

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 84 Session of
2009

INTRODUCED BY DeLUCA, KOTIK, MANDERINO, WALKO, FRANKEL,
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EACHUS, MICOZZIE, HORNAMAN, SANTARSIERO, KORTZ AND MATZIE,
JANUARY 28, 2009

SENATOR CORMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, JUNE 1, 2009

AN ACT

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

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

8 Section 1. Short title.

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

11 Section 2. Definitions.

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

15 "Health care facility." A health care facility as defined
16 under section 802.1 of the act of July 19, 1979 (P.L.130, No.

48), known as the Health Care Facilities Act, or an entity
licensed as a hospital under the act of June 13, 1967 (P.L.31,
No.21), known as the Public Welfare Code.

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

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

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

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

"Preventable serious adverse event." An event that occurs in
a health care facility that is within the health care provider's
control to avoid, but that occurs because of an error or other
system failure and results in a patient's death, loss of body
part, disfigurement, disability or loss of bodily function

lasting more than seven days or still present at the time of
discharge from a health care facility. ~~Unless the events are~~
~~listed in a preventable serious adverse events bulletin issued~~
~~by the Department of Public Welfare under section 4(a) or with~~
~~respect to medical assistance hospital payments under section~~
~~7(a) and (b), such events shall be within the list of reportable~~



1 ~~serious events adopted by the National Quality Forum.~~ THE EVENTS
2 SHALL BE INCLUDED ON THE LIST OF REPORTABLE SERIOUS ADVERSE
3 EVENTS ADOPTED BY THE NATIONAL QUALITY FORUM OR IN A BULLETIN AS
4 PROVIDED UNDER THIS ACT.

5 "Principal." A principal shall mean a nursing facility or
6 trade association representing nursing facilities.

7 Section 3. Payment policy for preventable serious adverse
8 events.

9 (a) General rule.--A health care provider may not knowingly
10 seek payment from a health payor or patient:

11 (1) for a preventable serious adverse event; or

12 (2) for any services required to correct or treat the
13 problem created by a preventable serious adverse event when
14 that event occurred under their control.

15 (b) Refunds.--A health care provider who discovers that
16 payment has unknowingly been sought for a preventable serious
17 adverse event or services required to correct or treat the
18 problem created by such an event shall immediately notify the
19 health payor, or patient and shall refund any payment received
20 within 30 days of discovery or receipt of payment, whichever is
21 later.

22 (c) Notification.--A health ~~care~~ payor who discovers that
23 payment has been sought for a preventable serious adverse event
24 or services required to correct or treat a problem created by
25 such an event shall notify the health care provider that payment
26 may not be sought for such an event or services and that payment
27 shall not be made for such events or services.

28 (d) Liability.--Any information provided to any health ~~care~~
29 payor or health care provider, in compliance with subsections
30 (b) and (c), shall not be discoverable or admissible in any

civil or administrative action related to the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

(E) APPLICABILITY.--THE PROVISIONS OF THIS SECTION SHALL APPLY TO A NURSING FACILITY UPON PUBLICATION OF THE PREVENTABLE SERIOUS ADVERSE EVENTS BULLETIN FOR NURSING FACILITIES UNDER SECTION 4(D).

Section 4. Nursing facility preventable serious adverse events bulletin.

(a) Nursing facility bulletin.--The Department of Public Welfare shall issue a preventable serious adverse events bulletin for nursing facilities. For a nursing facility, preventable serious adverse events shall be those listed in a bulletin developed by the department under this section.

(b) Consulting principals.--Prior to issuance of a bulletin, the Department of Public Welfare shall consult with principals concerning the development of a preventable serious adverse events bulletin for nursing facilities.

(c) Open meetings.--Meetings held under subsection (b) shall be open to the public.

(d) Publication.--The Department of Public Welfare shall publish the proposed preventable serious adverse events bulletin in the Pennsylvania Bulletin and solicit public comments for a minimum of 30 days. After consideration of the comments it receives, the Department of Public Welfare may proceed to adopt the final preventable serious adverse events bulletin by publication in the Pennsylvania Bulletin. The Department of Public Welfare shall include its responses to the public comments that it received concerning the proposed bulletin.

(e) Department notice.--The Department of Public Welfare

1 shall notify the Department of Health of the final preventable
2 serious adverse events bulletin published under this section.

3 Section 5. Duties of Department of Health.

4 (a) Publishing of updates.--The Department of Health shall
5 publish in the Pennsylvania Bulletin:

6 (1) Any updates to the list of reportable serious
7 adverse events adopted by the National Quality Forum within
8 30 days of the update issued by the National Quality Forum.

9 (2) A citation to the preventable serious adverse events
10 the bulletin published under section 4.

11 (b) Health department responsibility.--In accordance with
12 the act of July 19, 1979 (P.L.130, No.48), known as the Health
13 Care Facilities Act, the Department of Health shall be
14 responsible for investigating patient or health payor complaints
15 regarding a health care facility that is seeking payment
16 directly from the patient or health ~~care~~ payor for a preventable ←
17 serious adverse event.

18 Section 6. Duties of Department of State.

19 The Department of State shall be responsible for
20 investigating patient OR HEALTH PAYOR complaints regarding a ←
21 health care provider that is not a health care facility that is
22 seeking or causing to be sought payment directly from the
23 patient or health ~~care~~ payor for a preventable serious adverse ←
24 event.

25 Section 7. Applicability.

26 (a) Hospital preventable serious adverse events bulletin.--
27 Nothing in this act shall require the Department of Public
28 Welfare to alter, amend, revise or reissue any preventable
29 serious adverse events bulletin relating to inpatient hospitals
30 issued prior to the effective date of this ~~act~~ SECTION. ←

1 (B) DEPARTMENT INITIATION.--NOTHING IN THIS ACT SHALL
2 PREVENT THE DEPARTMENT OF PUBLIC WELFARE FROM DEVELOPING,
3 REVISING OR AMENDING A PREVENTABLE SERIOUS ADVERSE EVENTS
4 BULLETIN UPON CONSULTATION WITH HEALTH CARE PROVIDERS.

5 ~~(b)~~(C) Comment period.--Any modifications to the Department
6 of Public Welfare preventable serious adverse events bulletins
7 issued after the effective date of this ~~act~~SECTION for a health
8 care provider for a preventable serious adverse event shall
9 require a 30-day public comment period.

10 ~~(e)~~(D) Contracts.--Nothing in this act shall prohibit a
11 health care provider and payor from establishing by contract any
12 policies and procedures associated with serious preventable
13 adverse events necessary to implement the provisions of this
14 act.

15 ~~(d)~~(E) Reporting.--

16 (1) Except for health care providers under section 4,
17 health care providers shall include all applicable medical
18 codes in making reports to the Health Care Cost Containment
19 Council.

20 (2) A preventable serious adverse event shall be
21 reported pursuant to the requirements of the act of March 20,
22 2002 (P.L.154, No.13), known as the Medical Care Availability
23 and Reduction of Error (Mcare) Act.

24 ~~(e)~~(F) Medicare payment.--Nothing in this act shall be
25 construed to supersede Medicare payment policies where the
26 services provided to the patient are paid for by Medicare. If
27 Medicare denies payment based on a determination that a
28 preventable serious adverse event has occurred, nothing in this
29 act shall be construed to require medical assistance, any other
30 department responsible for payment of a medical claim or a

1 health payor to pay a claim for the event or services.

2 ~~(f) Department initiation. Nothing in this act may prevent~~ ←
3 ~~the Department of Public Welfare from developing, revising or~~
4 ~~amending a preventable serious adverse events bulletin in~~
5 ~~consultation with health care providers.~~

6 (G) MEDICAL ASSISTANCE.--THE BULLETIN ISSUED BY THE ←
7 DEPARTMENT OF PUBLIC WELFARE SHALL APPLY TO PREVENTABLE SERIOUS
8 ADVERSE EVENTS FOR THE MEDICAL ASSISTANCE PROGRAM.

9 ~~(g)~~ (H) Consultation by Department of Public Welfare.-- ←
10 Nothing in this act may prevent the Department of Public Welfare
11 from consulting with any other agency or department that is
12 responsible for payment of medical claims submitted for payment
13 by a health care provider.

14 Section 8. Effective date.

15 This act shall take effect as follows:

16 (1) Section 44(D) shall take effect in one year. ←

17 (2) The remainder of this act shall take effect in 60
18 days.