HOUSE . . . . No. 2226

By Ms. Provost of Somerville, petition of Denise Provost and others relative to promoting healthcare transparency and consumer and provider partnerships through the establishment of patient and family advisory councils. Public Health.

The Commonwealth of Massachusetts

PETITION OF:

Denise Provost	Michael E. Festa
Richard T. Moore	Elizabeth A. Malia
Kay Khan	Ellen Story
Rachel Kaprielian	Timothy J. Toomey, Jr.
David B. Sullivan	William Lantigua
William N. Brownsberger	Paul Kujawski
John W. Scibak	Joyce A. Spiliotis
Ruth B. Balser	A. Stephen Tobin
Steven J. D'Amico	Frank I. Smizik
Michael F. Rush	Alice K. Wolf
Carl M. Sciortino, Jr.	Barbara A. L'Italien
Theodore C. Speliotis	Anthony J. Verga
Kevin G. Honan	Patrick M. Natale
Anne M. Gobi	Jennifer M. Callahan
Mary E. Grant	

In the Year Two Thousand and Seven.

AN ACT PROMOTING HEALTHCARE TRANSPARENCY AND CONSUMER AND PROVIDER PARTNERSHIPS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111 of the General Laws is hereby amended
2 by inserting after Section 53D the following two sections:—
3 Section 53E. (a) All hospitals shall establish and convene patient
4 and family advisory councils, referred to in this section as the coun-
5 cils.
6 (b) The councils shall be composed of current and former patients
7 and members of their immediate families. The minimum size of a
8 council shall be 7 members. The rules and regulations for the coun-
9 cils shall be established by council members.

10 (c) Each hospital shall appoint an employee to serve as a resource
11 to the councils and to coordinate their activities.
12 (d) Each hospital shall develop a committee to establish and
13 maintain a council and to empower the council to provide mean-
14 ingful input into hospital policy and management. The councils shall
15 meet at least 4 times annually. The hospital shall provide a meeting
16 place for the council.
17 Section 53F. (a) All hospitals shall establish rapid response teams.
18 Each team shall consist of at least one physician, at least one regis-
19 tered nurse, at least one respiratory therapist, and other specialists as
20 determined necessary by the hospital.
21 (b) Rapid response teams shall be specially trained to assess a
22 patient's condition, stabilize a patient's condition, assist with com-
23 munication among the attending medical staff and the patient and
24 family, educate and support medical staff and assist with transfers.
25 (c) All Hospitals shall allow any patient, practitioner, family
26 member, or other person present during the care to activate the rapid
27 response team whenever they detect deterioration in the patient's
28 condition. Such deterioration shall include but not be limited to
29 changes in heart rate, blood pressure, respiratory status, oxygen satu-
30 ration, arterial blood gases, and mental functioning.

1 SECTION 2. Section 70E of Chapter 111 of the General Laws is
2 hereby amended by inserting after the first paragraph the following
3 paragraphs:—
4 As used in this section, "adverse event" shall mean injury to a
5 patient resulting from a medical intervention and not from the under-
6 lying condition of the patient.
7 As used in this section, "health care provider" shall mean a person
8 licensed or otherwise authorized under state law to provide health
9 care services, including: a doctor, nurse, physician assistant, nurse
10 practitioner, clinical nurse specialist, certified nurse anesthetist, cer-
11 tified nurse midwife, respiratory therapist, psychologist, certified
12 social worker, registered dietitian or nutrition professional, physical
13 or occupational therapist, pharmacist, or other individual health care
14 practitioner; and any other health care professional specified in regu-
15 lations promulgated by the secretary of the executive office of health
16 and human services.

1 SECTION 3. Said section 70E of said chapter 111 is hereby fur-
2 ther amended by inserting after the ninth paragraph the following
3 paragraphs:—
4 A health care provider who reasonably believes that an adverse
5 event has occurred shall report the adverse event to the management
6 of the facility where the event occurred unless the health care
7 provider knows that a report has already been made. The report
8 shall be made immediately or as soon as practicable, but in no event
9 later than 24 hours after the provider's discovery of the adverse
10 event.
11 Facilities, through a health care provider responsible for the
12 patient's care or through an appropriately trained designee, shall pro-
13 vide notification in person and in writing to a patient affected by an
14 adverse event or their health care proxy within 7 days. If no such
15 proxy exists, notice shall be provided to an available family member.
16 For patients who are under 18 years of age, the parent or guardian
17 shall be notified, except in cases where medical treatment was given
18 with only the consent of the minor patient, in which case only the
19 minor patient shall receive notification unless the minor patient is
20 unresponsive. If the patient or designee can not be notified in
21 person, written notification shall suffice.
22 This notification shall include a description of the adverse event,
23 the causes or potential causes of the adverse event as understood at
24 that point in time, the consequences or potential consequences of the
25 adverse event, the courses of action to be taken to alleviate the
26 impact or potential impact on the patient's health, and any other
27 information deemed by the facility or health care provider to be per-
28 tinent to the patient's health and understanding.

1 SECTION 4. Chapter 111 of the General Laws is hereby amended
2 by inserting after Section 70G the following two sections:—
3 Section 70H. (a) As used in this section, the following words,
4 unless the context clearly requires otherwise, shall have the
5 following meanings:—
6 "Department", the department of public health.
7 "Hospital", any institution, however named, whether conducted
8 for charity or for profit, which is advertised, announced, established,
9 or maintained for the purpose of caring for persons admitted thereto

10 for diagnosis, medical, surgical or restorative treatment which is ren-
11 dered within said institution.
12 "Hospital-acquired infection", a localized or systemic condition
13 (1) that results from adverse reaction to the presence of an infectious
14 agent(s) or its toxin(s) and (2) that was not present or incubating at
15 the time of admission to the hospital.
16 "Secretary", the secretary of the executive office of health and
17 human services
18 (b) Individual hospitals shall collect data on hospital-acquired
19 infection rates for the specific clinical procedures determined by the
20 department by regulation, including, but not limited to the following
21 categories:—
22 (1) Surgical site infections;
23 (2) Ventilator-associated pneumonia;
24 (3) Central line-related bloodstream infections;
25 (4) Urinary tract infections; and
26 (5) Other categories as provided under subsection (e) of this
27 section.
28 (c)(1) Hospitals shall submit quarterly reports on their hospital-
29 acquired infection rates to the department. Quarterly reports shall be
30 submitted according to a schedule set forth in regulations adopted by
31 the department. Data in quarterly reports must cover a period ending
32 not earlier than 1 month prior to submission of the report. Quarterly
33 reports shall be made available to the public at each hospital and
34 through the department on its website in a style and format that can
35 be easily understood by the public.
36 (2) If the hospital is a division or subsidiary of another entity that
37 owns or operates other hospitals or related organizations, the quar-
38 terly report shall be for the specific division or subsidiary and not for
39 the other entity.
40 (d) (1) The statewide infection prevention and control program
41 established in item 4570-1502 of section 2A of chapter 58 of the acts
42 of 2006, and the Betsy Lehman Center for Patient Safety and Med-
43 ical Error Reduction Expert Panel on Healthcare Associated Infec-
44 tion, referred to in this section as the Expert Panel, shall assist the
45 department in the development of all aspects of the department's
46 methodology for collecting, analyzing, and disclosing the informa-
47 tion collected under this section, including collection methods, for-
48 matting, and methods and means for release and dissemination.

49 (2) The department shall disclose the data collection and analysis
50 methodology as well as any public disclosure of hospital-acquired
51 infection rates to the public through its website.
52 (3) The department and the Expert Panel shall evaluate at least
53 annually the quality and accuracy of hospital information reported
54 under this section and the data collection, analysis, and dissemina-
55 tion methodologies.
56 (e) The department may, after consultation with the Expert Panel,
57 require hospitals to collect data on hospital-acquired infection rates
58 in categories additional to those set forth in subsection (b).
59 (f) (1) The department shall annually submit to the joint commit-
60 tees on public health and health care finance and the clerks of the
61 house and senate a report summarizing the hospital quarterly reports
62 and shall publish the annual report on its website. The department
63 may issue quarterly informational bulletins at its discretion, summa-
64 rizing all or part of the information submitted in the hospital quar-
65 terly reports.
66 (2) All reports issued by the department pursuant to this section
67 shall be risk adjusted, consistent with the recommendations of the
68 Expert Panel.
69 (3) The annual report shall annually compare the risk-adjusted
70 hospital-acquired infection rates, collected under subsection (c) of
71 this section, for each individual hospital in the state. The department,
72 in consultation with the Expert Panel, shall make this comparison as
73 easy to comprehend as possible for the benefit of health care con-
74 sumers. The report shall also include an executive summary, written
75 in plain language, that shall include, but not be limited to, a discus-
76 sion of findings, conclusions, and trends concerning the overall state
77 of hospital-acquired infections in the state, including a comparison
78 to prior years. The report may include policy recommendations.
79 (4) The department shall publicize the report and its availability
80 as widely as practical to interested parties, including, but not limited
81 to, hospitals, providers, media organizations, health insurers, health
82 maintenance organizations, purchasers of health insurance, orga-
83 nized labor, consumer or patient advocacy groups, and individual
84 consumers. The annual report shall be made available through the
85 department's web site and also to any person upon request.

86 (5) No hospital report or department disclosure may contain infor-
87 mation identifying a patient, hospital employee, or licensed health
88 care professional in connection with a specific infection incident.
89 (g) A patient's right of confidentiality shall not be violated in any
90 manner. Notwithstanding any general or special law to the contrary,
91 patient social security numbers and any other information that could
92 be used to identify an individual patient shall not be released.
93 (h) Hospitals shall reduce the rates of hospital-acquired infections
94 reportable under this section to zero or as close to zero as feasible, in
95 accordance with the recommendation of the statewide infection pre-
96 vention and control program established in item 4570-1502 of
97 section 2A of chapter 58 of the acts of 2006, and the Betsy Lehman
98 Center for Patient Safety and Medical Error Reduction Expert Panel
99 on Healthcare Associated Infection.
100 (i) A determination by the department that a hospital has violated
101 the provisions of subsections (a) to (g) inclusive of this section may
102 result in any or all of the following:
103 (1) Termination of licensure or other sanctions, as imposed by the
104 department, relating to licensure under this chapter.
105 (2) A civil penalty of up to $1,000 per day per violation for each
106 day the hospital is in violation of the act.
107 (j) The department shall promulgate regulations consistent with
108 this section.
109 Section 70I. (a) As used in this section, the following words,
110 unless the context clearly requires otherwise, shall have the
111 following meanings:—
112 "Health care facility" shall have the same meaning as found in
113 section 70E.
114 "Health care professional", a person licensed or otherwise autho-
115 rized under Massachusetts law to provide health care services,
116 including:—
117 (1) a doctor, nurse, physician assistant, nurse practitioner, clinical
118 nurse specialist, certified nurse anesthetist, certified nurse midwife,
119 respiratory therapist, psychologist, certified social worker, registered
120 dietitian or nutrition professional, physical or occupational therapist,
121 pharmacist, or other individual health care practitioner; and

122 (2) any other health care professional specified in regulations pro-
123 mulgated by the secretary of the executive office of health and
124 human services.
125 (b) Each health care facility shall report to the department the
126 occurrence of any of the adverse medical events, known as "never
127 events", described in items (1) to (6) of this subsection as soon as is
128 reasonably and practically possible, but no later than 15 working
129 days after discovery of the event. The report shall be filed in a
130 format specified by the department and shall identify the facility, but
131 shall not include any information identifying any of the health care
132 professionals, facility employees, or patients involved. The depart-
133 ment may consult with experts and organizations familiar with
134 patient safety when developing the format for reporting and in fur-
135 ther defining events in order to be consistent with industry standards.
136 These reports shall be available to the public through the depart-
137 ment's website.
138 (1) Surgical events reportable under this subsection shall include:-
139 (i) surgery performed on a wrong body part that is not consistent
140 with the documented informed consent for that patient. Reportable
141 events under this clause do not include situations requiring prompt
142 action that occur in the course of surgery or situations whose
143 urgency precludes obtaining informed consent;
144 (ii) surgery performed on the wrong patient;
145 (iii) the wrong surgical procedure performed on a patient that is
146 not consistent with the documented informed consent for that
147 patient. Reportable events under this clause do not include situations
148 requiring prompt action that occur in the course of surgery or situa-
149 tions whose urgency precludes obtaining informed consent;
150 (iv) retention of a foreign object in a patient after surgery or other
151 procedure, excluding objects intentionally implanted as part of a
152 planned intervention and objects present prior to surgery that are
153 intentionally retained; and
154 (v) death during or immediately after surgery of a normal, healthy
155 patient who has no organic, physiologic, biochemical, or psychiatric
156 disturbance and for whom the pathologic processes for which the
157 operation is to be performed are localized and do not entail a sys-
158 temic disturbance.

159 (2) Product or device events reportable under this subsection shall
160 include:—
161 (i) patient death or serious disability associated with the use of
162 contaminated drugs, devices, or biologics provided by the facility
163 when the contamination is the result of generally detectable contami-
164 nants in drugs, devices, or biologics regardless of the source of the
165 contamination or the product;
166 (ii) patient death or serious disability associated with the use or
167 function of a device in patient care in which the device is used or
168 functions other than as intended. Device includes, but is not limited
169 to, catheters, drains, and other specialized tubes, infusion pumps,
170 and ventilators; and
171 (iii) patient death or serious disability associated with intravas-
172 cular air embolism that occurs while being cared for in a facility,
173 excluding deaths associated with neurosurgical procedures known to
174 present a high risk of intravascular air embolism.
175 (3) Patient protection events reportable under this subsection
176 include:—
177 (i) an infant discharged to the wrong person;
178 (ii) patient death or serious disability associated with patient dis-
179 appearance for more than 4 hours, excluding events involving adults
180 who have decision-making capacity; and
181 (iii) patient suicide or attempted suicide resulting in serious dis-
182 ability while being cared for in a facility due to patient actions after
183 admission to the facility, excluding deaths resulting from self-
184 inflicted injuries that were the reason for admission to the facility.
185 (4) Care management events reportable under this subsection
186 include:—
187 (i) patient death or serious disability associated with a medication
188 error, including, but not limited to, errors involving the wrong drug,
189 the wrong dose, the wrong patient, the wrong time, the wrong rate,
190 the wrong preparation, or the wrong route of administration,
191 excluding reasonable differences in clinical judgment on drug selec-
192 tion and dose;
193 (ii) patient death or serious disability associated with a hemolytic
194 reaction due to the administration of ABO-incompatible blood or
195 blood products;

196 (iii) maternal death or serious disability associated with labor or
197 delivery in a low-risk pregnancy while being cared for in a facility,
198 including events that occur within 42 days postdelivery and
199 excluding deaths from pulmonary or amniotic fluid embolism, acute
200 fatty liver of pregnancy, or cardiomyopathy;
201 (iv) patient death or serious disability directly related to hypo-
202 glycemia, the onset of which occurs while the patient is being cared
203 for in a facility;
204 (v) death or serious disability, including kernicterus, associated
205 with failure to identify and treat hyperbilirubinemia in neonates
206 during the first 28 days of life. "Hyperbilirubinemia" means
207 bilirubin levels greater than 30 milligrams per deciliter;
208 (vi) stage 3 or 4 ulcers acquired after admission to a facility,
209 excluding progression from stage 2 to stage 3 if stage 2 was recog-
210 nized upon admission; and
211 (vii) patient death or serious disability due to spinal manipulative
212 therapy.
213 (5) Environmental events reportable under this subsection
214 include:—
215 (i) patient death or serious disability associated with an electric
216 shock while being cared for in a facility, excluding events involving
217 planned treatments such as electric countershock;
218 (ii) any incident in which a line designated for oxygen or other
219 gas to be delivered to a patient contains the wrong gas or is contami-
220 nated by toxic substances;
221 (iii) patient death or serious disability associated with a burn
222 incurred from any source while being cared for in a facility;
223 (iv) patient death associated with a fall while being cared for in a
224 facility; and
225 (v) patient death or serious disability associated with the use of
226 restraints or bedrails while being cared for in a facility.
227 (6) Criminal events reportable under this subsection include:—
228 (i) an instance of care ordered by or provided by someone imper-
229 sonating a physician, nurse, pharmacist, or other licensed health care
230 provider;
231 (ii) abduction of a patient of any age;
232 (iii) sexual assault on a patient within or on the grounds of a
233 facility; and

234 (iv) death or significant injury of a patient or staff member
235 resulting from a physical assault that occurs within or on the grounds
236 of a facility.
237 (c) The department shall annually submit to the joint committees
238 on health care finance and public health and the clerks of the house
239 and senate a report summarizing the hospital quarterly reports and
240 shall publish the annual report on the internet. The department may
241 issue quarterly informational bulletins at its discretion, summarizing
242 all or part of the information submitted in the hospital quarterly
243 reports.
244 (d) Notwithstanding any general or special law to the contrary, no
245 third party payer, including the commonwealth, an insurer licensed
246 or otherwise authorized to transact accident or health insurance orga-
247 nized under chapter 175, a nonprofit hospital service corporation
248 organized under chapter 176A, a nonprofit medical service corpora-
249 tion organized under chapter 176B, a health maintenance organiza-
250 tion organized under chapter 176G and an organization entering into
251 a preferred provider arrangement under chapter 176I, may know-
252 ingly reimburse a health care professional or a health care facility for
253 services that resulted in any of the adverse health care events listed
254 above, and no health care professional or health care facility may bill
255 the patient for such services.
256 (e) A determination by the department that a hospital has violated
257 the provisions of this section may result in any of the following:
258 (1) Termination of licensure or other sanctions relating to licen-
259 sure under this chapter, as determined by the department.
260 (2) A civil penalty of up to $1,000 per day per violation for each
261 day the hospital is in violation of the act.

1 SECTION 5. Section 23D of chapter 233 of the General Laws is
2 hereby amended by inserting after the definition of "Family", the
3 following definition:—
4 "Provider of health care", shall have the same meaning as found
5 in section 60B of chapter 231.

1 SECTION 6. Section 23D of said chapter 233 is hereby further
2 amended by inserting at the end thereof the following paragraph:—

3 In an action for malpractice, negligence, error, omission, mis-
4 take, or the unauthorized rendering of professional services against a
5 provider of health care, statements or writings by such provider of
6 health care expressing apology or sympathy relating to the pain, suf-
7 fering or death of a person which is not the result of intentional mis-
8 conduct by such provider of health care and made to such person or
9 to the family of such person shall be inadmissible as evidence of an
10 admission of liability.

1 SECTION 7. Section 1 shall take effect on January 1, 2010.

1 SECTION 8. The reports required by subsections (c) and (f) of
2 section 70H of Chapter 111 of the General Laws, created by section
3 4 of this act, shall be submitted on January 1, 2009.

1 SECTION 9. Subsection (h) of section 70H of chapter 111 of the
2 General Laws, as created by section 4 of this act, shall take effect on
3 January 1, 2010.

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