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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2098 Session of  
2007

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INTRODUCED BY DeLUCA, BELFANTI, FRANKEL, HALUSKA, KOTIK, MOYER,  
SIPTROTH, WALKO, J. WHITE, WOJNAROSKI, PETRONE, YOUNGBLOOD,  
GIBBONS AND CALTAGIRONE, DECEMBER 6, 2007

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SENATOR ARMSTRONG, APPROPRIATIONS, IN SENATE, RE-REPORTED AS  
AMENDED, OCTOBER 6, 2008

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AN ACT

1 ~~Establishing a system for payment or reduction in payment for~~ <—  
2 ~~preventable serious adverse events within Commonwealth~~  
3 ~~programs; informing health insurers of payment policies used~~  
4 ~~by Medicaid and Medicare; and providing for the powers and~~  
5 ~~duties of the Department of Public Welfare, the Insurance~~  
6 ~~Department, the Department of Health and the Department of~~  
7 ~~State.~~

8 ESTABLISHING A SYSTEM FOR PAYMENT OR REDUCTION IN PAYMENT FOR <—  
9 PREVENTABLE SERIOUS ADVERSE EVENTS WITHIN THIS COMMONWEALTH;  
10 AND PROVIDING FOR THE POWERS AND DUTIES OF THE DEPARTMENT OF  
11 HEALTH AND THE DEPARTMENT OF STATE.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

14 ~~Section 1. Short title.~~ <—

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

17 ~~Section 2. Definitions.~~

18 ~~The following words and phrases when used in this act shall~~  
19 ~~have the meanings given to them in this section unless the~~  
20 ~~context clearly indicates otherwise.~~

1 ~~"Centers for Medicare and Medicaid Services" or "CMS."—The~~  
2 ~~Centers for Medicare and Medicaid Services within the United~~  
3 ~~States Department of Health and Human Services.~~

4 ~~"Department."—The Insurance Department of the Commonwealth.~~

5 ~~"Facility."—A health care facility as defined in section~~  
6 ~~802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the~~  
7 ~~Health Care Facilities Act, or an entity licensed as a hospital~~  
8 ~~under the act of June 13, 1967 (P.L.31, No.21), known as the~~  
9 ~~Public Welfare Code.~~

10 ~~"Health care provider."—A health care facility or a person,~~  
11 ~~including a corporation, university or other educational~~  
12 ~~institution licensed or approved by the Commonwealth to provide~~  
13 ~~health care or professional medical services as a physician, a~~  
14 ~~certified nurse midwife, a podiatrist, a certified registered~~  
15 ~~nurse practitioner, a physician assistant, a chiropractor, a~~  
16 ~~hospital, an ambulatory surgery center, a nursing home and a~~  
17 ~~birth center.~~

18 ~~"Health payor."—An individual or entity providing a group~~  
19 ~~health, sickness or accident policy, subscriber contract or~~  
20 ~~program issued or provided by an entity, including any one of~~  
21 ~~the following:~~

22 ~~(1) The act of June 2, 1915 (P.L.736, No.338), known as~~  
23 ~~the Workers' Compensation Act.~~

24 ~~(2) The act of May 17, 1921 (P.L.682, No.284), known as~~  
25 ~~The Insurance Company Law of 1921.~~

26 ~~(3) The act of December 29, 1972 (P.L.1701, No.364),~~  
27 ~~known as the Health Maintenance Organization Act.~~

28 ~~(4) The act of May 18, 1976 (P.L.123, No.54), known as~~  
29 ~~the Individual Accident and Sickness Insurance Minimum~~  
30 ~~Standards Act.~~

1           ~~(5) 40 Pa.C.S. Ch. 61 (relating to hospital plan~~  
2           ~~corporations).~~

3           ~~(6) 40 Pa.C.S. Ch. 63 (relating to professional health~~  
4           ~~services plan corporations).~~

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

8           ~~"Preventable serious adverse event." A clearly defined~~  
9           ~~condition or negative consequence of care that results in~~  
10           ~~unintended injury or illness that could have been anticipated~~  
11           ~~and prepared for, but that occurs because of an error or other~~  
12           ~~system failure and results in a patient's death, loss of a body~~  
13           ~~part, disability or loss of bodily function lasting more than~~  
14           ~~seven days.~~

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

17           ~~(a) General rule. The following criteria shall be used by~~  
18           ~~health payors in determining when payment or partial payment to~~  
19           ~~a health care provider will be withheld:~~

20           ~~(1) A preventable serious adverse event must occur.~~

21           ~~(2) The preventable serious adverse event must be within~~  
22           ~~the control of the health care provider.~~

23           ~~(3) The preventable serious adverse event must occur in~~  
24           ~~a health care facility.~~

25           ~~(b) Language addressing payment policy. Payments can only~~  
26           ~~be withheld by health payors for services related to a~~  
27           ~~preventable serious adverse event or care made necessary by the~~  
28           ~~preventable serious adverse event if the agreement or contract~~  
29           ~~between the health payor and health care provider contains~~  
30           ~~language addressing payment policy for preventable serious~~

1 ~~adverse events.~~

2 ~~(c) Restriction. Health care providers shall not seek~~  
3 ~~payment directly from patients or the responsible party of the~~  
4 ~~patient for preventable serious adverse events.~~

5 ~~Section 4. Duties of Department of Public Welfare.~~

6 ~~(a) Department responsibilities. The Department of Public~~  
7 ~~Welfare is responsible for the following:~~

8 ~~(1) Determining payment policy under medical assistance~~  
9 ~~with respect to reduced reimbursements to health care~~  
10 ~~providers for preventable serious adverse events. This~~  
11 ~~payment policy includes the criteria and clearly stated~~  
12 ~~payment policies affecting health care providers.~~

13 ~~(2) Publishing the payment policy in the Pennsylvania~~  
14 ~~Bulletin following a 30 day public comment period.~~

15 ~~(b) Ongoing reviews. Nothing in this section shall affect~~  
16 ~~ongoing reviews of medical assistance services conducted by the~~  
17 ~~Department of Public Welfare.~~

18 ~~(c) Hospital payment policy. Nothing in this section shall~~  
19 ~~require the department to alter, amend or reissue any payment~~  
20 ~~policy for inpatient hospitals relating to preventable serious~~  
21 ~~adverse events that was promulgated prior to the enactment of~~  
22 ~~this act.~~

23 ~~Section 5. Duties of Insurance Department.~~

24 ~~(a) Notice of preventable serious adverse events. The~~  
25 ~~department shall annually notify health payors of the list of~~  
26 ~~preventable serious adverse events that CMS is using under the~~  
27 ~~Medicare program and for which health payors may withhold~~  
28 ~~reimbursement under section 3.~~

29 ~~(b) Notice of CMS rule. The department shall transmit~~  
30 ~~notice of the effective date of the CMS Hospital Acquired~~

1 ~~Conditions, Including Infections, Final Rule, to the Legislative~~  
2 ~~Reference Bureau for publication in the Pennsylvania Bulletin.~~  
3 ~~Section 6. Duties of Department of Health.~~

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

10 ~~Section 7. Duties of Department of State.~~

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

16 ~~Section 19. Applicability.~~

17 ~~This act shall apply to preventable serious adverse events~~  
18 ~~that occur after the later of the following:~~

19 ~~(1) Publication of the notice under section 5(b).~~

20 ~~(2) October 1, 2008.~~

21 ~~Section 20. Effective date.~~

22 ~~This act shall take effect immediately.~~

23 SECTION 1. SHORT TITLE.

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

26 SECTION 2. DEFINITIONS.

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

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

1 UNDER SECTION 802.1 OF THE ACT OF JULY 19, 1979 (P.L.130,  
2 NO.48), KNOWN AS THE HEALTH CARE FACILITIES ACT, OR AN ENTITY  
3 LICENSED AS A HOSPITAL UNDER THE ACT OF JUNE 13, 1967 (P.L.31,  
4 NO.21), KNOWN AS THE PUBLIC WELFARE CODE.

5 "HEALTH CARE PROVIDER." A HEALTH CARE FACILITY OR A PERSON,  
6 INCLUDING A CORPORATION, UNIVERSITY OR OTHER EDUCATIONAL  
7 INSTITUTION, LICENSED OR APPROVED BY THE COMMONWEALTH TO PROVIDE  
8 HEALTH CARE OR PROFESSIONAL MEDICAL SERVICES. THE TERM SHALL  
9 INCLUDE, BUT NOT BE LIMITED TO, A PHYSICIAN, A CERTIFIED NURSE  
10 MIDWIFE, A PODIATRIST, A CERTIFIED REGISTERED NURSE  
11 PRACTITIONER, A PHYSICIAN ASSISTANT, A CHIROPRACTOR, A HOSPITAL,  
12 AN AMBULATORY SURGERY CENTER, A NURSING HOME OR A BIRTH CENTER.

13 "HEALTH PAYOR." AN INDIVIDUAL OR ENTITY PAYING FOR HEALTH  
14 SERVICES FOR HIMSELF OR ITSELF OR ON BEHALF OF ANOTHER. ←

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

18 "NATIONAL QUALITY FORUM." A NOT-FOR-PROFIT MEMBERSHIP  
19 ORGANIZATION CREATED TO DEVELOP AND IMPLEMENT A NATIONAL  
20 STRATEGY FOR HEALTH CARE QUALITY MEASUREMENT AND REPORTING.

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

30 SECTION 3. PAYMENT POLICY FOR PREVENTABLE SERIOUS ADVERSE



1 WITHIN 30 DAYS OF THE UPDATE ISSUED BY THE NATIONAL QUALITY  
2 FORUM.

3 (B) HEALTH DEPARTMENT RESPONSIBILITY.--IN ACCORDANCE WITH  
4 THE ACT OF JULY 19, 1979 (P.L.130, NO.48), KNOWN AS THE HEALTH  
5 CARE FACILITIES ACT, THE DEPARTMENT OF HEALTH SHALL BE  
6 RESPONSIBLE FOR INVESTIGATING PATIENT COMPLAINTS REGARDING A  
7 HEALTH CARE FACILITY THAT IS SEEKING PAYMENT DIRECTLY FROM THE  
8 PATIENT OR HEALTH CARE PAYOR FOR A PREVENTABLE SERIOUS ADVERSE  
9 EVENT.

10 SECTION 5. DUTIES OF DEPARTMENT OF STATE.

11 THE DEPARTMENT OF STATE SHALL BE RESPONSIBLE FOR  
12 INVESTIGATING PATIENT COMPLAINTS REGARDING A HEALTH CARE  
13 PROVIDER THAT IS NOT A HEALTH CARE FACILITY THAT IS SEEKING OR  
14 CAUSING TO BE SOUGHT PAYMENT DIRECTLY FROM THE PATIENT OR HEALTH  
15 CARE PAYOR FOR A PREVENTABLE SERIOUS ADVERSE EVENT.

16 SECTION 6. APPLICABILITY.

17 (A) HOSPITAL MEDICAL ASSISTANCE PAYMENT POLICY.--NOTHING IN  
18 THIS ACT SHALL REQUIRE THE DEPARTMENT OF PUBLIC WELFARE TO  
19 ALTER, AMEND OR REISSUE ANY PAYMENT POLICY FOR INPATIENT  
20 HOSPITALS RELATING TO PREVENTABLE SERIOUS ADVERSE EVENTS THAT  
21 WAS PROMULGATED PRIOR TO THE ENACTMENT OF THIS ACT. ANY  
22 MODIFICATIONS TO THE DEPARTMENT OF PUBLIC WELFARE PAYMENT POLICY  
23 PROMULGATED ON OR AFTER THE DATE OF ENACTMENT OF THIS ACT FOR A  
24 HEALTH CARE PROVIDER FOR A PREVENTABLE SERIOUS ADVERSE EVENT  
25 SHALL REQUIRE A 30-DAY PUBLIC COMMENT PERIOD.

26 (B) CONTRACTS.--NOTHING IN THIS ACT SHALL PROHIBIT A HEALTH  
27 CARE PROVIDER AND PAYOR FROM ESTABLISHING BY CONTRACT ANY  
28 POLICIES AND PROCEDURES ASSOCIATED WITH SERIOUS PREVENTABLE  
29 ADVERSE EVENTS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS  
30 ACT.

1 (C) REPORTING.--

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

6 (2) A PREVENTABLE SERIOUS ADVERSE EVENT SHALL BE  
7 REPORTED PURSUANT TO THE REQUIREMENTS OF THE ACT OF MARCH 20,  
8 2002 (P.L.154, NO.13), KNOWN AS THE MEDICAL CARE AVAILABILITY  
9 AND REDUCTION OF ERROR (MCARE) ACT.

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

17 SECTION 7. EFFECTIVE DATE.

18 THIS ACT SHALL TAKE EFFECT IN 180 DAYS.