

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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

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

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
MARCH 17, 2008

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 shall be used by
15 health payors in determining when payment or partial payment to
16 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 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 (A) NOTICE OF PREVENTABLE SERIOUS ADVERSE EVENTS.--The <—
22 department shall annually notify health payors of the list of
23 preventable serious adverse events that CMS is using under the
24 Medicare program and ~~that health payors shall be permitted to~~ <—
25 FOR WHICH HEALTH PAYORS MAY withhold reimbursement under section <—
26 3.

27 (B) NOTICE OF CMS RULE.--THE DEPARTMENT SHALL TRANSMIT <—
28 NOTICE OF THE EFFECTIVE DATE OF THE CMS HOSPITAL-ACQUIRED
29 CONDITIONS, INCLUDING INFECTIONS, FINAL RULE, TO THE LEGISLATIVE
30 REFERENCE BUREAU FOR PUBLICATION IN THE PENNSYLVANIA BULLETIN.

1 Section 6. Duties of Department of Health.

2 In accordance with the act of July 19, 1979 (P.L.130, No.48),
3 known as the Health Care Facilities Act, the Department of
4 Health shall be responsible for investigating patient complaints
5 regarding a health care facility that is seeking payment
6 directly from the patient for a preventable serious adverse
7 event.

8 Section 7. Duties of Department of State.

9 The Department of State shall be responsible for
10 investigating ~~patient~~ complaints regarding a health care <—
11 provider that is not a health care facility that is seeking OR <—
12 CAUSING TO BE SOUGHT payment directly from the patient OR <—
13 RESPONSIBLE PARTY OF THE PATIENT for a preventable serious
14 adverse event.

15 SECTION 19. APPLICABILITY. <—

16 THIS ACT SHALL APPLY TO PREVENTABLE SERIOUS ADVERSE EVENTS
17 THAT OCCUR AFTER THE LATER OF THE FOLLOWING:

18 (1) PUBLICATION OF THE NOTICE UNDER SECTION 5(B).

19 (2) OCTOBER 1, 2008.

20 Section 20. Effective date.

21 This act shall take effect ~~in 180 days~~ IMMEDIATELY. <—