

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 2098** Session of  
2007

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INTRODUCED BY DeLUCA, BELFANTI, FRANKEL, HALUSKA, KOTIK, MOYER,  
SIPTROTH, WALKO, J. WHITE, WOJNAROSKI, PETRONE, YOUNGBLOOD  
AND GIBBONS, DECEMBER 6, 2007

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AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, FEBRUARY 12, 2008

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## AN ACT

1 Establishing a system for payment or reduction in payment for  
2 preventable serious adverse events within Commonwealth  
3 programs; informing health insurers of payment policies used  
4 by Medicaid and Medicare; and providing for the powers and  
5 duties of the Department of Public Welfare, the Insurance  
6 Department, the Department of Health and the Department of  
7 State.

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 Preventable  
12 Serious Adverse Events Act.

13 Section 2. Definitions.

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

17 "Centers for Medicare and Medicaid Services" or "CMS." The  
18 Centers for Medicare and Medicaid Services within the United  
19 States Department of Health and Human Services.

1 "Department." The Insurance Department of the Commonwealth.

2 "Facility." A health care facility as defined in section  
3 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the  
4 Health Care Facilities Act, or an entity licensed as a hospital  
5 under the act of June 13, 1967 (P.L.31, No.21), known as the  
6 Public Welfare Code.

7 "Health care provider." A health care facility or a person,  
8 including a corporation, university or other educational  
9 institution licensed or approved by the Commonwealth to provide  
10 health care or professional medical services as a physician, a  
11 certified nurse midwife, a podiatrist, a certified registered  
12 nurse practitioner, a physician assistant, a chiropractor, a  
13 hospital, an ambulatory surgery center, a nursing home and a  
14 birth center.

15 "Health payor." An individual or entity providing a group  
16 health, sickness or accident policy, subscriber contract or  
17 program issued or provided by an entity, including any one of  
18 the following:

19 (1) The act of June 2, 1915 (P.L.736, No.338), known as  
20 the Workers' Compensation Act.

21 (2) The act of May 17, 1921 (P.L.682, No.284), known as  
22 The Insurance Company Law of 1921.

23 (3) The act of December 29, 1972 (P.L.1701, No.364),  
24 known as the Health Maintenance Organization Act.

25 (4) The act of May 18, 1976 (P.L.123, No.54), known as  
26 the Individual Accident and Sickness Insurance Minimum  
27 Standards Act.

28 (5) 40 Pa.C.S. Ch. 61 (relating to hospital plan  
29 corporations).

30 (6) 40 Pa.C.S. Ch. 63 (relating to professional health

1 services plan corporations).

2 "Medical assistance." The Commonwealth's medical assistance  
3 program established under the act of June 13, 1967 (P.L.31,  
4 No.21), known as the Public Welfare Code.

5 "Preventable serious adverse event." A clearly defined  
6 condition or negative consequence of care that results in  
7 unintended injury or illness that could have been anticipated  
8 and prepared for, but that occurs because of an error or other  
9 system failure and results in a patient's death, loss of a body  
10 part, disability or loss of bodily function lasting more than  
11 seven days.

12 Section 3. Payment policy for preventable serious adverse  
13 events.

14 (a) General rule.--The following criteria ~~may~~ SHALL be used ←  
15 by health payors in determining when payment or partial payment  
16 to a health care provider will be withheld:

17 (1) A preventable serious adverse event must occur.

18 (2) The preventable serious adverse event must be within  
19 the control of the health care provider.

20 (3) The preventable serious adverse event must occur in  
21 a health care facility.

22 (b) Language addressing payment policy.--Payments can only  
23 be withheld by health payors for services related to a  
24 preventable serious adverse event or care made necessary by the  
25 preventable serious adverse event if the agreement or contract  
26 between the health payor and health care provider contains  
27 language addressing payment policy for preventable serious  
28 adverse events.

29 (c) Restriction.--Health care providers shall not seek  
30 payment directly from patients or the responsible party of the

1 patient for preventable serious adverse events.

2 Section 4. Duties of Department of Public Welfare.

3 (a) Department responsibilities.--The Department of Public  
4 Welfare is responsible for the following:

5 (1) Determining payment policy under medical assistance  
6 with respect to reduced reimbursements to health care  
7 providers for preventable serious adverse events. This  
8 payment policy includes the criteria and clearly stated  
9 payment policies affecting health care providers.

10 (2) Publishing the payment policy in the Pennsylvania  
11 Bulletin following a ~~60-day~~ 30-DAY public comment period. <—

12 (b) Ongoing reviews.--Nothing in this section shall affect  
13 ongoing reviews of medical assistance services conducted by the  
14 Department of Public Welfare.

15 (C) HOSPITAL PAYMENT POLICY.--NOTHING IN THIS SECTION SHALL <—  
16 REQUIRE THE DEPARTMENT TO ALTER, AMEND OR REISSUE ANY PAYMENT  
17 POLICY FOR INPATIENT HOSPITALS RELATING TO PREVENTABLE SERIOUS  
18 ADVERSE EVENTS THAT WAS PROMULGATED PRIOR TO THE ENACTMENT OF  
19 THIS ACT.

20 Section 5. Duties of Insurance Department.

21 The department shall annually notify health payors of the  
22 list of preventable serious adverse events that CMS is using  
23 under the Medicare program and that health payors shall be  
24 permitted to withhold reimbursement under section 3.

25 Section 6. Duties of Department of Health.

26 ~~The~~ IN ACCORDANCE WITH THE ACT OF JULY 19, 1979 (P.L.130, <—  
27 NO.48), KNOWN AS THE HEALTH CARE FACILITIES ACT, THE Department  
28 of Health shall be responsible for investigating patient  
29 complaints regarding a health care facility that is seeking  
30 payment directly from the patient for a preventable serious

1 adverse event.

2 Section 7. Duties of Department of State.

3 The Department of State shall be responsible for  
4 investigating patient complaints regarding a health care  
5 provider that is not a health care facility that is seeking  
6 payment directly from the patient for a preventable serious  
7 adverse event.

8 Section 8 20. Effective date.

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9 This act shall take effect in 180 days.