

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2371 Session of
2004

INTRODUCED BY DAILEY, DeLUCA, BROWNE, GEORGE, BUNT, ADOLPH, ALLEN, ARGALL, ARMSTRONG, BARD, BARRAR, BASTIAN, BEBKO-JONES, BELARDI, BENNINGHOFF, BIANCUCCI, BIRMELIN, BISHOP, BLAUM, BOYD, CASORIO, CIVERA, CLYMER, COHEN, COLEMAN, COSTA, COY, CRAHALLA, CREIGHTON, CURRY, DALEY, DALLY, DENLINGER, DERMODY, DeWEESE, DIVEN, DONATUCCI, EACHUS, EGOLF, D. EVANS, J. EVANS, FABRIZIO, FEESE, FICHTER, FORCIER, FRANKEL, FREEMAN, GABIG, GEIST, GERGELY, GINGRICH, GRUCELA, HALUSKA, HARHAI, HARHART, HARPER, HARRIS, HENNESSEY, HERMAN, HERSHEY, HORSEY, HUTCHINSON, JAMES, JOSEPHS, KENNEY, KIRKLAND, KOTIK, LaGROTTA, LAUGHLIN, LEACH, LEDERER, LEH, LESCOVITZ, LEVDANSKY, LEWIS, MAHER, MANDERINO, MARKOSEK, McCALL, McGEEHAN, McGILL, McILHATTAN, MELIO, METCALFE, R. MILLER, MUNDY, MYERS, OLIVER, PALLONE, PERZEL, PETRARCA, PETRI, PETRONE, PHILLIPS, PICKETT, PISTELLA, PRESTON, READSHAW, REICHLEY, RIEGER, ROBERTS, ROEBUCK, ROHRER, ROONEY, ROSS, RUFFING, SAINATO, SANTONI, SAYLOR, SCAVELLO, SCHRODER, SHANER, S. H. SMITH, SOLOBAY, STABACK, R. STEVENSON, T. STEVENSON, STURLA, SURRA, TANGRETTI, E. Z. TAYLOR, TIGUE, TRAVAGLIO, TURZAI, VANCE, VEON, VITALI, WALKO, WANSACZ, WASHINGTON, WATSON, WEBER, WHEATLEY, WILT, WOJNAROSKI, YEWIC, YOUNGBLOOD, YUDICHAK AND GOODMAN, FEBRUARY 20, 2004

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
FEBRUARY 20, 2004

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

1 regulation; providing for administration; imposing penalties;
2 and making repeals," further providing for declaration of
3 policy, for patient safety definitions, for powers and duties
4 of the Patient Safety Authority and for powers and duties of
5 the Department of Health; providing for whistleblower
6 protection; and making an appropriation.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 102 of the act of March 20, 2002
10 (P.L.154, No.13), known as the Medical Care Availability and
11 Reduction of Error (Mcare) Act, is amended to read:

12 Section 102. Declaration of policy.

13 The General Assembly finds and declares as follows:

14 (1) It is the purpose of this act to ensure that medical
15 care is available in this Commonwealth through a
16 comprehensive and high-quality health care system.

17 (2) Access to a full spectrum of hospital services and
18 to highly trained physicians in all specialties must be
19 available across this Commonwealth.

20 (3) To maintain this system, medical professional
21 liability insurance has to be obtainable at an affordable and
22 reasonable cost in every geographic region of this
23 Commonwealth.

24 (4) A person who has sustained injury or death as a
25 result of medical negligence by a health care provider must
26 be afforded a prompt determination and fair compensation.

27 (5) Every effort must be made to reduce and eliminate
28 medical errors by identifying problems and implementing
29 solutions that promote patient safety.

30 (6) Recognition and furtherance of all of these elements
31 is essential to the public health, safety and welfare of all
32 the citizens of Pennsylvania.

1 (7) It is the purpose of this act to enhance patient
2 safety by establishing meaningful whistleblower protection
3 and a reporting system for medical errors which is responsive
4 to legitimate concerns.

5 Section 2. Section 302 of the act is amended by adding
6 definitions to read:

7 Section 302. Definitions.

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

11 * * *

12 "Disciplinary action." An action against an individual which
13 has a negative impact on the individual in relation to salary or
14 terms of employment or professional affiliation. The term
15 includes discharge and loss or alteration of privileges of
16 affiliation.

17 * * *

18 "Health care facility." A facility licensed under the act of
19 July 19, 1979 (P.L.130, No.48), known as the Health Care
20 Facilities Act.

21 "Health care practitioner." An individual who is authorized
22 to practice some component of the healing arts by a license,
23 permit, certificate or registration, issued by a Commonwealth
24 licensing agency.

25 * * *

26 Section 3. Sections 304(a) and (b) and 306 of the act are
27 amended to read:

28 Section 304. Powers and duties.

29 (a) General rule.--The authority shall do all of the
30 following:

1 (1) Adopt bylaws necessary to carry out the provisions
2 of this chapter.

3 (2) Employ staff as necessary to implement this chapter.

4 (3) Make, execute and deliver contracts and other
5 instruments.

6 (4) Apply for, solicit, receive, establish priorities
7 for, allocate, disburse, contract for, administer and spend
8 funds in the fund and other funds that are made available to
9 the authority from any source consistent with the purposes of
10 this chapter.

11 (5) Contract with a for-profit or registered nonprofit
12 entity or entities, other than a health care provider, to do
13 the following:

14 (i) Collect, analyze and evaluate data regarding
15 reports of serious events and incidents, including the
16 identification of performance indicators and patterns in
17 frequency or severity at certain medical facilities or in
18 certain regions of this Commonwealth.

19 (ii) Transmit to the authority recommendations for
20 changes in health care practices and procedures which may
21 be instituted for the purpose of reducing the number and
22 severity of serious events and incidents.

23 (iii) Directly advise reporting medical facilities
24 of immediate changes that can be instituted to reduce
25 serious events and incidents.

26 (iv) Conduct reviews in accordance with subsection
27 (b).

28 (6) Receive and evaluate recommendations made by the
29 entity or entities contracted with in accordance with
30 paragraph (5) and [report] advise the department of those

1 recommendations [to the department, which shall have no more
2 than 30 days to approve or disapprove the recommendations].

3 (7) [After consultation and approval by the department,
4 issue] Issue recommendations to medical facilities on a
5 facility-specific or on a Statewide basis regarding changes,
6 trends and improvements in health care practices and
7 procedures for the purpose of reducing the number and
8 severity of serious events and incidents. Prior to issuing
9 recommendations, consideration shall be given to the
10 following factors that include expectation of improved
11 quality care, implementation feasibility, other relevant
12 implementation practices and the cost impact to patients,
13 payors and medical facilities. Statewide recommendations
14 shall be issued to medical facilities on a continuing basis
15 and shall be published and posted on the department's
16 publicly accessible World Wide Web site and the authority's
17 publicly accessible World Wide Web site.

18 (8) Meet with the department for purposes of
19 implementing this chapter.

20 (9) Upon receipt of a complaint under subsection (b), do
21 all of the following:

22 (i) Distribute copies of the complaint to each
23 director on the board.

24 (ii) Within ten business days, require the
25 department to investigate the complaint under section
26 306(a)(6).

27 (iii) Maintain the confidentiality of all
28 information resulting from the complaint and the
29 investigation until sanctions are pursued under section
30 306(a)(7).

1 (10) Disseminate, through publications and training
2 sessions, information about patient safety reporting under
3 subsection (b)(2).

4 (b) [Anonymous reports] Reports to the authority.--

5 (1) A health care worker who has complied with section
6 308(a) may file an anonymous report regarding a serious event
7 with the authority. Upon receipt of the report, the authority
8 shall give notice to the affected medical facility that a
9 report has been filed. [The authority shall conduct its own
10 review of the report unless the medical facility has already
11 commenced an investigation of the serious event.] The medical
12 facility [shall] may provide the authority with the results
13 of its investigation no later than 30 days after receiving
14 notice pursuant to this subsection. [If the authority is
15 dissatisfied with the adequacy of the investigation conducted
16 by the medical facility, the authority shall perform its own
17 review of the serious event and may refer a medical facility
18 and any involved licensee to the department for failure to
19 report pursuant to section 313(e) and (f).] This paragraph
20 shall not preclude a direct report to the authority under
21 paragraph (2).

22 (2) The authority shall maintain a Statewide
23 confidential, toll-free telephone line to enable health care
24 practitioners to report on patient safety and the quality of
25 patient care provided by a health care facility. If a health
26 care practitioner who files a complaint under this paragraph
27 requests anonymity, the authority shall, except to the extent
28 necessary to verify credentials, maintain anonymity.

29 * * *

30 Section 306. Department responsibilities.

1 (a) General rule.--The department shall do all of the
2 following:

3 (1) Review and approve patient safety plans in
4 accordance with section 307.

5 (2) Receive reports of serious events and infrastructure
6 failures under section 313.

7 (3) Investigate serious events and infrastructure
8 failures.

9 (4) In conjunction with the authority, analyze and
10 evaluate existing health care procedures and approve
11 recommendations issued by the authority pursuant to section
12 304(a)(6) and (7).

13 (5) Meet with the authority for purposes of implementing
14 this chapter.

15 (6) Upon referral of a complaint under section
16 304(a)(9), do all of the following:

17 (i) Within ten business days, investigate the
18 complaint. In order to carry out the investigation under
19 this subparagraph, the department shall consult with
20 board-certified, specialty-specific experts, as
21 necessary.

22 (ii) If warranted by the investigation:

23 (A) Seek sanctions under paragraph (7).

24 (B) Recommend sanctions or other action to the
25 appropriate licensing board under Chapter 9. A
26 licensing board or agency which receives a
27 recommendation under this clause shall report to the
28 authority concerning its action every 30 days until
29 the matter is finally disposed of.

30 (C) Recommend sanctions or other action to any

1 other appropriate Commonwealth agency.

2 (iii) Maintain the confidentiality of all
3 information resulting from the complaint and the
4 investigation until sanctions are sought under paragraph
5 (7).

6 (7) Impose an administrative penalty of up to \$5,000
7 upon a health care facility for acts or omissions which
8 impair patient safety or the quality of patient care or, at
9 the department's discretion, take other remedial actions as
10 authorized by law. This paragraph is subject to 2 Pa.C.S. Ch.
11 5 Subch. A (relating to practice and procedure of
12 Commonwealth agencies) and Ch. 7 Subch. A (relating to
13 judicial review of Commonwealth agency action).

14 (b) Department consideration.--The recommendations made to
15 medical facilities pursuant to subsection (a)(4) may be
16 considered by the department for licensure purposes under the
17 act of July 19, 1979 (P.L.130, No.48), known as the Health Care
18 Facilities Act, but shall not be considered mandatory unless
19 adopted by the department as regulations pursuant to the act of
20 June 25, 1982 (P.L.633, No.181), known as the Regulatory Review
21 Act.

22 Section 4. The act is amended by adding a section to read:
23 Section 315. Whistleblower protection.

24 (a) Applicability.--This section applies to a health care
25 practitioner who does any of the following:

26 (1) Files a complaint under section 304(b).

27 (2) Makes a report to an agency which has jurisdiction
28 over patient safety, health care or the quality of patient
29 care provided by any health care facility or health care
30 professional.

1 (3) Makes a report to a health care facility on patient
2 safety or the quality of patient care provided by the health
3 care facility. This paragraph includes a report to any
4 employer, supervisor, coworker or other person with
5 privileges.

6 (b) Prohibition.--A health care facility that employs or
7 grants conditional or unconditional privileges to a health care
8 practitioner may not take disciplinary action against the health
9 care practitioner in retaliation for filing a complaint in good
10 faith or making a report in good faith under subsection (a).

11 (c) Remedy.--A health care practitioner who is aggrieved by
12 a violation of subsection (b) may recover damages proximately
13 caused by the violation, including pain and suffering; cost of
14 the litigation; and attorney fees. Notwithstanding any other
15 provision of law, in an action under this subsection, all
16 patient records relating to the complaint under this subsection,
17 including peer review documents, shall be available to the court
18 and each party for possible use as documentary evidence.

19 (d) Deterring complaints and reports.--Any provision of a
20 contract or a professional affiliation arrangement, including a
21 document granting privileges, entered into with a health care
22 practitioner which limits the health care practitioner's ability
23 to file a complaint or make a report under subsection (a) or
24 which contains any threat, implicit or otherwise, or contains
25 any penalty for filing a complaint or making a report under
26 subsection (a) is against public policy and shall be void.

27 Section 5. The sum of \$, or as much thereof as may be
28 necessary, is hereby appropriated to the Patient Safety
29 Authority for the fiscal year July 1, 2003, to June 30, 2004, to
30 carry out the provisions of this act.

1 Section 6. This act shall take effect in 90 days.