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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 742      Session of  
2007

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INTRODUCED BY DeLUCA, BIANCUCCI, BOYD, CALTAGIRONE, COHEN,  
CREIGHTON, CURRY, DALEY, DERMODY, FABRIZIO, FREEMAN, GEIST,  
GEORGE, GIBBONS, GINGRICH, GOODMAN, GRUCELA, HENNESSEY,  
HORNAMAN, JAMES, JOSEPHS, W. KELLER, KOTIK, LEACH, MAHONEY,  
MANDERINO, MARKOSEK, MELIO, METCALFE, MUNDY, MYERS, PALLONE,  
PICKETT, RUBLEY, SCHRODER, SIPTROTH, SOLOBAY, STABACK, STERN,  
WALKO, WANSACZ, WATSON, WOJNAROSKI AND YOUNGBLOOD,  
MARCH 19, 2007

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REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,  
MARCH 19, 2007

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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 providing for whistleblower  
19 protection.

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

22 Section 1. Section 102 of the act of March 20, 2002  
23 (P.L.154, No.13), known as the Medical Care Availability and

1 Reduction of Error (Mcare) Act, is amended to read:

2 Section 102. Declaration of policy.

3 The General Assembly finds and declares as follows:

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

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

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

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

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

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

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

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

29 Section 302. Definitions.

30 The following words and phrases when used in this chapter

shall have the meanings given to them in this section unless the context clearly indicates otherwise:

\* \* \*

"Disciplinary action." An action against an individual which has a negative impact on the individual in relation to salary or terms of employment or professional affiliation. The term includes discharge and loss or alteration of privileges of affiliation.

\* \* \*

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

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

\* \* \*

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

Section 304. Powers and duties.

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

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

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

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

(4) Apply for, solicit, receive, establish priorities for, allocate, disburse, contract for, administer and spend funds in the fund and other funds that are made available to

1 the authority from any source consistent with the purposes of  
2 this chapter.

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

6 (i) Collect, analyze and evaluate data regarding  
7 reports of serious events and incidents, including the  
8 identification of performance indicators and patterns in  
9 frequency or severity at certain medical facilities or in  
10 certain regions of this Commonwealth.

11 (ii) Transmit to the authority recommendations for  
12 changes in health care practices and procedures which may  
13 be instituted for the purpose of reducing the number and  
14 severity of serious events and incidents.

15 (iii) Directly advise reporting medical facilities  
16 of immediate changes that can be instituted to reduce  
17 serious events and incidents.

18 (iv) Conduct reviews in accordance with subsection  
19 (b).

20 (6) Receive and evaluate recommendations made by the  
21 entity or entities contracted with in accordance with  
22 paragraph (5) and [report] advise the department of those  
23 recommendations [to the department, which shall have no more  
24 than 30 days to approve or disapprove the recommendations].

25 (7) [After consultation and approval by the department,  
26 issue] Issue recommendations to medical facilities on a  
27 facility-specific or on a Statewide basis regarding changes,  
28 trends and improvements in health care practices and  
29 procedures for the purpose of reducing the number and  
30 severity of serious events and incidents. Prior to issuing

1 recommendations, consideration shall be given to the  
2 following factors that include expectation of improved  
3 quality care, implementation feasibility, other relevant  
4 implementation practices and the cost impact to patients,  
5 payors and medical facilities. Statewide recommendations  
6 shall be issued to medical facilities on a continuing basis  
7 and shall be published and posted on the department's  
8 publicly accessible Internet website and the authority's  
9 publicly accessible [World Wide Web site] Internet website.

10 (8) Meet with the department for purposes of  
11 implementing this chapter.

12 (9) Upon receipt of a complaint under subsection (b), do  
13 all of the following:

14 (i) Distribute copies of the complaint to each  
15 director on the board.

16 (ii) Within ten business days, require the  
17 department to investigate the complaint under section  
18 306(a)(6).

19 (iii) Maintain the confidentiality of all  
20 information resulting from the complaint and the  
21 investigation. Information under this subparagraph may be  
22 released only when sanctions are pursued under section  
23 306(a)(7) or until section 316(d) is invoked by a health  
24 care practitioner.

25 (10) Disseminate, through publications and training  
26 sessions, information about patient safety reporting under  
27 subsection (b)(2).

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

29 (1) A health care worker who has complied with section  
30 308(a) may file an anonymous report regarding a serious event

1 with the authority. Upon receipt of the report, the authority  
2 shall give notice to the affected medical facility that a  
3 report has been filed. [The authority shall conduct its own  
4 review of the report unless the medical facility has already  
5 commenced an investigation of the serious event.] The medical  
6 facility [shall] may provide the authority with the results  
7 of its investigation no later than 30 days after receiving  
8 notice pursuant to this subsection. [If the authority is  
9 dissatisfied with the adequacy of the investigation conducted  
10 by the medical facility, the authority shall perform its own  
11 review of the serious event and may refer a medical facility  
12 and any involved licensee to the department for failure to  
13 report pursuant to section 313(e) and (f).] This paragraph  
14 shall not preclude a direct report to the authority under  
15 paragraph (2).

16 (2) The authority shall maintain a Statewide  
17 confidential, toll-free telephone line to enable health care  
18 practitioners to report on patient safety and the quality of  
19 patient care provided by a health care facility. If a health  
20 care practitioner who files a complaint under this paragraph  
21 requests anonymity, the authority shall, except to the extent  
22 necessary to verify credentials, maintain anonymity.

23 \* \* \*

24 Section 4. Section 306 of the act, amended May 1, 2006  
25 (P.L.103, No.30), is amended to read:

26 Section 306. Department responsibilities.

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

29 (1) Review and approve patient safety plans in  
30 accordance with section 307.

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

3 (3) Investigate serious events and infrastructure  
4 failures.

5 (4) In conjunction with the authority, analyze and  
6 evaluate existing health care procedures and approve  
7 recommendations issued by the authority pursuant to section  
8 304(a)(6) and (7).

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

11 (6) Upon referral of a complaint under section  
12 304(a)(9), do all of the following:

13 (i) Within ten business days, investigate the  
14 complaint. In order to carry out the investigation under  
15 this subparagraph, the department shall consult with one,  
16 or, if the department deems necessary, a second,  
17 independent, external quality review team to examine the  
18 team's recommendations and findings. A team under this  
19 subparagraph shall consider the appropriate use of  
20 patient care standards in the situation under  
21 investigation and make recommendations based upon its  
22 findings. The following apply to a team under this  
23 subparagraph:

24 (A) The team shall consist of at least all of  
25 the following:

26 (I) A registered nurse who holds a license  
27 under the act of May 22, 1951 (P.L.317, No.69),  
28 known as The Professional Nursing Law; is engaged  
29 in active practice for at least 20 hours per  
30 week; and holds a specialty-specific

1 certification from the American Nurses  
2 Credentialing Center.

3 (II) A physician or an osteopath who is  
4 engaged in active practice for at least 20 hours  
5 per week and who is board-certified in a  
6 specialty which is recognized by the American  
7 Board of Medical Specialties or the American  
8 Osteopathic Association and which is specific to  
9 the situation under investigation.

10 (III) A pharmacist who is engaged in active  
11 practice for at least 20 hours per week and who  
12 is board-certified as a clinical pharmacist.

13 (B) A member of the team may not:

14 (I) be an employee or a contractor of the  
15 health care facility or the health care  
16 practitioner under investigation;

17 (II) be a past or current colleague of the  
18 health care practitioner under investigation;

19 (III) have a past or current financial or  
20 practice relationship with the health care  
21 practitioner under review, that practitioner's  
22 group, that practitioner's employer or that  
23 practitioner's privilege-granting health care  
24 facility;

25 (IV) have a past or current financial or  
26 practice relationship with the health care  
27 facility under investigation; or

28 (V) reside within 75 miles of the health  
29 care facility under investigation.

30 (ii) If warranted by the investigation:



1                   (A) Seek sanctions under paragraph (7).

2                   (B) Recommend sanctions or other action to the  
3                   appropriate licensing board under Chapter 9. A  
4                   licensing board or agency which receives a  
5                   recommendation under this clause shall report to the  
6                   authority concerning its action every 30 days until  
7                   the matter is finally disposed of. A report under  
8                   this clause shall be available to each director of  
9                   the board upon request.

10                  (C) Recommend sanctions or other action to any  
11                  other appropriate Commonwealth agency.

12                  (iii) Maintain the confidentiality of all  
13                  information resulting from the complaint and the  
14                  investigation until sanctions are sought under paragraph  
15                  (7) or until section 316(d) is invoked by a health care  
16                  practitioner.

17                  (7) Impose an administrative penalty of up to \$5,000  
18                  upon a health care facility for acts or omissions which  
19                  impair patient safety or the quality of patient care or, at  
20                  the department's discretion, take other remedial actions as  
21                  authorized by law. This paragraph is subject to 2 Pa.C.S. Ch.  
22                  5 Subch. A (relating to practice and procedure of  
23                  Commonwealth agencies) and Ch. 7 Subch. A (relating to  
24                  judicial review of Commonwealth agency action).

25                  (b) Department consideration.--The recommendations made to  
26 medical facilities pursuant to subsection (a)(4) may be  
27 considered by the department for licensure purposes under the  
28 act of July 19, 1979 (P.L.130, No.48), known as the Health Care  
29 Facilities Act, and, in the case of abortion facilities, for  
30 approval or revocation purposes pursuant to 28 Pa. Code § 29.43

(relating to facility approval), but shall not be considered mandatory unless adopted by the department as regulations pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 5. The act is amended by adding a section to read:  
Section 316. Whistleblower protection.

(a) Applicability.--This section applies to a health care practitioner who does any of the following:

(1) Files a complaint under section 304(b).

(2) Makes a report to an agency which has jurisdiction over patient safety, health care or the quality of patient care provided by any health care facility or health care professional.

(3) Makes a report to a health care facility on patient safety or the quality of patient care provided by the health care facility. This paragraph includes a report to any employer, supervisor, coworker or other person with privileges.

(b) Prohibition.--A health care facility that employs or grants conditional or unconditional privileges to a health care practitioner may not take disciplinary action against the health care practitioner in retaliation for filing a complaint in good faith or making a report in good faith under subsection (a).

(c) Immunity.--A health care practitioner who in good faith files a complaint or makes a report under subsection (a) shall be immune from civil liability arising from filing the complaint or making the report.

(d) Remedy.--A health care practitioner who is aggrieved by a violation of subsection (b) may recover damages proximately caused by the violation, including pain and suffering; cost of

1 the litigation; and attorney fees. Notwithstanding any other  
2 provision of law, in an action under this subsection, all  
3 patient records relating to the complaint under this subsection,  
4 including peer review documents, shall be available to the court  
5 and each party for possible use as documentary evidence.

6 (e) Deterring complaints and reports.--Any provision of a  
7 contract or a professional affiliation arrangement, including a  
8 document granting privileges, entered into with a health care  
9 practitioner which limits the health care practitioner's ability  
10 to file a complaint or make a report under subsection (a) or  
11 which contains any threat, implicit or otherwise, or contains  
12 any penalty for filing a complaint or making a report under  
13 subsection (a) is against public policy and shall be void.

14 (f) Notification to health care practitioners.--Within 12  
15 months of the effective date of this section, every Commonwealth  
16 licensing agency that licenses, permits, certifies or registers  
17 health care practitioners within this Commonwealth shall notify  
18 the health care practitioners of the Statewide confidential,  
19 toll-free telephone line and the whistleblower protection  
20 provided through this act through already scheduled newsletters,  
21 annual notices and other mailings.

22 Section 6. This act shall take effect in 90 days.