

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 217 Session of
2007

INTRODUCED BY BROWNE, COSTA, O'PAKE, TARTAGLIONE, ORIE,
WASHINGTON AND M. WHITE, MARCH 7, 2007

REFERRED TO PUBLIC HEALTH AND WELFARE, MARCH 7, 2007

AN ACT

1 Amending the act of March 20, 2002 (P.L.154, No.13), entitled
2 "An act reforming the law on medical professional liability;
3 providing for patient safety and reporting; establishing the
4 Patient Safety Authority and the Patient Safety Trust Fund;
5 abrogating regulations; providing for medical professional
6 liability informed consent, damages, expert qualifications,
7 limitations of actions and medical records; establishing the
8 Interbranch Commission on Venue; providing for medical
9 professional liability insurance; establishing the Medical
10 Care Availability and Reduction of Error Fund; providing for
11 medical professional liability claims; establishing the Joint
12 Underwriting Association; regulating medical professional
13 liability insurance; providing for medical licensure
14 regulation; providing for administration; imposing penalties;
15 and making repeals," further providing for declaration of
16 policy, for patient safety definitions, for powers and duties
17 of the Patient Safety Authority and for powers and duties of
18 the Department of Health; and providing for whistleblower
19 protection.

20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 Section 1. Section 102 of the act of March 20, 2002
23 (P.L.154, No.13), known as the Medical Care Availability and
24 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 (7) It is the purpose of this act to enhance patient
21 safety by establishing meaningful whistleblower protection
22 and a reporting system for medical errors which is responsive
23 to legitimate concerns.

24 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 includes discharge and loss or alteration of privileges of
5 affiliation.

6 * * *

7 "Health care facility." A facility licensed under the act of
8 July 19, 1979 (P.L.130, No.48), known as the Health Care
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 licensing agency.

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
21 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
26 for, allocate, disburse, contract for, administer and spend
27 funds in the fund and other funds that are made available to
28 the authority from any source consistent with the purposes of
29 this chapter.

30 (5) Contract with a for-profit or registered nonprofit

1 entity or entities, other than a health care provider, to do
2 the following:

3 (i) Collect, analyze and evaluate data regarding
4 reports of serious events and incidents, including the
5 identification of performance indicators and patterns in
6 frequency or severity at certain medical facilities or in
7 certain regions of this Commonwealth.

8 (ii) Transmit to the authority recommendations for
9 changes in health care practices and procedures which may
10 be instituted for the purpose of reducing the number and
11 severity of serious events and incidents.

12 (iii) Directly advise reporting medical facilities
13 of immediate changes that can be instituted to reduce
14 serious events and incidents.

15 (iv) Conduct reviews in accordance with subsection
16 (b).

17 (6) Receive and evaluate recommendations made by the
18 entity or entities contracted with in accordance with
19 paragraph (5) and [report] advise the department of those
20 recommendations [to the department, which shall have no more
21 than 30 days to approve or disapprove the recommendations].

22 (7) [After consultation and approval by the department,
23 issue] Issue recommendations to medical facilities on a
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

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 publicly accessible Internet website and the authority's
6 publicly accessible [World Wide Web site] Internet website.

7 (8) Meet with the department for purposes of
8 implementing this chapter.

9 (9) Upon receipt of a complaint under subsection (b), do
10 all of the following:

11 (i) Distribute copies of the complaint to each
12 director on the board.

13 (ii) Within ten business days, require the
14 department to investigate the complaint under section
15 306(a)(6).

16 (iii) Maintain the confidentiality of all
17 information resulting from the complaint and the
18 investigation. Information under this subparagraph may be
19 released only when sanctions are pursued under section
20 306(a)(7) or until section 316(d) is invoked by a health
21 care practitioner.

22 (10) Disseminate, through publications and training
23 sessions, information about patient safety reporting under
24 subsection (b)(2).

25 (b) [Anonymous reports] Reports to the authority.--

26 (1) (i) A health care worker who has complied with
27 section 308(a) may file an anonymous report regarding a
28 serious event with the authority. Upon receipt of the report,
29 the authority shall give notice to the affected medical
30 facility that a report has been filed. [The authority shall

1 conduct its own review of the report unless the medical
2 facility has already commenced an investigation of the
3 serious event.] The medical facility [shall] may provide the
4 authority with the results of its investigation no later than
5 30 days after receiving notice pursuant to this subsection.
6 [If the authority is dissatisfied with the adequacy of the
7 investigation conducted by the medical facility, the
8 authority shall perform its own review of the serious event
9 and may refer a medical facility and any involved licensee to
10 the department for failure to report pursuant to section
11 313(e) and (f).]

12 (ii) This paragraph shall not be construed to
13 preclude a direct report to the authority under paragraph
14 (2).

15 (2) The authority shall maintain a Statewide
16 confidential, toll-free telephone line to enable health care
17 practitioners to report on patient safety and the quality of
18 patient care provided by a health care facility. If a health
19 care practitioner who files a complaint under this paragraph
20 requests anonymity, the authority shall, except to the extent
21 necessary to verify credentials, maintain anonymity.

22 * * *

23 Section 4. Section 306 of the act, amended May 1, 2006
24 (P.L.103, No.30), is amended to read:

25 Section 306. Department responsibilities.

26 (a) General rule.--The department shall do all of the
27 following:

28 (1) Review and approve patient safety plans in
29 accordance with section 307.

30 (2) Receive reports of serious events and infrastructure

1 failures under section 313.

2 (3) Investigate serious events and infrastructure
3 failures.

4 (4) In conjunction with the authority, analyze and
5 evaluate existing health care procedures and approve
6 recommendations issued by the authority pursuant to section
7 304(a)(6) and (7).

8 (5) Meet with the authority for purposes of implementing
9 this chapter.

10 (6) Upon referral of a complaint under section
11 304(a)(9), do all of the following:

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

23 (A) The team shall consist of at least all of
24 the following:

25 (I) A registered nurse who holds a license
26 under the act of May 22, 1951 (P.L.317, No.69),
27 known as The Professional Nursing Law; is engaged
28 in active practice for at least 20 hours per
29 week; and holds a specialty-specific
30 certification from the American Nurses

1 Credentialing Center.

2 (II) A physician or an osteopath who is
3 engaged in active practice for at least 20 hours
4 per week and who is board-certified in a
5 specialty which is recognized by the American
6 Board of Medical Specialties or the American
7 Osteopathic Association and which is specific to
8 the situation under investigation.

9 (III) A pharmacist who is engaged in active
10 practice for at least 20 hours per week and who
11 is board-certified as a clinical pharmacist.

12 (B) A member of the team may not:

13 (I) be an employee or a contractor of the
14 health care facility or the health care
15 practitioner under investigation;

16 (II) be a past or current colleague of the
17 health care practitioner under investigation;

18 (III) have a past or current financial or
19 practice relationship with the health care
20 practitioner under review, that practitioner's
21 group, that practitioner's employer or that
22 practitioner's privilege-granting health care
23 facility;

24 (IV) have a past or current financial or
25 practice relationship with the health care
26 facility under investigation; or

27 (V) reside within 75 miles of the health
28 care facility under investigation.

29 (ii) If warranted by the investigation:

30 (A) Seek sanctions under paragraph (7).

1 (B) Recommend sanctions or other action to the
2 appropriate licensing board under Chapter 9. A
3 licensing board or agency which receives a
4 recommendation under this clause shall report to the
5 authority concerning its action every 30 days until
6 the matter is finally disposed of. A report under
7 this clause shall be available to each director of
8 the board upon request.

9 (C) Recommend sanctions or other action to any
10 other appropriate Commonwealth agency.

11 (iii) Maintain the confidentiality of all
12 information resulting from the complaint and the
13 investigation until sanctions are sought under paragraph
14 (7) or until section 316(d) is invoked by a health care
15 practitioner.

16 (7) Impose an administrative penalty of up to \$5,000
17 upon a health care facility for an act or omission which
18 impairs patient safety or the quality of patient care or, at
19 the department's discretion, take other remedial actions as
20 authorized by law. This paragraph is subject to 2 Pa.C.S.
21 Chs. 5 Subch. A (relating to practice and procedure of
22 Commonwealth agencies) and 7 Subch. A (relating to judicial
23 review of Commonwealth agency action).

24 (b) Department consideration.--The recommendations made to
25 medical facilities pursuant to subsection (a)(4) may be
26 considered by the department for licensure purposes under the
27 act of July 19, 1979 (P.L.130, No.48), known as the Health Care
28 Facilities Act, and, in the case of abortion facilities, for
29 approval or revocation purposes pursuant to 28 Pa. Code § 29.43
30 (relating to facility approval), but shall not be considered

1 mandatory unless adopted by the department as regulations
2 pursuant to the act of June 25, 1982 (P.L.633, No.181), known as
3 the Regulatory Review Act.

4 Section 5. The act is amended by adding a section to read:

5 Section 316. Whistleblower protection.

6 (a) Applicability.--This section applies to a health care
7 practitioner who does any of the following:

8 (1) Files a complaint under section 304(b).

9 (2) Makes a report to an agency which has jurisdiction
10 over patient safety, health care or the quality of patient
11 care provided by any health care facility or health care
12 professional.

13 (3) Makes a report to a health care facility on patient
14 safety or the quality of patient care provided by the health
15 care facility. This paragraph includes a report to any
16 employer, supervisor, coworker or other person with
17 privileges.

18 (b) Prohibition.--A health care facility that employs or
19 grants conditional or unconditional privileges to a health care
20 practitioner may not take disciplinary action against the health
21 care practitioner in retaliation for filing a complaint in good
22 faith or making a report in good faith under subsection (a).

23 (c) Immunity.--A health care practitioner who in good faith
24 files a complaint or makes a report under subsection (a) shall
25 be immune from civil liability arising from filing the complaint
26 or making the report.

27 (d) Remedy.--

28 (1) A health care practitioner who is aggrieved by a
29 violation of subsection (b) may recover damages proximately
30 caused by the violation, including pain and suffering, cost

1 of the litigation, and attorney fees.

2 (2) Notwithstanding any other provision of law, in an
3 action under this section, all patient records relating to
4 the complaint under this section, including peer review
5 documents, shall be available to the court and each party for
6 possible use as documentary evidence.

7 (e) Deterring complaints and reports.--Any provision of a
8 contract or a professional affiliation arrangement, including a
9 document granting privileges, entered into with a health care
10 practitioner which limits the health care practitioner's ability
11 to file a complaint or make a report under subsection (a) or
12 which contains any threat, implicit or otherwise, or contains
13 any penalty for filing a complaint or making a report under
14 subsection (a) is against public policy and shall be void.

15 (f) Notification to health care practitioners.--Within 12
16 months of the effective date of this section, every Commonwealth
17 licensing agency that licenses, permits, certifies or registers
18 health care practitioners within this Commonwealth shall notify
19 the health care practitioners of the Statewide confidential,
20 toll-free telephone line and the whistleblower protection
21 provided through this act through already scheduled newsletters,
22 annual notices and other mailings.

23 Section 6. This act shall take effect in 90 days.