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 THE GENERAL ASSEMBLY OF PENNSYLVANIA
 

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# HOUSE BILL

No. 1190 Session of  
2013

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INTRODUCED BY CUTLER, DELISSIO, GRELL, MILLARD, STERN, CARROLL, SNYDER, HARHAI, STURLA, SAYLOR, TAYLOR, METCALFE, SWANGER, F. KELLER, FLECK, CAUSER, BAKER, LONGIETTI, KAUFFMAN, RAPP, GODSHALL, TOOHIL, PICKETT, MAJOR, PETRARCA, KOTIK, HICKERNELL, DAVIS, MACKENZIE, MENTZER, GILLESPIE, STEVENSON, THOMAS, MILNE, HESS, GERGELY, PETRI, WATSON, R. MILLER, GINGRICH, ADOLPH, GROVE, O'BRIEN, LAWRENCE, SCHLOSSBERG, FABRIZIO, K. BOYLE, SABATINA, CALTAGIRONE, EVERETT, FARRY AND EVANKOVICH, APRIL 15, 2013

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SENATOR VANCE, PUBLIC HEALTH AND WELFARE, IN SENATE, AS AMENDED, JUNE 19, 2013

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## AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An  
2 act relating to health care; prescribing the powers and  
3 duties of the Department of Health; establishing and  
4 providing the powers and duties of the State Health  
5 Coordinating Council, health systems agencies and Health Care  
6 Policy Board in the Department of Health, and State Health  
7 Facility Hearing Board in the Department of Justice;  
8 providing for certification of need of health care providers  
9 and prescribing penalties," in licensing of health care  
10 facilities, further providing for definitions, FOR <--  
11 ADMINISTRATION, for licensure, for term and content of  
12 license and for reliance on accrediting agencies and Federal  
13 Government; and providing for reliance on national  
14 accreditation organizations for hospitals.

15 The General Assembly of the Commonwealth of Pennsylvania

16 hereby enacts as follows:

17 Section 1. Section 802.1 of the act of July 19, 1979  
18 (P.L.130, No.48), known as the Health Care Facilities Act, is  
19 amended by adding definitions to read:

1 Section 802.1. Definitions.

2 The following words and phrases when used in this chapter  
3 shall have, unless the context clearly indicates otherwise, the  
4 meanings given them in this section:

5 \* \* \*

6 "Deemed" or "deemed status." A process under which a  
7 hospital may be exempt from routine licensure renewal surveys  
8 conducted by the Department of Health.

9 \* \* \*

10 "National accreditation ~~organization.~~" ORGANIZATION" OR <--  
11 "ACCREDITATION ORGANIZATION." A nongovernmental organization  
12 that has been authorized by the Centers for Medicare and  
13 Medicaid Services (CMS) to conduct hospital surveys to ensure  
14 compliance with the CMS Conditions of Participation.

15 "SURVEY." AN ANNOUNCED OR UNANNOUNCED EXAMINATION BY THE <--  
16 DEPARTMENT OF HEALTH OR ITS REPRESENTATIVES, WHICH MAY INCLUDE  
17 AN ONSITE VISIT, INTERVIEWS WITH EMPLOYEES, PATIENTS AND OTHER  
18 INDIVIDUALS AND REVIEW OF MEDICAL AND FACILITY RECORDS, FOR THE  
19 PURPOSE OF DETERMINING A HEALTH CARE FACILITY'S COMPLIANCE WITH  
20 LICENSURE REQUIREMENTS.

21 ~~Section 2. Section 806 of the act is amended by adding a~~ <--  
22 ~~subsection to read:~~

23 ~~Section 806. Licensure.~~

24 SECTION 2. SECTION 804 OF THE ACT, AMENDED DECEMBER 18, 1992 <--  
25 (P.L.1602, NO.179), IS AMENDED TO READ:

26 SECTION 804. ADMINISTRATION.

27 (A) DISCRIMINATION PROHIBITED.--EXCEPT AS OTHERWISE PROVIDED  
28 BY LAW, NO PROVIDER SHALL DISCRIMINATE IN THE OPERATION OF A  
29 HEALTH CARE FACILITY ON THE BASIS OF RACE, CREED, SEX OR  
30 NATIONAL ORIGIN.

1 (B) PREVENTION OF DUPLICATION.--IN CARRYING OUT THE  
2 PROVISIONS OF THIS CHAPTER AND OTHER STATUTES OF THIS  
3 COMMONWEALTH RELATING TO HEALTH CARE FACILITIES, THE DEPARTMENT  
4 AND OTHER DEPARTMENTS AND AGENCIES OF THE STATE AND LOCAL  
5 GOVERNMENTS SHALL MAKE EVERY REASONABLE EFFORT TO PREVENT  
6 DUPLICATION OF INSPECTIONS AND EXAMINATIONS. THE DEPARTMENT MAY  
7 MAKE THE DATES OF LICENSURE EXPIRATION COINCIDE WITH MEDICAL  
8 ASSISTANCE AND MEDICARE CERTIFICATION OR APPLICABLE [NATIONALLY  
9 RECOGNIZED ACCREDITING AGENCIES ACCREDITATION] ACCREDITATION BY  
10 NATIONAL ACCREDITATION ORGANIZATIONS AND SHALL COMBINE THESE  
11 SURVEYS AND INSPECTIONS WHERE PRACTICAL.

12 (C) HEALTH CARE INNOVATION.--THE DEPARTMENT SHALL ADMINISTER  
13 THIS CHAPTER SO AS TO ENCOURAGE INNOVATION AND EXPERIMENTATION  
14 IN HEALTH CARE AND HEALTH CARE FACILITIES CONSISTENT WITH THE  
15 PROVISIONS OF THIS CHAPTER AND SHALL ENCOURAGE CONTRIBUTIONS OF  
16 PRIVATE FUNDS AND SERVICES TO HEALTH CARE FACILITIES.

17 (D) REPORTS.--THE DEPARTMENT SHALL REPORT ANNUALLY TO THE  
18 GENERAL ASSEMBLY ON THE EFFECTIVENESS OF THE LICENSING AND  
19 ENFORCEMENT OF THIS CHAPTER. SUCH REPORT SHALL INCLUDE  
20 APPROPRIATE DATA ACCORDING TO NATURE OF FACILITY RELATING TO  
21 PROVISIONAL LICENSES ISSUED, NATURE OF VIOLATIONS OF REGULATIONS  
22 AND NUMBER OF FACILITIES AGAINST WHICH SANCTIONS HAD TO BE  
23 TAKEN.

24 SECTION 3. SECTION 806(B), (C) AND (D) OF THE ACT, AMENDED  
25 DECEMBER 18, 1992 (P.L.1602, NO.179), ARE AMENDED AND THE  
26 SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:  
27 SECTION 806. LICENSURE.

28 \* \* \*

29 (B) DEVELOPMENT OF REGULATIONS.--IN DEVELOPING RULES AND  
30 REGULATIONS FOR LICENSURE THE DEPARTMENT SHALL TAKE INTO

1 CONSIDERATION FEDERAL CERTIFICATION STANDARDS AND THE STANDARDS  
2 OF OTHER THIRD PARTY PAYORS FOR HEALTH CARE SERVICES AND SUCH  
3 [NATIONALLY RECOGNIZED ACCREDITING AGENCIES] NATIONAL  
4 ACCREDITATION ORGANIZATIONS AS THE DEPARTMENT MAY FIND  
5 APPROPRIATE.

6 (C) FIRE AND EMERGENCY STANDARDS.--NOTWITHSTANDING ANY OTHER  
7 PROVISION OF LAW OTHER THAN STANDARDS REQUIRED FOR FEDERAL  
8 CERTIFICATION BY THAT TYPE OF HEALTH CARE FACILITY IN THE  
9 MEDICARE OR MEDICAID PROGRAM, NO HEALTH CARE FACILITY SHALL BE  
10 REQUIRED TO SATISFY ANY REGULATION RELATING TO FIRE OR SIMILAR  
11 EMERGENCY CIRCUMSTANCE MORE STRINGENT THAN THOSE REQUIRED OF  
12 HOSPITALS BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTH  
13 ORGANIZATIONS OR SUCH [NATIONALLY RECOGNIZED ACCREDITING  
14 AGENCIES] NATIONAL ACCREDITATION ORGANIZATIONS AS THE DEPARTMENT  
15 MAY FIND APPROPRIATE, AND THE DEPARTMENT SHALL ADOPT AND ENFORCE  
16 THE APPROPRIATE STANDARDS.

17 (D) HOME HEALTH CARE AGENCY REGULATIONS.--IN DEVELOPING  
18 RULES AND REGULATIONS FOR LICENSURE OF HOME HEALTH CARE AGENCIES  
19 THE DEPARTMENT SHALL TAKE INTO CONSIDERATION THE STANDARDS OF  
20 [NATIONALLY RECOGNIZED ACCREDITING AGENCIES] NATIONAL  
21 ACCREDITATION ORGANIZATIONS AS THE DEPARTMENT MAY FIND  
22 APPROPRIATE. HOME HEALTH CARE AGENCIES CERTIFIED AS PROVIDERS BY  
23 THE DEPARTMENT TO THE FEDERAL GOVERNMENT FOR PURPOSES OF THE  
24 MEDICARE PROGRAM SHALL BE DEEMED TO COMPLY WITH AND SATISFY THE  
25 DEPARTMENT'S REGULATIONS GOVERNING HOME HEALTH CARE AGENCIES.

26 \* \* \*

27 (i) Hospitals.--

28 (1) In issuing a license to a hospital, the department  
29 shall, at the request of the hospital, rely on the reports of  
30 national accreditation organizations designated as acceptable

1 to the department pursuant to the requirements set forth in  
2 section 810.1 and shall issue a license to a hospital that  
3 received approval or accreditation from the designated  
4 organization.

5 (2) A hospital that is not accredited by a national  
6 accreditation organization or does not request that the  
7 department rely on the accreditation shall be required to  
8 comply with 28 Pa. Code Chs. 51 (relating to general  
9 information) and 101 (relating to general information).

10 (3) This subsection shall not be construed as a  
11 limitation on the department's right of inspection permitted  
12 under section 813, including the right to inspect in response  
13 to complaints or other reports made to the department.

14 (4) A hospital that is deemed shall comply with the  
15 standards established by a national accreditation  
16 organization that accredits the hospital. Any licensure  
17 ~~inspection~~ SURVEY of a deemed hospital shall be based on the <--  
18 standards established by the national accreditation  
19 organization that accredits the hospital and State law.

20 (5) All hospitals, whether licensed through  
21 accreditation or compliance with the department's  
22 regulations, shall submit plans for new construction and  
23 renovation of facilities to the department and must receive  
24 approval from the department before providing services in the  
25 newly constructed or renovated areas.

26 Section ~~3~~ 4. Sections 809 and 810 heading and (a) of the <--  
27 act, amended December 18, 1992 (P.L.1602, No.179), are amended  
28 to read:

29 Section 809. Term and content of license.

30 (a) Contents.--All licenses issued by the department under

1 this chapter shall:

2 (1) be issued for a specified length of time as follows,  
3 including the provision of section 804(b):

4 (i) all health care facilities other than hospitals  
5 for a period of one year[, and for hospitals for a period  
6 of two years] with the expiration date to be the last day  
7 of the month in which license is issued;

8 (ii) provisional licenses for the length of time to  
9 be determined by the department upon issuance of the  
10 provisional license;

11 ~~(iii) all deemed hospitals for the duration of the <--~~  
12 ~~accreditation cycle in good standing with the expiration~~  
13 ~~date to be the last day of the month in which the license~~  
14 ~~is issued; and~~

15 (III) ALL HOSPITALS REQUESTING THAT THE DEPARTMENT <--  
16 RELY ON THE REPORTS OF A NATIONAL ACCREDITATION  
17 ORGANIZATION AS SET FORTH UNDER SECTION 806(I)(1) AND  
18 MEETING THE REQUIREMENTS OF SECTION 810.1(A):

19 (A) AN INITIAL LICENSE WITH AN EXPIRATION DATE  
20 TO BE THE LAST DAY OF THE MONTH OF THE HOSPITAL'S  
21 CURRENT ACCREDITATION CYCLE; AND

22 (B) SUBSEQUENTLY, PROVIDED THE HOSPITAL IS A  
23 DEEMED HOSPITAL IN GOOD STANDING, A LICENSE FOR THE  
24 DURATION OF THE ACCREDITATION CYCLE WITH THE  
25 EXPIRATION DATE TO BE THE LAST DAY OF THE MONTH IN  
26 WHICH THE ACCREDITATION EXPIRES; AND

27 (iv) all hospitals licensed by compliance with the  
28 department's regulations for a period of three years,  
29 with the expiration date to be the last day of the month  
30 in which the license is issued;

- 1           (2) be on a form prescribed by the department;
- 2           (3) not be transferable except upon prior written
- 3 approval of the department;
- 4           (4) be issued only to the health care provider and for
- 5 the health care facility or facilities named in the
- 6 application;
- 7           (5) specify the maximum number of beds, if any, to be
- 8 used for the care of patients in the facility at any one
- 9 time; and
- 10          (6) specify limitations which have been placed on the
- 11 facility.

12          (b) Posting.--The license shall at all times be posted in a

13 conspicuous place on the provider's premises.

14          (c) Visitation.--Whenever practicable, the department shall

15 make its visitations and other reviews necessary for licensure

16 contemporaneously with similar visitations and other reviews

17 necessary for provider certification in the Medicare and medical

18 assistance programs and the department shall endeavor to avoid

19 duplication of effort by the department and providers in the

20 [certificate of need,] medical assistance and Medicare provider

21 certification and licensure procedures. This shall not preclude

22 the department from unannounced visits.

23          (d) Use of beds in excess of maximum.--Except in case of

24 [extreme emergency] natural disasters, catastrophes, acts of

25 bio-terrorism, epidemics or other emergencies, no license shall

26 permit the use of beds for inpatient use in the licensed

27 facility in excess of the maximum number set forth in the

28 license without first obtaining written permission from the

29 department: Provided, That during the period of a license, a

30 health care facility may without the prior approval of the

1 department increase the total number of beds by not more than  
2 ten beds or 10% of the total bed capacity, whichever is less.

3 Section 810. Reliance on [accrediting agencies] NATIONAL <--  
4 ACCREDITATION ORGANIZATIONS and Federal Government  
5 for health care facilities other than hospitals.

6 (a) Reports of other agencies.--After a provider has been  
7 licensed or approved to operate a health care facility other  
8 than a hospital for at least two years under this or prior acts,  
9 none of which has been pursuant to a provisional license, the  
10 department may rely on the reports of the Federal Government or  
11 [nationally recognized accrediting agencies] NATIONAL <--  
12 ACCREDITATION ORGANIZATIONS to the extent those standards are  
13 determined by the department to be similar to regulations of the  
14 department and if the provider agrees to:

15 (1) direct the [agency] NATIONAL ACCREDITATION <--  
16 ORGANIZATION or government to provide a copy of its findings  
17 to the department; and

18 (2) permit the department to inspect those areas or  
19 programs of the health care facility not covered by the  
20 [agency] NATIONAL ACCREDITATION ORGANIZATION or government <--  
21 inspection or where the [agency] NATIONAL ACCREDITATION <--  
22 ORGANIZATION or government report discloses more than a  
23 minimal violation of department regulations.

24 \* \* \*

25 Section 4 5. The act is amended by adding a section to read: <--  
26 Section 810.1. Reliance on national accreditation organizations  
27 for hospitals.

28 (a) Report of other agencies.--After a provider has been  
29 licensed or approved to operate a hospital for at least three  
30 years under this or a prior act, no portion of which has been



1 pursuant to a provisional or other restricted license, if  
2 requested by the facility, the department shall rely on the  
3 report of an acceptable accreditation organization authorized  
4 pursuant to this section and section 806.

5 (b) Application and approval process.--An accreditation  
6 organization shall apply to the department for approval. Prior  
7 to approval, the department shall:

8 (1) determine that the standards of the accreditation  
9 organization are equal to or more stringent than existing  
10 licensure survey requirements;

11 (2) evaluate the survey ~~or inspection~~ process of the <--  
12 accreditation organization to ensure the integrity of the  
13 survey ~~or inspection~~ process; and <--

14 (3) enter into a written agreement with the  
15 accreditation organization that includes requirements for:

16 (i) notice of all surveys ~~and inspections~~; <--

17 (ii) sharing of complaints and other relevant  
18 information;

19 (iii) participation of the department in  
20 accreditation organization activities if determined to be  
21 appropriate by the department;

22 (iv) protection of the confidentiality of medical  
23 and personal records;

24 (v) all licensure ~~inspections~~ SURVEYS of deemed <--  
25 hospitals shall be based on the standards established by  
26 the national accreditation organization and State law;  
27 and

28 (vi) any other provision necessary to ensure the  
29 integrity of the accreditation and ~~licensure~~ SURVEY <--  
30 process.

1 (c) Finding of substantial compliance of hospital.--

2 (1) If an approved accreditation organization has issued  
3 a final report finding a hospital to be in substantial  
4 compliance with the accreditation organization's standards,  
5 the department shall accept the report as evidence that the  
6 hospital has met the department's licensure requirements and  
7 shall grant the hospital deemed status, if the hospital  
8 provides a copy of the final report to the department within  
9 ten business days of the hospital receiving it from the  
10 approved accreditation organization. The final report must  
11 have been issued no more than one year prior to the  
12 expiration date of the hospital's license.

13 (2) A hospital that receives anything less than full  
14 accreditation shall be subject to full licensure survey by  
15 the department.

16 (d) Reports to department.--

17 ~~(1) A final report of an approved accreditation~~ <--  
18 ~~organization shall be made immediately available to the~~  
19 ~~public in accordance with department practice.~~

20 (1) THE DEPARTMENT SHALL, IN ACCORDANCE WITH DEPARTMENT <--  
21 PRACTICE, MAKE A FINAL REPORT OF AN APPROVED ACCREDITATION  
22 ORGANIZATION IMMEDIATELY AVAILABLE TO THE PUBLIC.

23 (2) A preliminary or final report of an approved  
24 accreditation organization shall not be admissible as  
25 evidence in a civil action or proceeding.

26 (e) Inspection by department.--The department may inspect an  
27 accredited hospital to:

28 (1) follow up on a systemic concern or event identified  
29 by an approved accreditation organization or by report filed  
30 by the facility;

1 (2) investigate a complaint;

2 (3) validate the findings of an approved accreditation  
3 organization that determined that a hospital is in compliance  
4 with conditions of participation issued by the Centers for  
5 Medicare and Medicaid Services and State licensure  
6 requirements; or

7 (4) comply with the request of any Federal or State  
8 regulatory entity.

9 ~~(f) Participation or observation of surveys or inspections~~ <--

10 ~~by accreditation organization by the department (F) DEPARTMENT~~ <--

11 PARTICIPATION OR OBSERVATION OF SURVEYS BY ACCREDITATION

12 ORGANIZATION.--The department may participate in or observe a  
13 survey or inspection of a hospital conducted by an approved <--  
14 accreditation organization.

15 (g) Actions by the department on accreditation  
16 organization's failure to meet obligations.--

17 (1) Upon determination by the department that an  
18 approved accreditation organization has failed to meet its  
19 obligations under this section, the department shall have 30  
20 days from the time it notifies the accreditation organization  
21 to resolve any issues that are resulting in the accrediting <--  
22 agency's ACCREDITATION ORGANIZATION not meeting its <--  
23 obligations.

24 (2) If, after 30 days, the department and the  
25 accrediting ACCREDITATION organization have not reached an <--  
26 agreement that brings the accrediting ACCREDITATION <--  
27 organization back into compliance with this act, the  
28 department shall provide notice in the Pennsylvania Bulletin  
29 that it intends to take action to withdraw the approval of  
30 the accreditation organization, list the reasons the action

1 is being taken, make available the accreditation  
2 organization's response to the department and receive public  
3 comment regarding the decision for a period of not less than  
4 30 days.

5 (3) If, after the conclusion of the public comment  
6 period, the department's determination is that the approved  
7 accreditation organization has failed to meet its obligation  
8 under this section, the department may withdraw approval of  
9 the accreditation organization granted under sections 806 and  
10 810 and immediately terminate the agreement between the  
11 department and the accreditation organization.

12 (4) Any hospital that has achieved deemed status as a  
13 result of being accredited by the accreditation organization  
14 terminated by the department shall keep the deemed status  
15 until the end of the current licensure period. To renew a  
16 license, the hospital shall either be accredited by another  
17 department-approved accreditation organization or shall be  
18 subject to the department's licensure regulations as provided  
19 for in section 806(i)(2).

20 Section 5 6. This act shall take effect in 180 days.

<--