

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

SENATOR D. WHITE, BANKING AND INSURANCE, IN SENATE, AS AMENDED,
SEPTEMBER 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 ESTABLISHING A SYSTEM FOR PAYMENT OR REDUCTION IN PAYMENT FOR <—
9 PREVENTABLE SERIOUS ADVERSE EVENTS WITHIN THIS COMMONWEALTH;
10 AND PROVIDING FOR THE POWERS AND DUTIES OF THE DEPARTMENT OF
11 HEALTH AND THE DEPARTMENT OF STATE.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 ~~Section 1. Short title.~~ <—

15 ~~This act shall be known and may be cited as the Preventable~~
16 ~~Serious Adverse Events Act.~~

17 ~~Section 2. Definitions.~~

18 ~~The following words and phrases when used in this act shall~~
19 ~~have the meanings given to them in this section unless the~~
20 ~~context clearly indicates otherwise:~~

21 ~~"Centers for Medicare and Medicaid Services" or "CMS." The~~

1 ~~Centers for Medicare and Medicaid Services within the United~~
2 ~~States Department of Health and Human Services.~~

3 ~~"Department."—The Insurance Department of the Commonwealth.~~

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

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

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

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

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

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

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

30 ~~(5) 40 Pa.C.S. Ch. 61 (relating to hospital plan~~

1 corporations).

2 ~~(6) 40 Pa.C.S. Ch. 63 (relating to professional health~~
3 ~~services plan corporations).~~

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

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

14 ~~Section 3. Payment policy for preventable serious adverse~~
15 ~~events.~~

16 ~~(a) General rule. The following criteria shall be used by~~
17 ~~health payors in determining when payment or partial payment to~~
18 ~~a health care provider will be withheld:~~

19 ~~(1) A preventable serious adverse event must occur.~~

20 ~~(2) The preventable serious adverse event must be within~~
21 ~~the control of the health care provider.~~

22 ~~(3) The preventable serious adverse event must occur in~~
23 ~~a health care facility.~~

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

1 ~~(c) Restriction. Health care providers shall not seek~~
2 ~~payment directly from patients or the responsible party of the~~
3 ~~patient for preventable serious adverse events.~~

4 ~~Section 4. Duties of Department of Public Welfare.~~

5 ~~(a) Department responsibilities. The Department of Public~~
6 ~~Welfare is responsible for the following:~~

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

12 ~~(2) Publishing the payment policy in the Pennsylvania~~
13 ~~Bulletin following a 30 day public comment period.~~

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

17 ~~(c) Hospital payment policy. Nothing in this section shall~~
18 ~~require the department to alter, amend or reissue any payment~~
19 ~~policy for inpatient hospitals relating to preventable serious~~
20 ~~adverse events that was promulgated prior to the enactment of~~
21 ~~this act.~~

22 ~~Section 5. Duties of Insurance Department.~~

23 ~~(a) Notice of preventable serious adverse events. The~~
24 ~~department shall annually notify health payors of the list of~~
25 ~~preventable serious adverse events that CMS is using under the~~
26 ~~Medicare program and for which health payors may withhold~~
27 ~~reimbursement under section 3.~~

28 ~~(b) Notice of CMS rule. The department shall transmit~~
29 ~~notice of the effective date of the CMS Hospital Acquired~~
30 ~~Conditions, Including Infections, Final Rule, to the Legislative~~

1 ~~Reference Bureau for publication in the Pennsylvania Bulletin.~~
2 ~~Section 6. Duties of Department of Health.~~

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

9 ~~Section 7. Duties of Department of State.~~

10 ~~The Department of State shall be responsible for~~
11 ~~investigating complaints regarding a health care provider that~~
12 ~~is not a health care facility that is seeking or causing to be~~
13 ~~sought payment directly from the patient or responsible party of~~
14 ~~the patient for a preventable serious 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 immediately.~~

22 SECTION 1. SHORT TITLE.

<—

23 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE PREVENTABLE
24 SERIOUS ADVERSE EVENTS ACT.

25 SECTION 2. DEFINITIONS.

26 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
27 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
28 CONTEXT CLEARLY INDICATES OTHERWISE:

29 "HEALTH CARE FACILITY." A HEALTH CARE FACILITY AS DEFINED
30 UNDER SECTION 802.1 OF THE ACT OF JULY 19, 1979 (P.L.130,

1 NO.48), KNOWN AS THE HEALTH CARE FACILITIES ACT, OR AN ENTITY
2 LICENSED AS A HOSPITAL UNDER THE ACT OF JUNE 13, 1967 (P.L.31,
3 NO.21), KNOWN AS THE PUBLIC WELFARE CODE.

4 "HEALTH CARE PROVIDER." A HEALTH CARE FACILITY OR A PERSON,
5 INCLUDING A CORPORATION, UNIVERSITY OR OTHER EDUCATIONAL
6 INSTITUTION, LICENSED OR APPROVED BY THE COMMONWEALTH TO PROVIDE
7 HEALTH CARE OR PROFESSIONAL MEDICAL SERVICES. THE TERM SHALL
8 INCLUDE, BUT NOT BE LIMITED TO, A PHYSICIAN, A CERTIFIED NURSE
9 MIDWIFE, A PODIATRIST, A CERTIFIED REGISTERED NURSE
10 PRACTITIONER, A PHYSICIAN ASSISTANT, A CHIROPRACTOR, A HOSPITAL,
11 AN AMBULATORY SURGERY CENTER, A NURSING HOME OR A BIRTH CENTER.

12 "HEALTH PAYOR." AN INDIVIDUAL OR ENTITY PAYING FOR HEALTH
13 SERVICES ON BEHALF OF ANOTHER.

14 "MEDICAL ASSISTANCE." THE COMMONWEALTH'S MEDICAL ASSISTANCE
15 PROGRAM ESTABLISHED UNDER THE ACT OF JUNE 13, 1967 (P.L.31,
16 NO.21), KNOWN AS THE PUBLIC WELFARE CODE.

17 "NATIONAL QUALITY FORUM." A NOT-FOR-PROFIT MEMBERSHIP
18 ORGANIZATION CREATED TO DEVELOP AND IMPLEMENT A NATIONAL
19 STRATEGY FOR HEALTH CARE QUALITY MEASUREMENT AND REPORTING.

20 "PREVENTABLE SERIOUS ADVERSE EVENT." AN EVENT THAT OCCURS IN
21 A HEALTH CARE FACILITY THAT IS WITHIN THE HEALTH CARE PROVIDER'S
22 CONTROL TO AVOID, BUT THAT OCCURS BECAUSE OF AN ERROR OR OTHER
23 SYSTEM FAILURE AND RESULTS IN A PATIENT'S DEATH, LOSS OF BODY
24 PART, DISFIGUREMENT, DISABILITY OR LOSS OF BODILY FUNCTION
25 LASTING MORE THAN SEVEN DAYS OR STILL PRESENT AT THE TIME OF
26 DISCHARGE FROM A HEALTH CARE FACILITY. SUCH EVENTS SHALL BE
27 WITHIN THE LIST OF REPORTABLE SERIOUS EVENTS ADOPTED BY THE
28 NATIONAL QUALITY FORUM.

29 SECTION 3. PAYMENT POLICY FOR PREVENTABLE SERIOUS ADVERSE
30 EVENTS.

1 (A) GENERAL RULE.--HEALTH CARE PROVIDERS MAY NOT KNOWINGLY
2 SEEK PAYMENT FROM HEALTH PAYORS, PATIENTS OR THE RESPONSIBLE
3 PARTY OF THE PATIENT FOR A PREVENTABLE SERIOUS ADVERSE EVENT OR
4 SERVICES REQUIRED TO CORRECT OR TREAT THE PROBLEM CREATED BY
5 SUCH AN EVENT WHEN SUCH AN EVENT OCCURRED UNDER THEIR CONTROL.

6 (B) REFUNDS.--A HEALTH CARE PROVIDER WHO DISCOVERS THAT
7 PAYMENT HAS UNKNOWINGLY BEEN SOUGHT FOR A PREVENTABLE SERIOUS
8 ADVERSE EVENT OR SERVICES REQUIRED TO CORRECT OR TREAT THE
9 PROBLEM CREATED BY SUCH AN EVENT SHALL IMMEDIATELY NOTIFY THE
10 HEALTH PAYOR, PATIENT OR THE RESPONSIBLE PARTY OF THE PATIENT
11 AND SHALL REFUND ANY PAYMENT RECEIVED WITHIN 30 DAYS OF
12 DISCOVERY OR RECEIPT OF PAYMENT, WHICHEVER IS LATER.

13 (C) NOTIFICATION.--A HEALTH CARE PAYOR WHO DISCOVERS THAT
14 PAYMENT HAS BEEN SOUGHT FOR A PREVENTABLE SERIOUS ADVERSE EVENT
15 OR SERVICES REQUIRED TO CORRECT OR TREAT A PROBLEM CREATED BY
16 SUCH AN EVENT SHALL NOTIFY THE HEALTH CARE PROVIDER THAT PAYMENT
17 MAY NOT BE SOUGHT FOR SUCH AN EVENT OR SERVICES AND THAT PAYMENT
18 SHALL NOT BE MADE FOR SUCH EVENTS OR SERVICES.

19 (D) LIABILITY.--ANY INFORMATION PROVIDED TO ANY HEALTH CARE
20 PAYOR OR HEALTH CARE PROVIDER, IN COMPLIANCE WITH SUBSECTIONS
21 (B) AND (C), SHALL NOT BE DISCOVERABLE OR ADMISSIBLE IN ANY
22 CIVIL OR ADMINISTRATIVE ACTION RELATED TO THE ACT OF MARCH 20,
23 2002 (P.L.154, NO.13), KNOWN AS THE MEDICAL CARE AVAILABILITY
24 AND REDUCTION OF ERROR (MCARE) ACT.

25 SECTION 4. DUTIES OF DEPARTMENT OF HEALTH.

26 (A) PUBLISHING OF UPDATES.--THE DEPARTMENT SHALL PUBLISH IN
27 THE PENNSYLVANIA BULLETIN ANY UPDATES TO THE LIST OF REPORTABLE
28 SERIOUS ADVERSE EVENTS ADOPTED BY THE NATIONAL QUALITY FORUM
29 WITHIN 30 DAYS OF THE UPDATE ISSUED BY THE NATIONAL QUALITY
30 FORUM.

1 (B) HEALTH DEPARTMENT RESPONSIBILITY.--IN ACCORDANCE WITH
2 THE ACT OF JULY 19, 1979 (P.L.130, NO.48), KNOWN AS THE HEALTH
3 CARE FACILITIES ACT, THE DEPARTMENT OF HEALTH SHALL BE
4 RESPONSIBLE FOR INVESTIGATING PATIENT COMPLAINTS REGARDING A
5 HEALTH CARE FACILITY THAT IS SEEKING PAYMENT DIRECTLY FROM THE
6 PATIENT OR HEALTH CARE PAYOR FOR A PREVENTABLE SERIOUS ADVERSE
7 EVENT.

8 SECTION 5. 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 HEALTH
13 CARE PAYOR FOR A PREVENTABLE SERIOUS ADVERSE EVENT.

14 SECTION 6. APPLICABILITY.

15 (A) HOSPITAL MEDICAL ASSISTANCE PAYMENT POLICY.--NOTHING IN
16 THIS ACT SHALL REQUIRE THE DEPARTMENT OF PUBLIC WELFARE TO
17 ALTER, AMEND OR REISSUE ANY PAYMENT POLICY FOR INPATIENT
18 HOSPITALS RELATING TO PREVENTABLE SERIOUS ADVERSE EVENTS THAT
19 WAS PROMULGATED PRIOR TO THE ENACTMENT OF THIS ACT. ANY
20 MODIFICATIONS TO THE DEPARTMENT OF PUBLIC WELFARE PAYMENT POLICY
21 PROMULGATED ON OR AFTER THE DATE OF ENACTMENT OF THIS ACT FOR A
22 HEALTH CARE PROVIDER FOR A PREVENTABLE SERIOUS ADVERSE EVENT
23 SHALL REQUIRE A 30-DAY PUBLIC COMMENT PERIOD.

24 (B) CONTRACTS.--NOTHING IN THIS ACT SHALL PROHIBIT A HEALTH
25 CARE PROVIDER AND PAYOR FROM ESTABLISHING BY CONTRACT ANY
26 POLICIES AND PROCEDURES ASSOCIATED WITH SERIOUS PREVENTABLE
27 ADVERSE EVENTS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS
28 ACT.

29 (C) REPORTING.--

30 (1) HEALTH CARE PROVIDERS SHALL INCLUDE ALL APPLICABLE

1 MEDICAL CODES IN MAKING REPORTS IN COMPLIANCE WITH THE ACT OF
2 JULY 8, 1986 (P.L.408, NO.89), KNOWN AS THE HEALTH CARE COST
3 CONTAINMENT ACT.

4 (2) A PREVENTABLE SERIOUS ADVERSE EVENT SHALL BE
5 REPORTED PURSUANT TO THE REQUIREMENTS OF THE ACT OF MARCH 20,
6 2002 (P.L.154, NO.13), KNOWN AS THE MEDICAL CARE AVAILABILITY
7 AND REDUCTION OF ERROR (MCARE) ACT.

8 SECTION 7. EFFECTIVE DATE.

9 THIS ACT SHALL TAKE EFFECT IN 180 DAYS.