

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 899 Session of
2015

INTRODUCED BY DeLUCA, APRIL 8, 2015

REFERRED TO COMMITTEE ON HEALTH, APRIL 8, 2015

AN ACT

1 Providing for the protection of patients and medical personnel
2 from health care facility retaliation, for prohibitions, for
3 presumptions, for rebuttable presumption, for discriminatory
4 treatment, for evidence, for civil penalties and remedies,
5 for criminal penalty, for restitution and damages, for
6 injunctive relief, for peer review activity and for
7 exemption.

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

10 Section 1. Short title.

11 This act shall be known and may be cited as the Protection of
12 Patients and Medical Personnel from Health Care Facility
13 Retaliation 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 "County correctional institution." As defined in 61 Pa.C.S.
19 § 102 (relating to definitions).

20 "Health care facility." As defined in section 802.1 of the
21 act of July 19, 1979 (P.L.130, No.48), known as the Health Care

Facilities Act. It includes, but is not limited to, the facility's administrative personnel, employees, boards and committees of the board and medical staff.

"Medical personnel." An employee, member of the medical staff or another health care worker of a health care facility.

"State correctional institution." As defined in 61 Pa.C.S. § 102 (relating to definitions).

Section 3. Prohibitions.

(a) Health care facilities.--A health care facility may not discriminate or retaliate against a patient or medical personnel because the patient or medical personnel has done either of the following:

(1) Presented a grievance, complaint or report to the facility, to an entity or agency responsible for accrediting or evaluating the facility, to the medical staff of the facility or to another governmental entity.

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

(b) Entities.--An entity that owns or operates a health care facility or another health care facility may not discriminate or retaliate against a person because the person took action under this act.

Section 4. Rebuttable presumption relating to patients.

A type of discriminatory treatment of a patient by whom, or upon whose behalf, a grievance or complaint has been submitted to a governmental entity or received by a health care facility

1 administrator within 180 days of the filing of the grievance or
2 complaint shall raise a rebuttable presumption that the action
3 was taken by the health care facility in retaliation for the
4 filing of the grievance or complaint.

5 Section 5. Rebuttable presumption relating to medical
6 personnel.

7 There shall be a rebuttable presumption that discriminatory
8 action was taken by the health care facility, or by the entity
9 that owns or operates that health care facility, or that owns or
10 operates any other health care facility, in retaliation against
11 medical personnel if responsible staff at the facility or the
12 entity that owns or operates the facility:

13 (1) Had knowledge of the actions.

14 (2) Participated or cooperated with the medical
15 personnel responsible for acts described in section 3.

16 (3) Commits a discriminatory act within 120 days of the
17 filing of the grievance or complaint by the medical
18 personnel.

19 Section 6. Discriminatory treatment.

20 For purposes of this act, discriminatory treatment of medical
21 personnel includes, but is not limited to, discharge, demotion,
22 suspension or any unfavorable changes in, or breach of, the
23 terms or conditions of a contract, employment or privileges of
24 the medical personnel or the threat of any of the actions.

25 Section 7. Evidence.

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

29 Section 8. Civil penalties and remedies.

30 (a) Secretary of Health.--Upon a determination by hearing

1 that this act was violated, the Secretary of Health may pursue
2 one or more of the following courses of action:

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

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

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

9 (4) Impose another appropriate remedy.

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

13 Section 9. Criminal penalty.

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

17 Section 10. Restitution and damages.

18 (a) Employee.--An employee who has been discriminated
19 against in employment under this act shall be entitled to:

20 (1) reinstatement, reimbursement for lost wages and work
21 benefits caused by the acts of the employer and the legal
22 costs associated with pursuing the case; or

23 (2) a remedy deemed warranted by a court of competent
24 jurisdiction.

25 (b) Health care worker.--A health care worker who has been
26 discriminated against under this act shall be entitled to:

27 (1) reimbursement for lost income and the legal costs
28 associated with pursuing the case; or

29 (2) a remedy deemed warranted by a court of competent
30 jurisdiction.

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

10 Section 11. Injunctive relief relating to peer review.

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

20 (b) In-camera review.--Prior to granting an injunction, the
21 court shall conduct an in-camera review of the evidence sought
22 to be discovered to determine if a peer review hearing, as
23 authorized by law, would be impeded. If it is determined that
24 the peer review hearing will be impeded, the injunction shall be
25 granted until the peer review hearing is completed.

26 (c) Irreparable harm.--Nothing in this section shall be
27 construed to preclude the court, on motion of its own or by a
28 party, from issuing an injunction or other order under this act
29 in the interest of justice for the duration of the peer review
30 process to protect the person from irreparable harm.

1 Section 12. Peer review activity.

2 This act may not be construed to limit the ability of the
3 medical staff to carry out its legitimate peer review activities
4 in accordance with 35 Pa.C.S. Ch. 81 (relating to emergency
5 medical services system) or other law.

6 Section 13. Exemption.

7 This act shall not apply to an inmate of a State correctional
8 institution or juvenile facility owned or operated by the State
9 or local government or to an inmate housed in a local detention
10 facility, including a county correctional institution or a
11 juvenile hall, juvenile camp or other juvenile detention
12 facility.

13 Section 14. Effective date.

14 This act shall take effect in 60 days.