
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1816 Session of
2021

INTRODUCED BY FIEDLER, HANBIDGE, DALEY, KINSEY, DRISCOLL,
SCHLOSSBERG, ISAACSON, CIRESI, HOHENSTEIN, HILL-EVANS,
KRAJEWSKI, GALLOWAY, McNEILL, PISCIOTTANO, D. WILLIAMS,
KEEFER, SANCHEZ, LEE, BRADFORD, HARRIS, KOSIEROWSKI, CONKLIN,
N. NELSON, SIMS, NEILSON, DEASY, O'MARA, A. DAVIS, OTTEN,
MALAGARI, WEBSTER, GUZMAN, McCLINTON, ROZZI, SAMUELSON,
KINKEAD, GAINNEY, GILLEN, MADDEN, CEPHAS, INNAMORATO, FRANKEL
AND LEWIS, AUGUST 31, 2021

REFERRED TO COMMITTEE ON HEALTH, AUGUST 31, 2021

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," in medical professional liability,
16 further providing for informed consent.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. Section 504(b), (c) and (d)(1) of the act of
20 March 20, 2002 (P.L.154, No.13), known as the Medical Care
21 Availability and Reduction of Error (Mcare) Act, are amended and
22 the section is amended by adding a subsection to read:

1 Section 504. Informed consent.

2 * * *

3 (a.1) Examination.--

4 (1) Subject to paragraph (2), a health care provider,
5 including a student participating in a course of professional
6 instruction or clinical training program, may not knowingly
7 perform any of the following examinations on a patient who is
8 anesthetized or unconscious in a facility that provides
9 health care services unless the patient or the patient's
10 authorized representative provides specific informed consent,
11 in verbal and written form, prior to the examination:

12 (i) Pelvic examinations.

13 (ii) Rectal examinations.

14 (iii) Prostate examinations.

15 (2) Paragraph (1) does not apply if the examination is:

16 (i) within the scope of care ordered for the
17 patient;

18 (ii) court-ordered for the purpose of obtaining
19 evidence; or

20 (iii) necessary in cases of a medical emergency for
21 the purpose of diagnosis or treatment and the patient is
22 incapable of providing informed consent.

23 (b) Description of procedure or examination.--Consent is
24 informed if the patient has been given a description of a
25 procedure set forth in subsection (a) or of the examination set
26 forth in subsection (a.1) and the risks and alternatives that a
27 reasonably prudent patient would require to make an informed
28 decision as to that procedure or examination. The [physician]
29 health care provider shall be entitled to present evidence of
30 the description of that procedure or examination and those risks

1 and alternatives that a [physician] health care provider acting
2 in accordance with accepted medical standards of medical
3 practice would provide.

4 (c) Expert testimony.--Expert testimony is required to
5 determine whether the procedure or examination constituted the
6 type of procedure or examination set forth in subsection (a) or
7 (a.1) and to identify the risks of that procedure or
8 examination, the alternatives to that procedure or examination
9 and the risks of these alternatives.

10 (d) Liability.--

11 (1) A [physician] health care provider is liable for
12 failure to obtain the informed consent only if the patient
13 proves that receiving such information would have been a
14 substantial factor in the patient's decision whether to
15 undergo a procedure or examination set forth in subsection
16 (a) or (a.1).

17 * * *

18 Section 2. This act shall take effect in 60 days.