

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 84 Session of 2009

INTRODUCED BY DeLUCA, KOTIK, MANDERINO, WALKO, FRANKEL, BELFANTI, BRENNAN, CALTAGIRONE, GIBBONS, GROVE, HARKINS, MANN, McILVAINE SMITH, MILLER, MUNDY, READSHAW, SIPTROTH, SOLOBAY, STABACK, VULAKOVICH, WHITE, WANSACZ, MURT, MYERS, EACHUS, MICOZZIE, HORNAMAN, SANTARSIERO, KORTZ AND MATZIE, JANUARY 28, 2009

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MARCH 31, 2009

AN ACT

~~Establishing a system for payment or reduction in payment for preventable serious adverse events within this Commonwealth; and providing for the powers and duties of the Department of Health and the Department of State.~~

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ESTABLISHING A SYSTEM FOR PAYMENT OR REDUCTION IN PAYMENT FOR PREVENTABLE SERIOUS ADVERSE EVENTS WITHIN THIS COMMONWEALTH; DEVELOPING BULLETINS; AND PROVIDING FOR THE POWERS AND DUTIES OF THE DEPARTMENT OF PUBLIC WELFARE, THE DEPARTMENT OF HEALTH AND THE DEPARTMENT OF STATE.

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The General Assembly of the Commonwealth of Pennsylvania

hereby enacts as follows:

Section 1. Short title.

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

Section 2. Definitions.

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

"Health care facility." A health care facility as defined

under section 802.1 of the act of July 19, 1979 (P.L.130, No. 48), known as the Health Care Facilities Act, or an entity licensed as a hospital under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

"Health care provider." A health care facility or a person, including a corporation, university or other educational institution, licensed or approved by the Commonwealth to provide health care or professional medical services. The term shall include, but not be limited to, a physician, a certified nurse midwife, a podiatrist, a certified registered nurse practitioner, a physician assistant, a chiropractor, a hospital, an ambulatory surgery center, a nursing home or a birth center.

"Health payor." An individual or entity paying for health services for himself or itself or on behalf of another.

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

"National Quality Forum." A not-for-profit membership organization created to develop and implement a national strategy for health care quality measurement and reporting.

"Preventable serious adverse event." An event that occurs in a health care facility that is within the health care provider's control to avoid, but that occurs because of an error or other system failure and results in a patient's death, loss of body part, disfigurement, disability or loss of bodily function lasting more than seven days or still present at the time of discharge from a health care facility. ~~Such~~ UNLESS THE EVENTS

ARE LISTED IN A PREVENTABLE SERIOUS ADVERSE EVENTS BULLETIN ISSUED BY THE DEPARTMENT OF PUBLIC WELFARE UNDER SECTION 4(A) OR WITH RESPECT TO MEDICAL ASSISTANCE HOSPITAL PAYMENTS UNDER
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SECTION 7(A) AND (B), SUCH events shall be within the list of reportable serious events adopted by the National Quality Forum.

"PRINCIPAL." A PRINCIPAL SHALL MEAN A NURSING FACILITY OR TRADE ASSOCIATION REPRESENTING NURSING FACILITIES.

Section 3. Payment policy for preventable serious adverse events.

~~(a) General rule. Health care providers may not knowingly~~

~~seek payment from health payors, or patients for a preventable serious adverse event or services required to correct or treat the problem created by such an event when such an event occurred under their control.~~

(A) GENERAL RULE.--A HEALTH CARE PROVIDER MAY NOT KNOWINGLY SEEK PAYMENT FROM A HEALTH PAYOR OR PATIENT:

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(1) FOR A PREVENTABLE SERIOUS ADVERSE EVENT; OR

(2) FOR ANY SERVICES REQUIRED TO CORRECT OR TREAT THE PROBLEM CREATED BY A PREVENTABLE SERIOUS ADVERSE EVENT WHEN THAT EVENT OCCURRED UNDER THEIR CONTROL.

(b) Refunds.--A health care provider who discovers that payment has unknowingly been sought for a preventable serious adverse event or services required to correct or treat the problem created by such an event shall immediately notify the health payor, or patient and shall refund any payment received within 30 days of discovery or receipt of payment, whichever is later.

(c) Notification.--A health care payor who discovers that payment has been sought for a preventable serious adverse event or services required to correct or treat a problem created by such an event shall notify the health care provider that payment may not be sought for such an event or services and that payment shall not be made for such events or services.

(d) Liability.--Any information provided to any health care payor or health care provider, in compliance with subsections (b) and (c), shall not be discoverable or admissible in any civil or administrative action related to the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

SECTION 4. NURSING FACILITY PREVENTABLE SERIOUS ADVERSE EVENTS BULLETIN. <--

(A) NURSING FACILITY BULLETIN.--THE DEPARTMENT OF PUBLIC WELFARE SHALL ISSUE A PREVENTABLE SERIOUS ADVERSE EVENTS BULLETIN FOR NURSING FACILITIES. FOR A NURSING FACILITY, PREVENTABLE SERIOUS ADVERSE EVENTS SHALL BE THOSE LISTED IN A BULLETIN DEVELOPED BY THE DEPARTMENT UNDER THIS SECTION.

(B) CONSULTING PRINCIPALS.--PRIOR TO ISSUANCE OF A BULLETIN, THE DEPARTMENT OF PUBLIC WELFARE SHALL CONSULT WITH PRINCIPALS CONCERNING THE DEVELOPMENT OF A PREVENTABLE SERIOUS ADVERSE EVENTS BULLETIN FOR NURSING FACILITIES.

(C) OPEN MEETINGS.--MEETINGS HELD UNDER SUBSECTION (B) SHALL BE OPEN TO THE PUBLIC.

(D) PUBLICATION.--THE DEPARTMENT OF PUBLIC WELFARE SHALL PUBLISH THE PROPOSED PREVENTABLE SERIOUS ADVERSE EVENTS BULLETIN IN THE PENNSYLVANIA BULLETIN AND SOLICIT PUBLIC COMMENTS FOR A MINIMUM OF 30 DAYS. AFTER CONSIDERATION OF THE COMMENTS IT RECEIVES, THE DEPARTMENT OF PUBLIC WELFARE MAY PROCEED TO ADOPT

THE FINAL PREVENTABLE SERIOUS ADVERSE EVENTS BULLETIN BY PUBLICATION IN THE PENNSYLVANIA BULLETIN. THE DEPARTMENT OF PUBLIC WELFARE SHALL INCLUDE ITS RESPONSES TO THE PUBLIC COMMENTS THAT IT RECEIVED CONCERNING THE PROPOSED BULLETIN.

(E) DEPARTMENT NOTICE.--THE DEPARTMENT OF PUBLIC WELFARE SHALL NOTIFY THE DEPARTMENT OF HEALTH OF THE FINAL PREVENTABLE

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SERIOUS ADVERSE EVENTS BULLETIN PUBLISHED UNDER THIS SECTION.

Section 45. Duties of Department of Health.

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~~(a) Publishing of updates.--The department shall publish in the Pennsylvania Bulletin any updates to the list of reportable serious adverse events adopted by the National Quality Forum within 30 days of the update issued by the National Quality Forum.~~

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(A) PUBLISHING OF UPDATES.--THE DEPARTMENT OF HEALTH SHALL PUBLISH IN THE PENNSYLVANIA BULLETIN:

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(1) ANY UPDATES TO THE LIST OF REPORTABLE SERIOUS ADVERSE EVENTS ADOPTED BY THE NATIONAL QUALITY FORUM WITHIN 30 DAYS OF THE UPDATE ISSUED BY THE NATIONAL QUALITY FORUM.

(2) A CITATION TO THE PREVENTABLE SERIOUS ADVERSE EVENTS THE BULLETIN PUBLISHED UNDER SECTION 4.

(b) Health department responsibility.--In accordance with the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, the Department of Health shall be

responsible for investigating patient OR HEALTH PAYOR complaints regarding a health care facility that is seeking payment directly from the patient or health care payor for a preventable serious adverse event.

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Section 56. Duties of Department of State.

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The Department of State shall be responsible for investigating patient complaints regarding a health care provider that is not a health care facility that is seeking or causing to be sought payment directly from the patient or health care payor for a preventable serious adverse event.

Section 67. Applicability.

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~~(a) Hospital medical assistance payment policy. Nothing in this act shall require the Department of Public Welfare to~~

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~~alter, amend or reissue any payment policy for inpatient hospitals relating to preventable serious adverse events that was promulgated prior to the enactment of this act. Any modifications to the Department of Public Welfare payment policy promulgated on or after the date of enactment of this act for a health care provider for a preventable serious adverse event shall require a 30 day public comment period.~~

~~(b)~~

(A) HOSPITAL PREVENTABLE SERIOUS ADVERSE EVENTS BULLETIN.--
NOTHING IN THIS ACT SHALL REQUIRE THE DEPARTMENT OF PUBLIC

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WELFARE TO ALTER, AMEND, REVISE OR REISSUE ANY PREVENTABLE SERIOUS ADVERSE EVENTS BULLETIN RELATING TO INPATIENT HOSPITALS ISSUED PRIOR TO THE EFFECTIVE DATE OF THIS ACT.

(B) COMMENT PERIOD.--ANY MODIFICATIONS TO THE DEPARTMENT OF PUBLIC WELFARE PREVENTABLE SERIOUS ADVERSE EVENTS BULLETINS ISSUED AFTER THE EFFECTIVE DATE OF THIS ACT FOR A HEALTH CARE PROVIDER FOR A PREVENTABLE SERIOUS ADVERSE EVENT SHALL REQUIRE A 30-DAY PUBLIC COMMENT PERIOD.

(C) Contracts.--Nothing in this act shall prohibit a health care provider and payor from establishing by contract any policies and procedures associated with serious preventable adverse events necessary to implement the provisions of this act.

~~(e)(D) Reporting.--~~

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~~(1) Health care providers shall include all applicable medical codes in making reports in compliance with the act of July 8, 1986 (P.L.408, No.89), known as the Health Care Cost Containment Act.~~

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(1) EXCEPT FOR HEALTH CARE PROVIDERS UNDER SECTION 4, HEALTH CARE PROVIDERS SHALL INCLUDE ALL APPLICABLE MEDICAL

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CODES IN MAKING REPORTS TO THE HEALTH CARE COST CONTAINMENT COUNCIL.

(2) A preventable serious adverse event shall be

reported pursuant to the requirements of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

~~(d)~~(E) Medicare payment.--Nothing in this act shall be construed to supersede Medicare payment policies where the services provided to the patient are paid for by Medicare. If Medicare denies payment based on a determination that a preventable serious adverse event has occurred, nothing in this act shall be construed to require medical assistance, ANY OTHER DEPARTMENT RESPONSIBLE FOR PAYMENT OF A MEDICAL CLAIM or a health payor to pay a claim for the event or services.

(F) DEPARTMENT INITIATION.--NOTHING IN THIS ACT MAY PREVENT THE DEPARTMENT OF PUBLIC WELFARE FROM DEVELOPING, REVISING OR AMENDING A PREVENTABLE SERIOUS ADVERSE EVENTS BULLETIN IN CONSULTATION WITH HEALTH CARE PROVIDERS.

(G) CONSULTATION BY DEPARTMENT OF PUBLIC WELFARE.--NOTHING IN THIS ACT MAY PREVENT THE DEPARTMENT OF PUBLIC WELFARE FROM CONSULTING WITH ANY OTHER AGENCY OR DEPARTMENT THAT IS RESPONSIBLE FOR PAYMENT OF MEDICAL CLAIMS SUBMITTED FOR PAYMENT BY A HEALTH CARE PROVIDER.

Section 78. Effective date.

This act shall take effect ~~in 180 days~~.AS FOLLOWS:

- (1) SECTION 4 SHALL TAKE EFFECT IN ONE YEAR.
- (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60

DAYS.

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