



January 22, 2010

SENATE BILL No. 254

DIGEST OF SB 254 (Updated January 20, 2010 12:57 pm - DI 104)

Citations Affected: IC 16-28.

Synopsis: Voluntary audits by health facilities. Provides that a voluntary health facility audit report is privileged and inadmissible as evidence in a civil or administrative action except in specified circumstances. States that a voluntary health facility audit report is admissible in a criminal proceeding.

Effective: July 1, 2010.

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January 11, 2010, read first time and referred to Committee on Health and Provider Services.
January 21, 2010, reported favorably — Do Pass.

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SB 254—LS 6794/DI 104+



January 22, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 254



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 16-28-15 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2010]:

4 **Chapter 15. Voluntary Health Facility Audit Reports**

5 **Sec. 1. This chapter applies to a health facility licensed under**
6 **IC 16-28-2.**

7 **Sec. 2. As used in this chapter, "health facility audit report"**
8 **means a voluntary internal evaluation conducted by an owner or**
9 **operator of a health facility, or an employee or independent**
10 **contractor on behalf of the owner or operator, concerning:**

- 11 (1) a health facility;
- 12 (2) an activity at a health facility that is regulated by
- 13 IC 16-28-2 or by administrative rules adopted under the
- 14 authority of IC 16-28-2; or
- 15 (3) a management system related to a health facility or an
- 16 activity at a health facility;

17 **that is designed to identify and prevent violations of laws, rules,**

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1 and regulations and improve compliance with laws.

2 Sec. 3. (a) Except as provided in subsection (b), a health facility
3 audit report is privileged and inadmissible as evidence in a civil or
4 administrative legal action, including an enforcement action under
5 IC 16-28-4 or IC 16-28-5.

6 (b) A health facility audit report is not considered privileged in
7 any of the following circumstances:

8 (1) A criminal investigation or proceeding.

9 (2) A civil or administrative hearing if the court determines
10 that the health facility audit report was first issued after
11 January 1, 2010, and either of the following applies:

12 (A) The privilege is asserted for a fraudulent purpose.

13 (B) The material is subject to the privilege, and the
14 material shows evidence of noncompliance with:

15 (i) this title or a rule adopted by the department under
16 this title; or

17 (ii) a federal law or regulation;

18 and the person claiming the privilege did not promptly
19 initiate and diligently pursue appropriate efforts to achieve
20 compliance with the law, regulation, or rule.

21 (3) An owner or operator of a health facility that prepared the
22 health facility audit report or caused the report to be
23 prepared waives the privilege of the health facility audit
24 report.

25 (c) The privilege described in this section does not apply to the
26 following:

27 (1) Documents, communications data, reports, or other
28 information that must be collected, developed, maintained,
29 reported, or otherwise made available to the state department
30 under this title, a rule or standard adopted under this title, or
31 any other federal, state, or local law, permit, or order.

32 (2) Information obtained by observation, sampling, or
33 monitoring by a regulatory agency.

34 (3) Information obtained from a source independent of the
35 health facility audit report.

36 However, the state department may not adopt an administrative
37 rule for the purpose of qualifying the information under this
38 subsection and circumventing the privilege established in this
39 chapter.

40 (d) A health facility audit report is admissible in a criminal
41 proceeding. However, if the state department or a prosecuting
42 attorney obtains, reviews, or uses a health facility audit report in

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1 a criminal proceeding, the administrative or civil privilege created
2 by this chapter is not waived or eliminated.

3 Sec. 4. (a) A party asserting the privilege described in section 3
4 of this chapter has the burden of proving:

- 5 (1) that the privilege applies; and
- 6 (2) that the party made an appropriate effort to achieve
- 7 compliance with a law, regulation, or rule if the evidence
- 8 indicates that the party was in noncompliance with a law,
- 9 regulation, or rule.

10 (b) A party seeking disclosure of material in a health facility
11 audit report under section 3(b)(2)(A) of this chapter has the burden
12 of proving that the privilege is being asserted for a fraudulent
13 purpose.

14 Sec. 5. (a) A party that submits a health facility audit report to
15 the state department waives any privilege that would otherwise be
16 available under this chapter.

17 (b) If the state department determines that a health facility
18 audit report or part of the health facility audit report may not be
19 disclosed to the public under IC 5-14-3-4(a), the health facility
20 audit report or part of the report may not be disclosed by a public
21 agency unless access to the health facility audit report is required
22 by:

- 23 (1) state law;
- 24 (2) federal law; or
- 25 (3) a court;

26 in accordance with IC 5-14-3-4(a).

27 Sec. 6. If a court determines that a health facility audit report
28 is admissible under section 3 or 4 of this chapter, the court may
29 compel disclosure of only the parts of the health facility audit
30 report that are relevant to the issues in dispute in the proceeding.

31 Sec. 7. The parties to a legal action may at any time stipulate for
32 an order to be entered in court that directs whether specific
33 information contained in a health facility audit report is subject to
34 privilege under this chapter.

35 Sec. 8. The privilege described in this chapter does not limit,
36 waive, or abrogate the scope or nature of any other statutory or
37 common law privilege, including the following:

- 38 (1) The work product doctrine.
- 39 (2) The attorney-client privilege.

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 254, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 254 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 9, Nays 0.

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