

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 369 Session of
2013

INTRODUCED BY DELUCA, YOUNGBLOOD, FABRIZIO, O'BRIEN, MUNDY, V.
BROWN, GOODMAN, D. COSTA, KORTZ, W. KELLER, CALTAGIRONE, MURT
AND KIRKLAND, JANUARY 29, 2013

REFERRED TO COMMITTEE ON HEALTH, JANUARY 29, 2013

AN ACT

1 Providing for the Protection of Patients and Medical Personnel
2 from Health Care Facility Retaliation Act; providing for
3 prohibitions against discrimination and retaliation and for
4 rebuttable presumptions.

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 Protection of
9 Patients and Medical Personnel from Health Care Facility
10 Retaliation Act.

11 Section 2. Definitions.

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

15 "Abortion facility." A public or private hospital, clinic,
16 center, medical school, medical training institution,
17 physician's office, infirmary or other institution which
18 provides surgical services meant to terminate the clinically

1 diagnosable pregnancy of a woman with knowledge that the
2 termination by those means will, with reasonable likelihood,
3 cause the death of the unborn child.

4 "Health care facility." The term shall have the same meaning
5 as in section 802.1 of the act of July 19, 1979 (P.L.130,
6 No.48), known as the Health Care Facilities Act. It shall
7 include, but is not limited to, the facility's administrative
8 personnel, employees, boards and committees of the board and
9 medical staff.

10 Section 3. Prohibitions.

11 (a) Health care facilities.--No health care facility shall
12 discriminate or retaliate against any patient, employee, member
13 of the medical staff or any other health care worker of the
14 health care facility because that person has done either of the
15 following:

16 (1) Presented a grievance, complaint or report to the
17 facility, to an entity or agency responsible for accrediting
18 or evaluating the facility, to the medical staff of the
19 facility or to any other governmental entity.

20 (2) Initiated, participated or cooperated in an
21 investigation or administrative proceeding related to the
22 quality of care, services or conditions at the facility that
23 is carried out by an entity or agency responsible for
24 accrediting or evaluating the facility or its medical staff
25 or governmental entity.

26 (b) Entities.--No entity that owns or operates a health care
27 facility or any other health care facility shall discriminate or
28 retaliate against a person because he took action under this
29 act.

30 Section 4. Presumptions.

1 Any type of discriminatory treatment of a patient by whom, or
2 upon whose behalf, a grievance or complaint has been submitted,
3 directly or indirectly, to a governmental entity or received by
4 a health care facility administrator within 180 days of the
5 filing of the grievance or complaint shall raise a rebuttable
6 presumption that the action was taken by the health care
7 facility in retaliation for the filing of the grievance or
8 complaint.

9 Section 5. Rebuttable presumption.

10 There shall be a rebuttable presumption that discriminatory
11 action was taken by the health care facility, or by the entity
12 that owns or operates that health care facility, or that owns or
13 operates any other health care facility, in retaliation against
14 an employee, member of the medical staff or any other health
15 care worker of the facility if responsible staff at the facility
16 or the entity that owns or operates the facility:

17 (1) Had knowledge of the actions.

18 (2) Participated or cooperated with the person
19 responsible for acts described in section 3.

20 (3) Commits a discriminatory act within 120 days of the
21 filing of the grievance or complaint by the employee, member
22 of the medical staff or any other health care worker of the
23 facility.

24 Section 6. Discriminatory treatment.

25 For purposes of this act, discriminatory treatment of an
26 employee, member of the medical staff or any other health care
27 worker includes, but is not limited to, discharge, demotion,
28 suspension or any unfavorable changes in, or breach of, the
29 terms or conditions of a contract, employment or privileges of
30 the employee, member of the medical staff or any other health

1 care worker of the health care facility or the threat of any of
2 these actions.

3 Section 7. Evidence.

4 The presumptions in sections 4 and 5 shall be presumptions
5 affecting the burden of producing evidence as provided in 42
6 Pa.C.S. Ch. 61 (relating to rules of evidence).

7 Section 8. Civil penalties and remedies.

8 (a) Secretary of Health.--Upon a determination by hearing
9 that this act was violated, the Secretary of Health may pursue
10 one or more of the following courses of action:

11 (1) Issue an order requiring the person in violation to
12 cease and desist from engaging in the violation.

13 (2) Suspend or revoke or refuse to issue or renew the
14 certificate or license of the person in violation.

15 (3) Impose a civil penalty of not more than \$25,000 for
16 each violation.

17 (4) Impose another appropriate remedy.

18 (b) Other remedies.--The enforcement remedies imposed under
19 this section are in addition to other remedies or penalties that
20 may be imposed by this or other applicable statute.

21 Section 9. Criminal penalty.

22 In addition to another penalty assessed under this or another
23 act, a person who willfully violates this section commits a
24 misdemeanor punishable by a fine of not more than \$20,000.

25 Section 10. Restitution and damages.

26 (a) Employee.--An employee who has been discriminated
27 against in employment under this act shall be entitled to
28 reinstatement, reimbursement for lost wages and work benefits
29 caused by the acts of the employer and the legal costs
30 associated with pursuing the case or to a remedy deemed

1 warranted by a court of competent jurisdiction.

2 (b) Health care worker.--A health care worker who has been
3 discriminated against under this act shall be entitled to
4 reimbursement for lost income and the legal costs associated
5 with pursuing the case or to a remedy deemed warranted by a
6 court of competent jurisdiction.

7 (c) Medical staff.--A member of the medical staff who has
8 been discriminated against under this section shall be entitled
9 to reinstatement, reimbursement for lost income resulting from
10 any change in the terms or conditions of his privileges caused
11 by the acts of the facility or the entity that owns or operates
12 a health care facility or any other health care facility that is
13 owned or operated by that entity, and the legal costs associated
14 with pursuing the case, or to a remedy deemed warranted by a
15 court of competent jurisdiction.

16 Section 11. Injunctive relief.

17 (a) Right to petition.--The medical staff of the health care
18 facility may petition the court for an injunction to protect a
19 peer review committee from being required to comply with
20 evidentiary demands on a pending peer review hearing from the
21 member of the medical staff who has filed an action under this
22 section, if the evidentiary demands from the complainant would
23 impede the peer review process or endanger the health and safety
24 of patients of the health care facility during the peer review
25 process.

26 (b) In-camera review.--Prior to granting an injunction, the
27 court shall conduct an in-camera review of the evidence sought
28 to be discovered to determine if a peer review hearing, as
29 authorized by law, would be impeded. If it is determined that
30 the peer review hearing will be impeded, the injunction shall be

1 granted until the peer review hearing is completed.

2 (c) Irreparable harm.--Nothing in this section shall
3 preclude the court, on motion of its own or by a party, from
4 issuing an injunction or other order under this act in the
5 interest of justice for the duration of the peer review process
6 to protect the person from irreparable harm.

7 Section 12. Peer review activity.

8 Nothing in this act shall be construed to limit the ability
9 of the medical staff to carry out its legitimate peer review
10 activities in accordance with 35 Pa.C.S. Ch. 81 (relating to
11 emergency medical services system) or other law.

12 Section 13. Exemption.

13 This act shall not apply to an inmate of a correctional
14 facility or juvenile facility owned or operated by the State or
15 local government or to an inmate housed in a local detention
16 facility including a county jail or a juvenile hall, juvenile
17 camp or other juvenile detention facility.

18 Section 30. Effective date.

19 This act shall take effect in 60 days.