

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 84 Session of
2009

INTRODUCED BY DeLUCA, KOTIK, MANDERINO, WALKO, FRANKEL,
BELFANTI, BRENNAN, CALTAGIRONE, GIBBONS, GROVE, HARKINS,
MANN, McILVAINE SMITH, MILLER, MUNDY, READSHAW, SIPTROTH,
SOLOBAY, STABACK, VULAKOVICH, WHITE AND WANSACZ,
JANUARY 28, 2009

REFERRED TO COMMITTEE ON INSURANCE, JANUARY 28, 2009

AN ACT

1 Establishing a system for payment or reduction in payment for
2 preventable serious adverse events within this Commonwealth;
3 and providing for the powers and duties of the Department of
4 Health and the Department of State.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Preventable
9 Serious Adverse Events Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Health care facility." A health care facility as defined
15 under section 802.1 of the act of July 19, 1979 (P.L.130, No.
16 48), known as the Health Care Facilities Act, or an entity
17 licensed as a hospital under the act of June 13, 1967 (P.L.31,

1 No.21), known as the Public Welfare Code.

2 "Health care provider." A health care facility or a person,
3 including a corporation, university or other educational
4 institution, licensed or approved by the Commonwealth to provide
5 health care or professional medical services. The term shall
6 include, but not be limited to, a physician, a certified nurse
7 midwife, a podiatrist, a certified registered nurse
8 practitioner, a physician assistant, a chiropractor, a hospital,
9 an ambulatory surgery center, a nursing home or a birth center.

10 "Health payor." An individual or entity paying for health
11 services for himself or itself or on behalf of another.

12 "Medical assistance." The Commonwealth's medical assistance
13 program established under the act of June 13, 1967 (P.L.31, No.
14 21), known as the Public Welfare Code.

15 "National Quality Forum." A not-for-profit membership
16 organization created to develop and implement a national
17 strategy for health care quality measurement and reporting.

18 "Preventable serious adverse event." An event that occurs in
19 a health care facility that is within the health care provider's
20 control to avoid, but that occurs because of an error or other
21 system failure and results in a patient's death, loss of body
22 part, disfigurement, disability or loss of bodily function
23 lasting more than seven days or still present at the time of
24 discharge from a health care facility. Such events shall be
25 within the list of reportable serious events adopted by the
26 National Quality Forum.

27 Section 3. Payment policy for preventable serious adverse
28 events.

29 (a) General rule.--Health care providers may not knowingly
30 seek payment from health payors, or patients for a preventable

1 serious adverse event or services required to correct or treat
2 the problem created by such an event when such an event occurred
3 under their control.

4 (b) Refunds.--A health care provider who discovers that
5 payment has unknowingly been sought for a preventable serious
6 adverse event or services required to correct or treat the
7 problem created by such an event shall immediately notify the
8 health payor, or patient and shall refund any payment received
9 within 30 days of discovery or receipt of payment, whichever is
10 later.

11 (c) Notification.--A health care payor who discovers that
12 payment has been sought for a preventable serious adverse event
13 or services required to correct or treat a problem created by
14 such an event shall notify the health care provider that payment
15 may not be sought for such an event or services and that payment
16 shall not be made for such events or services.

17 (d) Liability.--Any information provided to any health care
18 payor or health care provider, in compliance with subsections
19 (b) and (c), shall not be discoverable or admissible in any
20 civil or administrative action related to the act of March 20,
21 2002 (P.L.154, No.13), known as the Medical Care Availability
22 and Reduction of Error (Mcare) Act.

23 Section 4. Duties of Department of Health.

24 (a) Publishing of updates.--The department shall publish in
25 the Pennsylvania Bulletin any updates to the list of reportable
26 serious adverse events adopted by the National Quality Forum
27 within 30 days of the update issued by the National Quality
28 Forum.

29 (b) Health department responsibility.--In accordance with
30 the act of July 19, 1979 (P.L.130, No.48), known as the Health

1 Care Facilities Act, the Department of Health shall be
2 responsible for investigating patient complaints regarding a
3 health care facility that is seeking payment directly from the
4 patient or health care payor for a preventable serious adverse
5 event.

6 Section 5. Duties of Department of State.

7 The Department of State shall be responsible for
8 investigating patient complaints regarding a health care
9 provider that is not a health care facility that is seeking or
10 causing to be sought payment directly from the patient or health
11 care payor for a preventable serious adverse event.

12 Section 6. Applicability.

13 (a) Hospital medical assistance payment policy.--Nothing in
14 this act shall require the Department of Public Welfare to
15 alter, amend or reissue any payment policy for inpatient
16 hospitals relating to preventable serious adverse events that
17 was promulgated prior to the enactment of this act. Any
18 modifications to the Department of Public Welfare payment policy
19 promulgated on or after the date of enactment of this act for a
20 health care provider for a preventable serious adverse event
21 shall require a 30-day public comment period.

22 (b) Contracts.--Nothing in this act shall prohibit a health
23 care provider and payor from establishing by contract any
24 policies and procedures associated with serious preventable
25 adverse events necessary to implement the provisions of this
26 act.

27 (c) Reporting.--

28 (1) Health care providers shall include all applicable
29 medical codes in making reports in compliance with the act of
30 July 8, 1986 (P.L.408, No.89), known as the Health Care Cost

1 Containment Act.

2 (2) A preventable serious adverse event shall be
3 reported pursuant to the requirements of the act of March 20,
4 2002 (P.L.154, No.13), known as the Medical Care Availability
5 and Reduction of Error (Mcare) Act.

6 (d) Medicare payment.--Nothing in this act shall be
7 construed to supersede Medicare payment policies where the
8 services provided to the patient are paid for by Medicare. If
9 Medicare denies payment based on a determination that a
10 preventable serious adverse event has occurred, nothing in this
11 act shall be construed to require medical assistance or a health
12 payor to pay a claim for the event or services.

13 Section 7. Effective date.

14 This act shall take effect in 180 days.