record or document is needed by the institution to  
14 assess the professional qualifications of any health  
15 care provider who is or was an employee of the De-  
16 partment and who has applied for or been granted  
17 authority or employment to provide health care serv-  
18 ices in or on behalf of such institution.

19 “(H) To an administrative or judicial proceed-  
20 ing commenced by a present or former Department  
21 health care provider concerning the termination, sus-  
22 pension or limitation of the clinical privileges of such  
23 health care provider, or concerning any adverse ac-  
24 tion involving such health care provider, but only to  
25 the extent that such records or documents relate to

1 the clinical conduct or performance of the individual  
2 who has commenced the action.”.

3 (c) REMOVAL OF IDENTITIES.—Subsection (b)(2) of  
4 such section is amended by striking out “if disclosure”  
5 and all that follows through “personal privacy” and insert-  
6 ing in lieu thereof “subparagraphs (1)(A) and (1)(B) of  
7 this subsection”.

8 **SEC. 3. LIMITATION ON DISCLOSURE.**

9 Paragraph (3) of section 5705(b) of title 38, United  
10 States Code, is amended to read as follows:

11 “(3) A person or entity having possession of, or ac-  
12 cess to, information, records, or documents, or testimony  
13 relating thereto, that is subject to the provisions of this  
14 section may not disclose such information, records, or doc-  
15 uments, or any testimony relating thereto, in any manner  
16 or for any purpose except for a purpose as provided in  
17 this subsection. No person or entity to whom a record or  
18 document has been disclosed under this subsection shall  
19 make further disclosure of such record or document except  
20 for a purpose provided in this subsection.”.

21 **SEC. 4. ACCESS TO RECORDS.**

22 Subsection (b) of section 5705 of title 38, United  
23 States Code, is amended by adding at the end the follow-  
24 ing:

1       “(7) Medical quality assurance records and docu-  
2       ments described in subsection (a) which are subject to sec-  
3       tion 552a of title 5 may not be disclosed in accordance  
4       with that section except to the extent that such disclosure  
5       is also authorized under this section.

6       “(8) Medical quality assurance records or documents  
7       described in subsection (a) which are also subject to sec-  
8       tion 552a of title 5—

9               “(A) shall not be subject to the access provi-  
10       sions of such section 552a to the extent that such  
11       access would reveal the identities of participants in  
12       the quality assurance process which generated the  
13       records or documents; and

14               “(B) are not subject to the amendment provi-  
15       sions of such section 552a.

16       “(9) Medical quality assurance records and docu-  
17       ments described in subsection (a) may not be made avail-  
18       able to any person under section 552 of title 5.”.

19       **SEC. 5. REGULATIONS.**

20       Subsection (d)(2) of section 5705 of title 38, United  
21       States Code, is amended by striking out “specified in” and  
22       inserting in lieu thereof “accomplished in accordance  
23       with”.

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