



Confidentiality and Legal Implications for Alaska Review Organizations: Navigating Privacy and Compliance

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Agenda

1. How do Alaska State statutes define “review organizations”?
2. What do the statutes say about limitation on liability for committee members?
3. What information from a review meeting can and can't be disclosed?
4. What changed in 2024 with House Bills 371 and 126?
5. Frequently asked questions

What is a “review organization” according to statute?

AS 18.23.070(5) – “review organization” means

- A. A hospital governing body...that is established by a hospital...to gather and review information relating to the care and treatment of patients....
- B. The State Medical Board established by AS 08.64.010
- C. A committee established by the commissioner of health and approved by the chief medical officer in the Department of Health to review public health issues regarding morbidity or mortality
- D. A nationally recognized group or entity that accredits health care organizations, including the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)

AS 18.23.020 Limitation on liability for members of review organizations

A person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to a review organization is not liable for damages or other relief in an action brought by another whose activities have been or are being scrutinized or reviewed by a review organization, by reason of the performance of a duty, function, or activity of the review organization, unless the performance of the duty, function, or activity was motivated by malice toward the affected person. A person is not liable for damages or other relief in an action by reason of performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

AS 18.23.020 -- essentials

First part:

A person who is part of or working with a review organization is not liable for damages if someone who was being scrutinized sues them, as long as their actions with the review organization were not motivated by malice toward the affected person.

Second part:

When a person makes reasonable efforts to ascertain the facts, and then reasonably believes that an action or recommendation made by a review organization is warranted by facts known to the person, that person is not liable based on the actions or recommendations of the review organization.

Sec. 18.23.030(a). Confidentiality of records of review organization

Except as provided in (b) of this section, all data and information acquired by a review organization in the exercise of its duties and functions shall be held in confidence and may not be disclosed to anyone except to the extent necessary to carry out the purposes of the review organization and is not subject to subpoena or discovery. Except as provided in (b) of this section, a person described in AS 18.23.020 may not disclose what transpired at a meeting of a review organization except to the extent necessary to carry out the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter that is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within the person's knowledge, but a witness may not be asked about the witness's testimony before a review organization or opinions formed by the witness as a result of its hearings, except as provided in (b) of this section.

AS 18.23.030(a) – breakdown:

What happens in MCDR stays in MCDR

1. **All data and information acquired by a review organization in the exercise of its duties and functions shall be held in confidence** and may not be disclosed to anyone except to the extent necessary to carry out the purposes of the review organization and is not subject to subpoena or discovery.
2. A person who is part of or working with a review organization **may not disclose what transpired at a meeting of a review organization** except to the extent necessary to carry out the purposes of a review organization.
3. The proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter that is the subject of consideration by the review organization.
4. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within the person's knowledge, but a witness may not be asked about the witness's testimony before a review organization or opinions formed by the witness as a result of its hearings, except as provided in (b) of this section.

AS 18.23.030 was amended in 2024 by adding a new subsection (e)

(e) A review organization may publish a report containing data or information obtained in the exercise of its duties if the report does not violate federal or state law regarding confidentiality of a person or decedent. A report may include

- (1) the identification of trends, patterns, and risk factors;
- (2) an analysis of the rate and cause of death in the state; and
- (3) methods of intervention or prevention related to certain causes of death.

Sec. 18.23.040. Penalty for violation.

Other than as authorized by AS 18.23.030, a disclosure of data and information acquired by a review committee or of what transpired at a review meeting is a misdemeanor and punishable by imprisonment for not more than one year or by a fine of not more than \$500.

Confidentiality Agreement

The confidentiality agreement that committee members are asked to sign before starting their service acknowledges that the member understands these rules, and that they agree to follow certain specific rules and procedures in order to protect the confidentiality of the information that is shared and discussed in the MCDR.

Other questions...



Thank you!

Contact info?

