

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2192 Session of
2003

INTRODUCED BY DAILEY, DeLUCA, ARMSTRONG, BARRAR, CORRIGAN,
CRAHALLA, CRUZ, CURRY, DALEY, DENLINGER, DeWEESE, FABRIZIO,
FEESE, GERGELY, GINGRICH, GOOD, GRUCELA, HARPER, HENNESSEY,
HERMAN, JAMES, JOSEPHS, LaGROTTA, LAUGHLIN, LEACH, LEDERER,
LEVDANSKY, MANDERINO, McGEEHAN, MUNDY, PALLONE, PHILLIPS,
PISTELLA, REICHLEY, ROSS, SAYLOR, SHANER, B. SMITH, SOLOBAY,
STABACK, T. STEVENSON, SURRA, TANGRETTI, E. Z. TAYLOR, TIGUE,
WALKO, WATSON, WEBER, WILT AND YOUNGBLOOD, NOVEMBER 24, 2003

REFERRED TO COMMITTEE ON JUDICIARY, NOVEMBER 24, 2003

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 making an appropriation.

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

21 Section 1. Section 102 of the act of March 20, 2002
22 (P.L.154, No.13), known as the Medical Care Availability and
23 Reduction of Error (Mcare) Act, is amended to read:

1 Section 102. Declaration of policy.

2 The General Assembly finds and declares as follows:

3 (1) It is the purpose of this act to ensure that medical
4 care is available in this Commonwealth through a
5 comprehensive and high-quality health care system.

6 (2) Access to a full spectrum of hospital services and
7 to highly trained physicians in all specialties must be
8 available across this Commonwealth.

9 (3) To maintain this system, medical professional
10 liability insurance has to be obtainable at an affordable and
11 reasonable cost in every geographic region of this
12 Commonwealth.

13 (4) A person who has sustained injury or death as a
14 result of medical negligence by a health care provider must
15 be afforded a prompt determination and fair compensation.

16 (5) Every effort must be made to reduce and eliminate
17 medical errors by identifying problems and implementing
18 solutions that promote patient safety.

19 (6) Recognition and furtherance of all of these elements
20 is essential to the public health, safety and welfare of all
21 the citizens of Pennsylvania.

22 (7) It is the purpose of this act to enhance patient
23 safety by establishing meaningful whistleblower protection
24 and a reporting system for medical errors which is responsive
25 to legitimate concerns.

26 Section 2. Section 302 of the act is amended by adding
27 definitions to read:

28 Section 302. Definitions.

29 The following words and phrases when used in this chapter
30 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 * * *

3 "Health care facility." A facility licensed under the act of
4 July 19, 1979 (P.L.130, No.48), known as the Health Care
5 Facilities Act.

6 "Health care practitioner." An individual who is authorized
7 to practice some component of the healing arts by a license,
8 permit, certificate or registration, issued by a Commonwealth
9 licensing agency.

10 * * *

11 Section 3. Sections 304(a) and (b) and 306 of the act are
12 amended to read:

13 Section 304. Powers and duties.

14 (a) General rule.--The authority shall do all of the
15 following:

16 (1) Adopt bylaws necessary to carry out the provisions
17 of this chapter.

18 (2) Employ staff as necessary to implement this chapter.

19 (3) Make, execute and deliver contracts and other
20 instruments.

21 (4) Apply for, solicit, receive, establish priorities
22 for, allocate, disburse, contract for, administer and spend
23 funds in the fund and other funds that are made available to
24 the authority from any source consistent with the purposes of
25 this chapter.

26 (5) Contract with a for-profit or registered nonprofit
27 entity or entities, other than a health care provider, to do
28 the following:

29 (i) Collect, analyze and evaluate data regarding
30 reports of serious events and incidents, including the

1 identification of performance indicators and patterns in
2 frequency or severity at certain medical facilities or in
3 certain regions of this Commonwealth.

4 (ii) Transmit to the authority recommendations for
5 changes in health care practices and procedures which may
6 be instituted for the purpose of reducing the number and
7 severity of serious events and incidents.

8 (iii) Directly advise reporting medical facilities
9 of immediate changes that can be instituted to reduce
10 serious events and incidents.

11 (iv) Conduct reviews in accordance with subsection
12 (b).

13 (6) Receive and evaluate recommendations made by the
14 entity or entities contracted with in accordance with
15 paragraph (5) and report those recommendations to the
16 department, which shall have no more than 30 days to approve
17 or disapprove the recommendations.

18 (7) After consultation and approval by the department,
19 issue recommendations to medical facilities on a facility-
20 specific or on a Statewide basis regarding changes, trends
21 and improvements in health care practices and procedures for
22 the purpose of reducing the number and severity of serious
23 events and incidents. Prior to issuing recommendations,
24 consideration shall be given to the following factors that
25 include expectation of improved quality care, implementation
26 feasibility, other relevant implementation practices and the
27 cost impact to patients, payors and medical facilities.
28 Statewide recommendations shall be issued to medical
29 facilities on a continuing basis and shall be published and
30 posted on the department's and the authority's publicly

1 accessible World Wide Web site.

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

4 (9) Promulgate regulations to administer subsection
5 (b)(2).

6 (10) Upon receipt of a complaint under subsection
7 (b)(2), do all of the following:

8 (i) Within ten business days, investigate the
9 complaint.

10 (ii) If warranted, recommend sanctions to the
11 department or the appropriate licensing board under
12 Chapter 9.

13 (iii) Maintain the confidentiality of all
14 information resulting from the complaint and the
15 investigation until sanctions are recommended under
16 subparagraph (ii).

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

18 (1) A health care worker who has complied with section
19 308(a) may file an anonymous report regarding a serious event
20 with the authority. Upon receipt of the report, the authority
21 shall give notice to the affected medical facility that a
22 report has been filed. The authority shall conduct its own
23 review of the report unless the medical facility has already
24 commenced an investigation of the serious event. The medical
25 facility shall provide the authority with the results of its
26 investigation no later than 30 days after receiving notice
27 pursuant to this subsection. If the authority is dissatisfied
28 with the adequacy of the investigation conducted by the
29 medical facility, the authority shall perform its own review
30 of the serious event and may refer a medical facility and any

1 involved licensee to the department for failure to report
2 pursuant to section 313(e) and (f).

3 (2) The authority shall maintain a Statewide
4 confidential, toll-free telephone line to enable health care
5 practitioners to report on patient safety and the quality of
6 patient care provided by a health care facility. The
7 following shall apply:

8 (i) If a health care practitioner who files a
9 complaint under this paragraph requests anonymity, the
10 authority shall maintain anonymity.

11 (ii) A health care facility that employs a health
12 care practitioner who files a complaint under this
13 paragraph may not retaliate against the health care
14 practitioner, in relation to salary or terms or
15 conditions of employment, for filing in good faith a
16 complaint under this paragraph. A health care
17 practitioner who is aggrieved by a violation of this
18 subparagraph may recover damages proximately caused by
19 the violation, including pain and suffering; cost of the
20 litigation; and attorney fees.

21 * * *

22 Section 306. Department responsibilities.

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

25 (1) Review and approve patient safety plans in
26 accordance with section 307.

27 (2) Receive reports of serious events and infrastructure
28 failures under section 313.

29 (3) Investigate serious events and infrastructure
30 failures.

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

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

7 (6) Impose an administrative penalty of up to \$5,000
8 upon a health care facility for acts or omissions which
9 impair patient safety or the quality of patient care. This
10 paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to
11 practice and procedure of Commonwealth agencies) and Ch. 7
12 Subch. A (relating to judicial review of Commonwealth agency
13 action).

14 (b) Department consideration.--The recommendations made to
15 medical facilities pursuant to subsection (a)(4) may be
16 considered by the department for licensure purposes under the
17 act of July 19, 1979 (P.L.130, No.48), known as the Health Care
18 Facilities Act, but shall not be considered mandatory unless
19 adopted by the department as regulations pursuant to the act of
20 June 25, 1982 (P.L.633, No.181), known as the Regulatory Review
21 Act.

22 Section 4. The sum of \$, or as much thereof as may be
23 necessary, is hereby appropriated to the Patient Safety
24 Authority for the fiscal year July 1, 2003, to June 30, 2004, to
25 carry out the provisions of this act.

26 Section 5. This act shall take effect in 90 days.