

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 968 Session of 2007

INTRODUCED BY ERICKSON, PILEGGI, SCARNATI, WONDERLING, MADIGAN, McILHINNEY, MELLOW, TARTAGLIONE, WASHINGTON, ORIE, M. WHITE, MUSTO, KITCHEN, GORDNER, FOLMER, O'PAKE, PIPPY, TOMLINSON, RAFFERTY, VANCE, BAKER, C. WILLIAMS, D. WHITE, FERLO, FONTANA, GREENLEAF, STACK AND BROWNE, JUNE 11, 2007

SENATOR ARMSTRONG, APPROPRIATIONS, RE-REPORTED AS AMENDED, JUNE 20, 2007

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," providing for reduction and prevention
16 of health care-associated infection.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. The act of March 20, 2002 (P.L.154, No.13), known
20 as the Medical Care Availability and Reduction of Error (Mcare)
21 Act, is amended by adding a chapter to read:

CHAPTER 4

HEALTH CARE-ASSOCIATED INFECTIONS

23

1 Section 401. Scope.

2 This chapter relates to the reduction and prevention of
3 health care-associated infections.

4 Section 402. Definitions.

5 The following words and phrases when used in this chapter
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Antimicrobial agent." A general term for drugs, chemicals
9 or other substances that kill or slow the growth of microbes,
10 including, but not limited to, antibacterial drugs, antiviral
11 agents, antifungal agents and antiparasitic drugs.

12 "Authority." The Patient Safety Authority.

13 "Colonization." The first stage of microbial infection or
14 the presence of nonreplicating microorganisms usually present in
15 host tissues that are in contact with the external environment.

16 "Department." The Department of Health of the Commonwealth.

17 "Fund." The Patient Safety Trust Fund as defined in section
18 305.

19 "Health care-associated infection." A localized or systemic
20 condition that results from an adverse reaction to the presence
21 of an infectious agent or its toxins that:

22 (1) occurs in a patient in a health care setting;

23 (2) was not present or incubating at the time of
24 admission, unless the infection was related to a previous
25 admission to the same setting; and

26 (3) if occurring in a hospital setting, meets the
27 criteria for a specific infection site as defined by the
28 Centers for Disease Control and Prevention and its National
29 Health Care Safety Network.

30 "Health care facility." A hospital or nursing home licensed

1 or otherwise regulated to provide health care services under the
2 laws of this Commonwealth.

3 "Health payor." An individual or entity providing a group
4 health, sickness or accident policy, subscriber contract or
5 program issued or provided by an entity subject to any one of
6 the following:

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

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

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

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

16 (5) 40 Pa.C.S. Ch. 61 (relating to hospital plan
17 corporations).

18 "Medicaid." The program established under Title XIX of the
19 Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.).

20 "Medicare." The program established under section 1886 of
21 the Social Security Act (49 Stat. 620, 42 U.S.C. § 1395ww).

22 "Methicillin Resistant Staphylococcus Aureus" or "MRSA." A
23 strain of bacteria that is resistant to certain antibiotics and
24 is difficult to treat medically.

25 "Multidrug resistant organism" or "MDRO." Microorganisms,
26 predominantly bacteria, that are resistant to one or more
27 classes of antimicrobial agents.

28 "Nationally recognized standards." Standards developed by
29 organizations specializing in the control of infectious diseases
30 such as the Society for the Healthcare Epidemiology of America

1 (SHEA), the Association for Professionals in Infection Control
2 and Epidemiology (APIC) and the Infectious Disease Society of
3 America (IDSA) and such methods, recommendations and guidelines
4 developed by the Centers for Disease Control and Prevention
5 (CDC) and its National Healthcare Safety Network.

6 Section 403. Infection control plan.

7 (a) Development and compliance.--Within 120 days of the
8 effective date of this section, a health care facility shall
9 develop and implement an internal infection control plan that
10 shall be established for the purpose of improving the health and
11 safety of patients and health care workers and shall include:

12 (1) A multidisciplinary committee including
13 representatives from each of the following if applicable to
14 that specific health care facility:

15 (i) Medical staff.

16 (ii) Administration.

17 (iii) Laboratory.

18 (iv) Nursing.

19 (v) Pharmacy.

20 (vi) The community.

21 (2) Effective measures for the detection, control and
22 prevention of health care-associated infections.

23 (3) An active culture surveillance process and policies.

24 (4) A system to identify and designate patients known to
25 be colonized or infected with MRSA or other MDRO.

26 (5) The procedure for identifying other high-risk
27 patients admitted to the facility who shall receive routine
28 cultures and screenings.

29 (6) An outreach process for notifying a receiving health
30 care facility of any patient known to be colonized prior to

1 transfer within or between facilities.

2 (7) A required infection-control intervention protocol
3 which includes:

4 (i) Infection control precautions, based on
5 nationally recognized standards, for general surveillance
6 of infected or colonized patients.

7 (ii) Treatment protocols based on evidence-based
8 standards.

9 (iii) Isolation procedures.

10 (iv) Physical plant operations related to infection
11 control.

12 (v) Appropriate use of antimicrobial agents and
13 antibiotics.

14 (vi) Mandatory educational programs for personnel.

15 (vii) Fiscal and human resource requirements.

16 (b) Department review.--The department shall review each
17 health care facility's infection control plan to ensure
18 compliance with this section in accordance with the department's
19 authority under 28 Pa. Code § 146 (relating to infection
20 control) OR 28 PA. CODE § 211.1 (RELATING TO REPORTABLE ←
21 DISEASES) during its regular licensure inspection process.

22 (c) Notification.--Upon review of its infection control
23 plan, a health care facility shall notify all health care
24 workers and medical staff of the health care facility of the
25 infection control plan. Compliance with the infection control
26 plan shall be required as a condition of employment or
27 credentialing at the health care facility.

28 Section 404. Patient Safety Authority jurisdiction.

29 (a) Health care facility reports to authority.--The
30 occurrence of a health care-associated infection in a health

1 care facility shall be deemed a serious event or incident, as <—
2 applicable, as defined in section 302 and shall be reported to <—
3 the authority within 24 hours of the health care facility's
4 confirmation of its occurrence. The report to the authority
5 shall be in A form and manner prescribed by the authority and <—
6 shall not include the name of any patient or any other
7 identifiable individual information. The occurrence of a health <—
8 care associated infection shall otherwise be subject to other
9 requirements of Chapter 3.

10 ~~(b) Report submission. Within 60 days of the effective date~~
11 of this section, REPORT TO THE AUTHORITY SHALL ALSO BE SUBJECT <—
12 TO ALL OF THE CONFIDENTIALITY PROTECTIONS SET FORTH IN SECTION
13 311.

14 (B) REPORT SUBMISSION.--SUBJECT TO THE NOTICE AND REPORTING
15 REQUIREMENTS SET FORTH IN SUBSECTION (C)(4), a health care
16 facility shall begin reporting health care-associated infections
17 in its facility as serious events or incidents, consistent with
18 the requirements of this section AND THE PROVISIONS OF CHAPTER <—
19 3.

20 (c) Duties.--In addition to its existing responsibilities,
21 the authority is responsible for all of the following:

22 (1) Establishing uniform definitions based on nationally
23 recognized standards for the identification and reporting of
24 health care-associated infections.

25 (2) Developing and implementing uniform reporting
26 requirements utilizing the uniform definitions established
27 under paragraph (1), which a health care facility shall
28 follow for purposes of reporting health care-associated
29 infections IF APPLICABLE TO THAT SPECIFIC HEALTH CARE <—

30 FACILITY:

1 (i) to the authority pursuant to subsection (b);
2 (ii) to the Health Care Cost Containment Council
3 pursuant to section 6(c)(7) of the act of July 8, 1986
4 (P.L.408, No.89), known as the Health Care Cost
5 Containment Act; and
6 (iii) to any other State agency, including
7 independent State agencies.

8 (3) Developing a methodology using nationally recognized
9 standards for determining and assessing the rate of health
10 care-associated infections that occur in health care
11 facilities in this Commonwealth as compared with the rate of
12 health care-associated infections occurring in health care
13 facilities on a nationwide basis.

14 (4) Publishing a notice in the Pennsylvania Bulletin
15 stating the uniform reporting requirements established
16 pursuant to this subsection and the effective date for the
17 commencement of required reporting by health care facilities
18 consistent with this chapter, which, at a minimum, shall
19 begin 120 days after publication of the notice.

20 (5) Issuing advisories under section 304(a)(7).

21 (6) Including a separate category for providing
22 information about health care-associated infections in the
23 annual report under section 304(c).

24 (7) Appointing an advisory panel of health care-
25 associated infection control experts, INCLUDING AT LEAST ONE ←
26 REPRESENTATIVE OF A NURSING HOME AND AT LEAST ONE
27 REPRESENTATIVE OF A HOSPITAL, to assist in carrying out the
28 requirements of this chapter.

29 Section 405. Payment for performing routine cultures and
30 screenings.

1 The cost of routine cultures and screenings performed on
2 patients in compliance with a health care facility's infection
3 control plan shall be considered a reimbursable cost to be paid
4 by health payors and Medicaid SUBJECT TO ANY COPAYMENT, ←
5 COINSURANCE OR DEDUCTIBLE IN AMOUNTS IMPOSED IN ANY APPLICABLE
6 POLICY ISSUED BY A HEALTH PAYOR AND TO ANY AGREEMENTS BETWEEN A
7 HEALTH CARE FACILITY AND PAYOR.

8 Section 406. Incentive payment.

9 (a) General rule.--Commencing on January 1, 2009, a health
10 care facility that achieves at least a 10% reduction for that
11 facility in the total number of reported health care-associated
12 infections over the preceding year shall be eligible to receive
13 an incentive payment. For calendar year 2010 and thereafter, the
14 Department of Public Welfare shall consult with the authority to
15 establish appropriate percentage benchmarks for the reduction of
16 health care-associated infections in health care facilities in
17 order to be eligible for an incentive payment pursuant to this
18 section.

19 (b) Distribution of funds.--Funds for the purpose of
20 implementing this section shall be appropriated to the
21 Department of Public Welfare and distributed to eligible health
22 care facilities as set forth in this section. Incentive payments
23 to health care facilities shall be limited to funds available
24 for this purpose.

25 Section 407. Duties of Department of Health.

26 The department is responsible for the following:

27 (1) The development of a public health awareness
28 campaign on health care-associated infections to be known as
29 the Community Awareness Program. The program shall provide
30 information to the public on causes and symptoms of health

1 care-associated infections, diagnosis and treatment
2 prevention methods and the proper use of antibiotics.

3 (2) The consideration and determination of the
4 feasibility of establishing an active surveillance program
5 involving other entities, such as athletic teams,
6 correctional facilities or other entities to identify those
7 persons in the community that are actively colonized and at
8 risk of susceptibility to and transmission of MRSA bacteria.

9 Section 408. Nursing home assessment to Patient Safety
10 Authority.

11 (a) Assessment.--Commencing January 1, 2008, each nursing
12 home shall pay the department a surcharge on its licensing fee
13 as necessary to provide sufficient revenues to operate the
14 authority for its responsibilities under this chapter. The total
15 assessment for all nursing homes shall not be more than
16 \$1,000,000. The department shall transfer the total assessment
17 amount to the fund within 30 days of receipt.

18 (b) Base amount.--For each succeeding calendar year, the
19 authority shall determine the appropriate assessment amount and
20 the department shall assess each nursing home its proportionate
21 share of the authority's budget for its responsibilities under
22 this chapter. The total assessment amount shall not be more than
23 \$1,000,000 in fiscal year 2007-2008 and shall be increased
24 according to the Consumer Price Index in each succeeding fiscal
25 year.

26 (c) Expenditures.--Money appropriated to the fund under this
27 chapter shall be expended by the authority to implement this
28 chapter.

29 (d) Dissolution.--In the event that the fund is discontinued
30 or the authority is dissolved by operation of law, any balance

1 paid by nursing homes remaining in the fund, after deducting
2 administrative costs of liquidation, shall be returned to the
3 nursing homes in proportion to their financial contributions to
4 the fund in the preceding licensing period.

5 (e) Failure to pay surcharge.--If after 30 days' notice a
6 nursing home fails to pay a surcharge levied by the department
7 under this chapter, the department may assess an administrative
8 penalty of \$1,000 per day until the surcharge is paid.

9 Section 409. Scope of reporting.

10 This chapter shall satisfy the sole and exclusive requirement
11 for health care facilities to report health care-associated
12 infections to the Commonwealth.

13 Section 410. Penalties.

14 (a) Violation of Health Care Facilities Act.--The failure of
15 a health care facility to report a health care-associated
16 infection as a serious event or incident as required by this
17 chapter or the failure of a health care facility to develop,
18 implement and comply with its infection control plan in
19 accordance with the requirements of section 403 shall be a
20 violation of the act of July 19, 1979 (P.L.130, No.48), known as
21 the Health Care Facilities Act.

22 (b) Administrative penalty.--In addition to any penalty that
23 may be imposed under the Health Care Facilities Act or under 18
24 Pa.C.S. Ch. 32 (relating to abortion), a health care facility
25 which fails to report a health care-associated infection as a
26 serious event or incident may be subject to an administrative
27 penalty of \$1,000 per day imposed by the department.

28 Section 2. This act shall take effect in 30 days.