

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 443 Session of  
2009INTRODUCED BY D. WHITE, PILEGGI, ALLOWAY, ERICKSON, ORIE, STACK  
AND PIPPY, FEBRUARY 24, 2009SENATOR D. WHITE, BANKING AND INSURANCE, AS AMENDED, MARCH 10,  
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 ESTABLISHING A SYSTEM FOR PAYMENT OR REDUCTION IN PAYMENT FOR ←  
6 PREVENTABLE SERIOUS ADVERSE EVENTS WITHIN THIS COMMONWEALTH;  
7 AND PROVIDING FOR THE POWERS AND DUTIES OF THE DEPARTMENT OF  
8 HEALTH AND THE DEPARTMENT OF STATE.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 ~~Section 1. Short title.~~ ←

12 ~~This act shall be known and may be cited as the Preventable~~  
13 ~~Serious Adverse Events Act.~~

14 ~~Section 2. Definitions.~~

15 ~~The following words and phrases when used in this act shall~~  
16 ~~have the meanings given to them in this section unless the~~  
17 ~~context clearly indicates otherwise:~~

18 ~~"Health care facility." A health care facility as defined~~  
19 ~~under section 802.1 of the act of July 19, 1979 (P.L.130, No.~~  
20 ~~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 as 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 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 is within the health care facility's control to avoid, but that occurs because of an error or 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 is still present at the time of discharge from a health care facility. Such events shall be within the list of reportable serious events adopted by the National Quality Forum.~~

~~Section 3. Payment policy for preventable serious adverse events.~~

~~(a) General rule. Health care providers may not knowingly seek payment from health payors, patients or the responsible~~

~~party of the patient for a preventable serious adverse event or services required to correct or treat the problem created by an event when the event occurred under their care or control.~~

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

~~(c) Liability. A health care provider, in compliance with this subsection, shall not constitute an acknowledgment or admission of liability.~~

#### ~~Section 4. Duties of Department of Health.~~

~~In accordance with the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, the Department of Health shall be responsible for investigating patient complaints regarding a health care facility that is seeking payment from the patient for a preventable serious adverse event.~~

#### ~~Section 5. Duties of Department of State.~~

~~The Department of State shall be responsible for investigating patient complaints regarding a health care provider that is not a health care facility that is seeking or causing to be sought payment from the patient or responsible party of the patient for a preventable serious adverse event.~~

#### ~~Section 6. Applicability.~~

~~(a) Hospital medical assistance payment policy. Nothing in this act shall require the Department of Public Welfare to alter, amend or reissue any payment policy for inpatient hospitals relating to preventable serious adverse events that~~

~~was promulgated prior to the enactment of this act. Any  
modifications of the Department of Public Welfare payment policy  
issued after enactment of this act shall require a 60 day public  
comment period.~~

~~(b) Contracts. Nothing in this act shall prohibit a health  
care provider and payor from establishing by contract a payment  
policy associated with serious preventable adverse events,  
including policies related to payment reductions or medical  
review of any events on the National Quality Forum serious  
reportable event list.~~

~~(c) Reporting. Health care providers shall include all  
applicable medical codes in making reports in compliance with  
the act of July 8, 1986 (P.L.408, No.89), known as the Health  
Care Cost Containment Act.~~

~~Section 7. Effective date.~~

~~This act shall take effect in 180 days.~~

#### SECTION 1. SHORT TITLE.

THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE PREVENTABLE  
SERIOUS ADVERSE EVENTS ACT.

#### SECTION 2. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL  
HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
CONTEXT CLEARLY INDICATES OTHERWISE:

"HEALTH CARE FACILITY." A HEALTH CARE FACILITY AS DEFINED  
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



1 INSTITUTION, LICENSED OR APPROVED BY THE COMMONWEALTH TO PROVIDE  
2 HEALTH CARE OR PROFESSIONAL MEDICAL SERVICES. THE TERM SHALL  
3 INCLUDE, BUT NOT BE LIMITED TO, A PHYSICIAN, A CERTIFIED NURSE  
4 MIDWIFE, A PODIATRIST, A CERTIFIED REGISTERED NURSE  
5 PRACTITIONER, A PHYSICIAN ASSISTANT, A CHIROPRACTOR, A HOSPITAL,  
6 AN AMBULATORY SURGERY CENTER, A NURSING HOME OR A BIRTH CENTER.

7 "HEALTH PAYOR." AN INDIVIDUAL OR ENTITY PAYING FOR HEALTH  
8 SERVICES FOR HIMSELF OR ITSELF OR ON BEHALF OF ANOTHER.

9 "MEDICAL ASSISTANCE." THE COMMONWEALTH'S MEDICAL ASSISTANCE  
10 PROGRAM ESTABLISHED UNDER THE ACT OF JUNE 13, 1967 (P.L.31,  
11 NO.21), KNOWN AS THE PUBLIC WELFARE CODE.

12 "NATIONAL QUALITY FORUM." A NOT-FOR-PROFIT MEMBERSHIP  
13 ORGANIZATION CREATED TO DEVELOP AND IMPLEMENT A NATIONAL  
14 STRATEGY FOR HEALTH CARE QUALITY MEASUREMENT AND REPORTING.

15 "PREVENTABLE SERIOUS ADVERSE EVENT." AN EVENT THAT OCCURS IN  
16 A HEALTH CARE FACILITY THAT IS WITHIN THE HEALTH CARE PROVIDER'S  
17 CONTROL TO AVOID, BUT THAT OCCURS BECAUSE OF AN ERROR OR OTHER  
18 SYSTEM FAILURE AND RESULTS IN A PATIENT'S DEATH, LOSS OF BODY  
19 PART, DISFIGUREMENT, DISABILITY OR LOSS OF BODILY FUNCTION  
20 LASTING MORE THAN SEVEN DAYS OR STILL PRESENT AT THE TIME OF  
21 DISCHARGE FROM A HEALTH CARE FACILITY. SUCH EVENTS SHALL BE  
22 WITHIN THE LIST OF REPORTABLE SERIOUS EVENTS ADOPTED BY THE  
23 NATIONAL QUALITY FORUM.

24 SECTION 3. PAYMENT POLICY FOR PREVENTABLE SERIOUS ADVERSE  
25 EVENTS.

26 (A) GENERAL RULE.--HEALTH CARE PROVIDERS MAY NOT KNOWINGLY  
27 SEEK PAYMENT FROM HEALTH PAYORS, OR PATIENTS FOR A PREVENTABLE  
28 SERIOUS ADVERSE EVENT OR SERVICES REQUIRED TO CORRECT OR TREAT  
29 THE PROBLEM CREATED BY SUCH AN EVENT WHEN SUCH AN EVENT OCCURRED  
30 UNDER THEIR CONTROL.

1 (B) REFUNDS.--A HEALTH CARE PROVIDER WHO DISCOVERS THAT  
2 PAYMENT HAS UNKNOWINGLY BEEN SOUGHT FOR A PREVENTABLE SERIOUS  
3 ADVERSE EVENT OR SERVICES REQUIRED TO CORRECT OR TREAT THE  
4 PROBLEM CREATED BY SUCH AN EVENT SHALL IMMEDIATELY NOTIFY THE  
5 HEALTH PAYOR, OR PATIENT AND SHALL REFUND ANY PAYMENT RECEIVED  
6 WITHIN 30 DAYS OF DISCOVERY OR RECEIPT OF PAYMENT, WHICHEVER IS  
7 LATER.

8 (C) NOTIFICATION.--A HEALTH CARE PAYOR WHO DISCOVERS THAT  
9 PAYMENT HAS BEEN SOUGHT FOR A PREVENTABLE SERIOUS ADVERSE EVENT  
10 OR SERVICES REQUIRED TO CORRECT OR TREAT A PROBLEM CREATED BY  
11 SUCH AN EVENT SHALL NOTIFY THE HEALTH CARE PROVIDER THAT PAYMENT  
12 MAY NOT BE SOUGHT FOR SUCH AN EVENT OR SERVICES AND THAT PAYMENT  
13 SHALL NOT BE MADE FOR SUCH EVENTS OR SERVICES.

14 (D) LIABILITY.--ANY INFORMATION PROVIDED TO ANY HEALTH CARE  
15 PAYOR OR HEALTH CARE PROVIDER, IN COMPLIANCE WITH SUBSECTIONS  
16 (B) AND (C), SHALL NOT BE DISCOVERABLE OR ADMISSIBLE IN ANY  
17 CIVIL OR ADMINISTRATIVE ACTION RELATED TO THE ACT OF MARCH 20,  
18 2002 (P.L.154, NO.13), KNOWN AS THE MEDICAL CARE AVAILABILITY  
19 AND REDUCTION OF ERROR (MCARE) ACT.

20 SECTION 4. DUTIES OF DEPARTMENT OF HEALTH.

21 (A) PUBLISHING OF UPDATES.--THE DEPARTMENT SHALL PUBLISH IN  
22 THE PENNSYLVANIA BULLETIN ANY UPDATES TO THE LIST OF REPORTABLE  
23 SERIOUS ADVERSE EVENTS ADOPTED BY THE NATIONAL QUALITY FORUM  
24 WITHIN 30 DAYS OF THE UPDATE ISSUED BY THE NATIONAL QUALITY  
25 FORUM.

26 (B) HEALTH DEPARTMENT RESPONSIBILITY.--IN ACCORDANCE WITH  
27 THE ACT OF JULY 19, 1979 (P.L.130, NO.48), KNOWN AS THE HEALTH  
28 CARE FACILITIES ACT, THE DEPARTMENT OF HEALTH SHALL BE  
29 RESPONSIBLE FOR INVESTIGATING PATIENT COMPLAINTS REGARDING A  
30 HEALTH CARE FACILITY THAT IS SEEKING PAYMENT DIRECTLY FROM THE

1 PATIENT OR HEALTH CARE PAYOR FOR A PREVENTABLE SERIOUS ADVERSE  
2 EVENT.

3 SECTION 5. DUTIES OF DEPARTMENT OF STATE.

4 THE DEPARTMENT OF STATE SHALL BE RESPONSIBLE FOR  
5 INVESTIGATING PATIENT COMPLAINTS REGARDING A HEALTH CARE  
6 PROVIDER THAT IS NOT A HEALTH CARE FACILITY THAT IS SEEKING OR  
7 CAUSING TO BE SOUGHT PAYMENT DIRECTLY FROM THE PATIENT OR HEALTH  
8 CARE PAYOR FOR A PREVENTABLE SERIOUS ADVERSE EVENT.

9 SECTION 6. APPLICABILITY.

10 (A) HOSPITAL MEDICAL ASSISTANCE PAYMENT POLICY.--NOTHING IN  
11 THIS ACT SHALL REQUIRE THE DEPARTMENT OF PUBLIC WELFARE TO  
12 ALTER, AMEND OR REISSUE ANY PAYMENT POLICY FOR INPATIENT  
13 HOSPITALS RELATING TO PREVENTABLE SERIOUS ADVERSE EVENTS THAT  
14 WAS PROMULGATED PRIOR TO THE ENACTMENT OF THIS ACT. ANY  
15 MODIFICATIONS TO THE DEPARTMENT OF PUBLIC WELFARE PAYMENT POLICY  
16 PROMULGATED ON OR AFTER THE DATE OF ENACTMENT OF THIS ACT FOR A  
17 HEALTH CARE PROVIDER FOR A PREVENTABLE SERIOUS ADVERSE EVENT  
18 SHALL REQUIRE A 30-DAY PUBLIC COMMENT PERIOD.

19 (B) CONTRACTS.--NOTHING IN THIS ACT SHALL PROHIBIT A HEALTH  
20 CARE PROVIDER AND PAYOR FROM ESTABLISHING BY CONTRACT ANY  
21 POLICIES AND PROCEDURES ASSOCIATED WITH SERIOUS PREVENTABLE  
22 ADVERSE EVENTS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS  
23 ACT.

24 (C) REPORTING.--

25 (1) HEALTH CARE PROVIDERS SHALL INCLUDE ALL APPLICABLE  
26 MEDICAL CODES IN MAKING REPORTS IN COMPLIANCE WITH THE ACT OF  
27 JULY 8, 1986 (P.L.408, NO.89), KNOWN AS THE HEALTH CARE COST  
28 CONTAINMENT ACT.

29 (2) A PREVENTABLE SERIOUS ADVERSE EVENT SHALL BE  
30 REPORTED PURSUANT TO THE REQUIREMENTS OF THE ACT OF MARCH 20,

2002 (P.L.154, NO.13), KNOWN AS THE MEDICAL CARE AVAILABILITY  
AND REDUCTION OF ERROR (MCARE) ACT.

(D) MEDICARE PAYMENT.--NOTHING IN THIS ACT SHALL BE  
CONSTRUED TO SUPERSEDE MEDICARE PAYMENT POLICIES WHERE THE  
SERVICES PROVIDED TO THE PATIENT ARE PAID FOR BY MEDICARE. IF  
MEDICARE DENIES PAYMENT BASED ON A DETERMINATION THAT A  
PREVENTABLE SERIOUS ADVERSE EVENT HAS OCCURRED, NOTHING IN THIS  
ACT SHALL BE CONSTRUED TO REQUIRE MEDICAL ASSISTANCE OR A HEALTH  
PAYOR TO PAY A CLAIM FOR THE EVENT OR SERVICES.

SECTION 7. EFFECTIVE DATE.

THIS ACT SHALL TAKE EFFECT IN 180 DAYS.