THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

313

Session of 2009

INTRODUCED BY BROWNE, ORIE, BOSCOLA, O'PAKE, COSTA, EARLL, M. WHITE AND TARTAGLIONE, MARCH 5, 2009

REFERRED TO PUBLIC HEALTH AND WELFARE, MARCH 5, 2009

AN ACT

- Amending the act of March 20, 2002 (P.L.154, No.13), entitled "An act reforming the law on medical professional liability; 2 providing for patient safety and reporting; establishing the 3 Patient Safety Authority and the Patient Safety Trust Fund; 4 abrogating regulations; providing for medical professional 5 liability informed consent, damages, expert qualifications, limitations of actions and medical records; establishing the 7 Interbranch Commission on Venue; providing for medical 8 professional liability insurance; establishing the Medical 9 Care Availability and Reduction of Error Fund; providing for 10 medical professional liability claims; establishing the Joint 11 Underwriting Association; regulating medical professional 12 liability insurance; providing for medical licensure 13 regulation; providing for administration; imposing penalties; 14 and making repeals," further providing for declaration of 15 16 policy, for patient safety definitions, for powers and duties 17 of the Patient Safety Authority and for powers and duties of the Department of Health; and providing for whistleblower 18 19 protection. The General Assembly of the Commonwealth of Pennsylvania
- 20
- 21 hereby enacts as follows:
- 22 Section 1. Section 102 of the act of March 20, 2002
- (P.L.154, No.13), known as the Medical Care Availability and 23
- Reduction of Error (Mcare) Act, is amended to read:
- 25 Section 102. Declaration of policy.
- 26 The General Assembly finds and declares as follows:

- 1 (1) It is the purpose of this act to ensure that medical 2 care is available in this Commonwealth through a
- 3 comprehensive and high-quality health care system.
- 4 (2) Access to a full spectrum of hospital services and 5 to highly trained physicians in all specialties must be 6 available across this Commonwealth.
- 7 (3) To maintain this system, medical professional
 8 liability insurance has to be obtainable at an affordable and
 9 reasonable cost in every geographic region of this
 10 Commonwealth.
- 11 (4) A person who has sustained injury or death as a

 12 result of medical negligence by a health care provider must

 13 be afforded a prompt determination and fair compensation.
- 14 (5) Every effort must be made to reduce and eliminate 15 medical errors by identifying problems and implementing 16 solutions that promote patient safety.
- 17 (6) Recognition and furtherance of all of these elements 18 is essential to the public health, safety and welfare of all 19 the citizens of Pennsylvania.
- 20 <u>(7) It is the purpose of this act to enhance patient</u>
 21 <u>safety by establishing meaningful whistleblower protection</u>
- 22 <u>and a reporting system for medical errors which is responsive</u>
- 23 to legitimate concerns.
- Section 2. Section 302 of the act is amended by adding
- 25 definitions to read:
- 26 Section 302. Definitions.
- 27 The following words and phrases when used in this chapter
- 28 shall have the meanings given to them in this section unless the
- 29 context clearly indicates otherwise:
- 30 * * *

- 1 "Disciplinary action." An action against an individual which
- 2 has a negative impact on the individual in relation to salary or
- 3 terms of employment or professional affiliation. The term
- 4 <u>includes discharge and loss or alteration of privileges of</u>
- 5 affiliation.
- 6 * * *
- 7 "Health care facility." A facility licensed under the act of
- 8 <u>July 19, 1979 (P.L.130, No.48), known as the Health Care</u>
- 9 Facilities Act.
- 10 "Health care practitioner." An individual who is authorized
- 11 to practice some component of the healing arts by a license,
- 12 permit, certificate or registration, issued by a Commonwealth
- 13 <u>licensing agency.</u>
- 14 * * *
- 15 Section 3. Section 304(a) and (b) of the act are amended to
- 16 read:
- 17 Section 304. Powers and duties.
- 18 (a) General rule. -- The authority shall do all of the
- 19 following:
- 20 (1) Adopt bylaws necessary to carry out the provisions
- of this chapter.
- 22 (2) Employ staff as necessary to implement this chapter.
- 23 (3) Make, execute and deliver contracts and other
- 24 instruments.
- 25 (4) Apply for, solicit, receive, establish priorities
- for, allocate, disburse, contract for, administer and spend
- funds in the fund and other funds that are made available to
- the authority from any source consistent with the purposes of
- this chapter.
- 30 (5) Contract with a for-profit or registered nonprofit

- entity or entities, other than a health care provider, to do the following:
 - (i) Collect, analyze and evaluate data regarding reports of serious events and incidents, including the identification of performance indicators and patterns in frequency or severity at certain medical facilities or in certain regions of this Commonwealth.
 - (ii) Transmit to the authority recommendations for changes in health care practices and procedures which may be instituted for the purpose of reducing the number and severity of serious events and incidents.
 - (iii) Directly advise reporting medical facilities of immediate changes that can be instituted to reduce serious events and incidents.
 - (iv) Conduct reviews in accordance with subsection(b).
 - (6) Receive and evaluate recommendations made by the entity or entities contracted with in accordance with paragraph (5) and [report] advise the department of those recommendations [to the department, which shall have no more than 30 days to approve or disapprove the recommendations].
- 22 [After consultation and approval by the department, (7) issue] Issue recommendations to medical facilities on a 23 24 facility-specific or on a Statewide basis regarding changes, 25 trends and improvements in health care practices and 26 procedures for the purpose of reducing the number and 27 severity of serious events and incidents. Prior to issuing 28 recommendations, consideration shall be given to the 29 following factors that include expectation of improved 30 quality care, implementation feasibility, other relevant

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- 1 implementation practices and the cost impact to patients,
- 2 payors and medical facilities. Statewide recommendations
- 3 shall be issued to medical facilities on a continuing basis
- 4 and shall be published and posted on the department's
- 5 <u>publicly accessible Internet website</u> and the authority's
- 6 publicly accessible [World Wide Web site] <u>Internet website</u>.
- 7 (8) Meet with the department for purposes of
- 8 implementing this chapter.
- 9 (b) [Anonymous reports] Reports to the authority.--A health
- 10 care worker who has complied with section 308(a) may file an
- 11 anonymous report regarding a serious event with the authority.
- 12 Upon receipt of the report, the authority shall give notice to
- 13 the affected medical facility that a report has been filed. The
- 14 authority shall conduct its own review of the report unless the
- 15 medical facility has already commenced an investigation of the
- 16 serious event. The medical facility shall provide the authority
- 17 with the results of its investigation no later than 30 days
- 18 after receiving notice pursuant to this subsection. If the
- 19 authority is dissatisfied with the adequacy of the investigation
- 20 conducted by the medical facility, the authority shall perform
- 21 its own review of the serious event and may refer a medical
- 22 facility and any involved licensee to the department for failure
- 23 to report pursuant to section 313(e) and (f).
- 24 * * *
- Section 4. Section 306 of the act, amended May 1, 2006
- 26 (P.L.103, No.30), is amended to read:
- 27 Section 306. Department responsibilities.
- 28 (a) General rule. -- The department shall do all of the
- 29 following:
- 30 (1) Review and approve patient safety plans in

- 1 accordance with section 307.
- 2 (2) Receive reports of serious events and infrastructure 3 failures under section 313.
- 4 (3) Investigate serious events and infrastructure failures.
- 6 (4) In conjunction with the authority, analyze and
 7 evaluate existing health care procedures and approve
 8 recommendations issued by the authority pursuant to section
 9 304(a)(6) and (7).
- 10 (5) Meet with the authority for purposes of implementing 11 this chapter.

(6) Do all of the following:

- (i) Within ten business days, investigate the 13 14 complaint. In order to carry out the investigation under 15 this subparagraph, the department shall consult with one, and, if the department deems necessary, a second, 16 17 independent, external quality review team to examine the 18 team's recommendations and findings. A team under this 19 subparagraph shall consider the appropriate use of 20 patient care standards in the situation under 21 investigation and make recommendations based upon its 22 findings. The following apply to a team consulted under 23 this subparagraph:
- 24 (A) The team shall consist of at least all of the following:
- 26 (I) A registered nurse who holds a license

 27 under the act of May 22, 1951 (P.L.317, No.69),

 28 known as The Professional Nursing Law; is engaged

 29 in active practice for at least 20 hours per

 30 week; and holds a specialty-specific

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1	certification from the American Nurses
2	Credentialing Center.
3	(II) A physician or an osteopath who is
4	engaged in active practice for at least 20 hours
5	per week and who is board-certified in a
6	specialty which is recognized by the American
7	Board of Medical Specialties or the American
8	Osteopathic Association and which is specific to
9	the situation under investigation.
10	(III) A pharmacist who is engaged in active
11	practice for at least 20 hours per week and who
12	is board-certified as a clinical pharmacist.
13	(B) A member of the team may not:
14	(I) be an employee or a contractor of the
15	health care facility or the health care
16	practitioner under investigation;
17	(II) be a past or current colleague of the
18	health care practitioner under investigation;
19	(III) have a past or current financial or
20	practice relationship with the health care
21	practitioner under review, that practitioner's
22	group, that practitioner's employer or that
23	practitioner's privilege-granting health care
24	<pre>facility;</pre>
25	(IV) have a past or current financial or
26	practice relationship with the health care
27	facility under investigation; or
28	(V) reside within 75 miles of the health
29	care facility under investigation.
30	(ii) If warranted by the investigation:

Τ	(A) Seek sanctions under paragraph (/).
2	(B) Recommend sanctions or other action to the
3	appropriate licensing board under Chapter 9. A
4	licensing board or agency which receives a
5	recommendation under this clause shall report to the
6	authority concerning its action every 30 days until
7	the matter is finally disposed of. A report under
8	this clause shall be available to each director of
9	the board upon request.
10	(C) Recommend sanctions or other action to any
11	other appropriate Commonwealth agency.
12	(iii) Maintain the confidentiality of all
13	information resulting from the complaint and the
14	investigation until sanctions are sought under paragraph
15	(7) or until section 316(d) is invoked by a health care
16	<pre>practitioner.</pre>
17	(7) Impose an administrative penalty of up to \$5,000
18	upon a health care facility for an act or omission which
19	impairs patient safety or the quality of patient care or, at
20	the department's discretion, take other remedial actions as
21	authorized by law. This paragraph is subject to 2 Pa.C.S.
22	Chs. 5 Subch. A (relating to practice and procedure of
23	Commonwealth agencies) and 7 Subch. A (relating to judicial
24	review of Commonwealth agency action).
25	(b) Department consideration The recommendations made to
26	medical facilities pursuant to subsection (a)(4) may be
27	considered by the department for licensure purposes under the
28	act of July 19, 1979 (P.L.130, No.48), known as the Health Care
29	Facilities Act, and, in the case of abortion facilities, for
30	approval or revocation purposes pursuant to 28 Pa. Code § 29.43

- 1 (relating to facility approval), but shall not be considered
- 2 mandatory unless adopted by the department as regulations
- 3 pursuant to the act of June 25, 1982 (P.L.633, No.181), known as
- 4 the Regulatory Review Act.
- 5 Section 5. The act is amended by adding a section to read:
- 6 <u>Section 316. Whistleblower protection.</u>
- 7 (a) Applicability. -- This section applies to a health care
- 8 practitioner who does any of the following:
- 9 <u>(1) Files a complaint under section 304(b).</u>
- 10 (2) Makes a report to an agency which has jurisdiction
- 11 <u>over patient safety, health care or the quality of patient</u>
- 12 <u>care provided by any health care facility or health care</u>
- 13 <u>professional.</u>
- 14 (3) Makes a report to a health care facility on patient
- 15 <u>safety or the quality of patient care provided by the health</u>
- 16 <u>care facility. This paragraph includes a report to any</u>
- 17 employer, supervisor, coworker or other person with
- 18 privileges.
- 19 (b) Prohibition. -- A health care facility that employs or
- 20 grants conditional or unconditional privileges to a health care
- 21 practitioner may not take disciplinary action against the health
- 22 care practitioner in retaliation for filing a complaint in good
- 23 faith or making a report in good faith under subsection (a).
- 24 (c) Immunity. -- A health care practitioner who in good faith
- 25 files a complaint or makes a report under subsection (a) shall
- 26 be immune from civil liability arising from filing the complaint
- 27 <u>or making the report.</u>
- 28 (d) Remedy.--
- 29 <u>(1) A health care practitioner who is aggrieved by a</u>
- 30 violation of subsection (b) may recover damages proximately

- 1 <u>caused by the violation, including pain and suffering, cost</u>
- 2 of the litigation, and attorney fees.
- 3 (2) Notwithstanding any other provision of law, in an
- 4 <u>action under this section, all patient records relating to</u>
- 5 <u>the complaint under this section, including peer review</u>
- 6 documents, shall be available to the court and each party for
- 7 <u>possible use as documentary evidence.</u>
- 8 (e) Deterring complaints and reports. -- Any provision of a
- 9 <u>contract or a professional affiliation arrangement, including a</u>
- 10 document granting privileges, entered into with a health care
- 11 practitioner which limits the health care practitioner's ability
- 12 to file a complaint or make a report under subsection (a) or
- 13 which contains any threat, implicit or otherwise, or contains
- 14 any penalty for filing a complaint or making a report under
- 15 subsection (a) is against public policy and shall be void.
- (f) Notification to health care practitioners. -- Within 12
- 17 months of the effective date of this section, every Commonwealth
- 18 <u>licensing agency that licenses</u>, permits, certifies or registers
- 19 health care practitioners within this Commonwealth shall notify
- 20 the health care practitioners of the Statewide confidential,
- 21 toll-free telephone line and the whistleblower protection
- 22 provided through this act through already scheduled newsletters,
- 23 annual notices and other mailings.
- 24 Section 6. This act shall take effect in 90 days.