
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1366 Session of
2017

INTRODUCED BY EVANKOVICH, MACKENZIE, HELM, WARD, MILLARD, MILNE,
BERNSTINE, KAUFFMAN, GREINER, RAPP, CUTLER, IRVIN, SAYLOR,
GERGELY AND GILLEN, MAY 11, 2017

REFERRED TO COMMITTEE ON INSURANCE, MAY 11, 2017

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," in medical professional liability,
16 further providing for emergency care.

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 section to read:

22 Section 517. Emergency care.

23 (a) Qualified immunity.--In a medical professional liability
24 action arising out of the provision of emergency health care

1 under circumstances in which the health care provider did not
2 have, and could not reasonably obtain at the time the care was
3 rendered, the patient's pertinent medical history, no health
4 care provider may be held liable for an act or omission unless
5 it is proven by clear and convincing evidence that the health
6 care provider was grossly negligent.

7 (b) Limitation.--The qualified immunity provided in
8 subsection (a) applies solely to emergency health care provided
9 within an emergency department, including care provided in a
10 medical emergency vehicle under the direction of a medical
11 command physician, and to continuing emergency health care
12 provided in any other department within the facility until the
13 patient is stabilized.

14 (c) Relevant factors.--The trier of fact shall consider,
15 together with all other relevant matters:

16 (1) The circumstances constituting the need for
17 emergency health care.

18 (2) The circumstances surrounding the delivery of the
19 emergency health care, including, if relevant, factors
20 including where the care was provided, the demands on the
21 emergency department at the time and the promptness with
22 which it was necessary to make medical decisions and to order
23 and provide care.

24 (3) Whether there was a preexisting health care
25 provider-patient relationship.

26 (d) Definitions.--The following words and phrases when used
27 in this section shall have the meanings given to them in this
28 subsection unless the context clearly indicates otherwise:

29 "Emergency health care." All health care services provided
30 to a patient after the onset, and until the patient is

1 stabilized, of a medical or traumatic condition manifesting
2 itself by acute symptoms of sufficient severity, including
3 severe pain, such that the absence of immediate medical
4 attention could reasonably be expected to result in placing the
5 individual's health in serious jeopardy, impairment of bodily
6 functions or dysfunction of a bodily organ or part.

7 "Health care service." An act or treatment that is performed
8 or furnished, or that should have been performed or furnished,
9 by a health care provider for, to or on behalf of a patient
10 during a patient's medical care or treatment. The term includes
11 the direction to perform, not perform, furnish or not furnish a
12 health care service.

13 "Stabilized." In reference to an emergency medical
14 condition, that no material deterioration of the emergency
15 medical condition is likely, within reasonable medical
16 probability, to result from or occur during a transfer of the
17 patient to another department within the facility, transfer to
18 another facility or discharge from the facility.

19 Section 2. The addition of section 517 of the act shall
20 apply to all medical professional liability actions arising on
21 or after the effective date of this section.

22 Section 3. This act shall take effect in 60 days.