

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 443** Session of
2009

INTRODUCED BY D. WHITE, PILEGGI, ALLOWAY, ERICKSON, ORIE, STACK
AND PIPPY, FEBRUARY 24, 2009

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, MARCH
23, 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 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

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

10 Section 2. Definitions.

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

14 "Health care facility." A health care facility as defined
15 under section 802.1 of the act of July 19, 1979 (P.L.130,
16 No.48), known as the Health Care Facilities Act, or an entity
17 licensed as a hospital under the act of June 13, 1967 (P.L.31,
18 No.21), known as the Public Welfare Code.

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

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

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

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

17 "Preventable serious adverse event." An event that occurs in
18 a health care facility that is within the health care provider's
19 control to avoid, but that occurs because of an error or other
20 system failure and results in a patient's death, loss of body
21 part, disfigurement, disability or loss of bodily function
22 lasting more than seven days or still present at the time of
23 discharge from a health care facility. Such events shall be
24 within the list of reportable serious events adopted by the
25 National Quality Forum.

26 Section 3. Payment policy for preventable serious adverse
27 events.

28 (a) General rule.--Health care providers may not knowingly
29 seek payment from health payors, or patients for a preventable
30 serious adverse event or services required to correct or treat

1 the problem created by such an event when such an event occurred
2 under their control.

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

10 (c) Notification.--A health care payor who discovers that
11 payment has been sought for a preventable serious adverse event
12 or services required to correct or treat a problem created by
13 such an event shall notify the health care provider that payment
14 may not be sought for such an event or services and that payment
15 shall not be made for such events or services.

16 (d) Liability.--Any information provided to any health care
17 payor or health care provider, in compliance with subsections
18 (b) and (c), shall not be discoverable or admissible in any
19 civil or administrative action related to the act of March 20,
20 2002 (P.L.154, No.13), known as the Medical Care Availability
21 and Reduction of Error (Mcare) Act.

22 Section 4. Duties of Department of Health.

23 (a) Publishing of updates.--The department shall publish in
24 the Pennsylvania Bulletin any updates to the list of reportable
25 serious adverse events adopted by the National Quality Forum
26 within 30 days of the update issued by the National Quality
27 Forum.

28 (b) Health department responsibility.--In accordance with
29 the act of July 19, 1979 (P.L.130, No.48), known as the Health
30 Care Facilities Act, the Department of Health shall be

1 responsible for investigating patient complaints OR HEALTH CARE ←
2 PAYOR COMPLAINTS regarding a health care facility that is
3 seeking payment directly from the patient or health care payor
4 for a preventable serious adverse event.

5 Section 5. Duties of Department of State.

6 The Department of State shall be responsible for
7 investigating patient complaints OR HEALTH CARE PAYOR COMPLAINTS ←
8 regarding a health care provider that is not a health care
9 facility that is seeking or causing to be sought payment
10 directly from the patient or health care payor for a preventable
11 serious adverse event.

12 Section 6. Applicability.

13 (a) Hospital medical assistance payment policy.--Nothing in
14 this act shall require the Department of Public Welfare to
15 alter, amend or reissue any payment policy for inpatient
16 hospitals relating to preventable serious adverse events that
17 was promulgated prior to the enactment of this act. Any
18 modifications to the Department of Public Welfare payment policy
19 promulgated on or after the date of enactment of this act for a
20 health care provider for a preventable serious adverse event
21 shall require a 30-day public comment period.

22 (b) Contracts.--Nothing in this act shall prohibit a health
23 care provider and payor from establishing by contract any
24 policies and procedures associated with serious preventable
25 adverse events necessary to implement the provisions of this
26 act.

27 (c) Reporting.--

28 (1) Health care providers shall include all applicable
29 medical codes in making reports ~~in compliance with the act of~~ ←
30 ~~July 8, 1986 (P.L.408, No.89), known as the Health Care Cost~~

1 ~~Containment Act~~ TO THE HEALTH CARE COST CONTAINMENT COUNCIL. ←

2 (2) A preventable serious adverse event shall be
3 reported pursuant to the requirements of the act of March 20,
4 2002 (P.L.154, No.13), known as the Medical Care Availability
5 and Reduction of Error (Mcare) Act.

6 (d) Medicare payment.--Nothing in this act shall be
7 construed to supersede Medicare payment policies where the
8 services provided to the patient are paid for by Medicare. If
9 Medicare denies payment based on a determination that a
10 preventable serious adverse event has occurred, nothing in this
11 act shall be construed to require medical assistance or a health
12 payor to pay a claim for the event or services.

13 Section 7. Effective date.

14 This act shall take effect in 180 days.