

SENATE NO. 1277

AN ACT PROMOTING HEALTHCARE TRANSPARENCY AND CONSUMER- 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 by inserting after Section 53D
2 the following two sections:-

3 Section 53E. (a) All hospitals shall establish and convene patient and family advisory councils,
4 referred to in this section as the councils.

5 (b) The councils shall be composed of current and former patients and members of their immediate
6 families. The minimum size of a council shall be 7 members. The rules and regulations for the
7 councils shall be established by council members.

8 (c) Each hospital shall appoint an employee to serve as a resource to the councils and to coordinate
9 their activities.

10 (d) Each hospital shall develop a committee to establish and maintain a council and to empower the
11 council to provide meaningful input into hospital policy and management. The councils shall meet
12 at least 4 times annually. The hospital shall provide a meeting place for the council.

13 Section 53F. (a) All hospitals shall establish rapid response teams. Each team shall consist of at
14 least one physician, at least one registered nurse, at least one respiratory therapist, and other
15 specialists as determined necessary by the hospital.

16 (b) Rapid response teams shall be specially trained to assess a patient's condition, stabilize a
17 patient's condition, assist with communication among the attending medical staff and the patient
18 and family, educate and support medical staff and assist with transfers.

19 (c) All Hospitals shall allow any patient, practitioner, family member, or other person present
20 during the care to activate the rapid response team whenever they detect deterioration in the
21 patient's condition. Such deterioration shall include but not be limited to changes in heart rate,
22 blood pressure, respiratory status, oxygen saturation, arterial blood gases, and mental functioning.

23 SECTION 2. Section 70E of Chapter 111 of the General Laws is hereby amended by inserting after
24 the first paragraph the following paragraphs:-

25 As used in this section, "adverse event" shall mean injury to a patient resulting from a medical
26 intervention and not from the underlying condition of the patient.

27 As used in this section, "health care provider" shall mean a person licensed or otherwise authorized
28 under state law to provide health care services, including: a doctor, nurse, physician assistant, nurse
29 practitioner, clinical nurse specialist, certified nurse anesthetist, certified nurse midwife, respiratory
30 therapist, psychologist, certified social worker, registered dietitian or nutrition professional,
31 physical or occupational therapist, pharmacist, or other individual health care practitioner; and any
32 other health care professional specified in regulations promulgated by the secretary of the executive
33 office of health and human services.

34 SECTION 3. Said section 70E of said chapter 111 is hereby further amended by inserting after the
35 ninth paragraph the following paragraphs:-

36 A health care provider who reasonably believes that an adverse event has occurred shall
37 report the adverse event to the management of the facility where the event occurred unless the
38 health care provider knows that a report has already been made. The report shall be made
39 immediately or as soon as practicable, but in no event later than 24 hours after the provider's
40 discovery of the adverse event.

41 Facilities, through a health care provider responsible for the patient's care or through an
42 appropriately trained designee, shall provide notification in person and in writing to a patient
43 affected by an adverse event or their health care proxy within 7 days. If no such proxy exists, notice
44 shall be provided to an available family member. For patients who are under 18 years of age, the
45 parent or guardian shall be notified, except in cases where medical treatment was given with only
46 the consent of the minor patient, in which case only the minor patient shall receive notification
47 unless the minor patient is unresponsive. If the patient or designee can not be notified in person,
48 written notification shall suffice.

49 This notification shall include a description of the adverse event, the causes or potential
50 causes of the adverse event as understood at that point in time, the consequences or potential
51 consequences of the adverse event, the courses of action to be taken to alleviate the impact or
52 potential impact on the patient's health, and any other information deemed by the facility or health
53 care provider to be pertinent to the patient's health and understanding.

54

55 SECTION 4. Chapter 111 of the General Laws is hereby amended by inserting after Section 70G
56 the following two sections:-

57 Section 70H. (a) As used in this section, the following words, unless the context clearly requires
58 otherwise, shall have the following meanings:-

59 "Department", the department of public health.

60 "Hospital", any institution, however named, whether conducted for charity or for profit, which is
61 advertised, announced, established, or maintained for the purpose of caring for persons admitted
62 thereto for diagnosis, medical, surgical or restorative treatment which is rendered within said
63 institution.

64 "Hospital-acquired infection", a localized or systemic condition (1) that results from adverse
65 reaction to the presence of an infectious agent(s) or its toxin(s) and (2) that was not present or
66 incubating at the time of admission to the hospital.

67 "Secretary", the secretary of the executive office of health and human services

68 (b) Individual hospitals shall collect data on hospital-acquired infection rates for the specific clinical
69 procedures determined by the department by regulation, including, but not limited to the following
70 categories: -

71 (1) Surgical site infections;

72 (2) Ventilator-associated pneumonia;

73 (3) Central line-related bloodstream infections;

74 (4) Urinary tract infections; and

75 (5) Other categories as provided under subsection (e) of this section.

76 (c)(1) Hospitals shall submit quarterly reports on their hospital-acquired infection rates to the
77 department. Quarterly reports shall be submitted according to a schedule set forth in regulations
78 adopted by the department. Data in quarterly reports must cover a period ending not earlier than 1
79 month prior to submission of the report. Quarterly reports shall be made available to the public at
80 each hospital and through the department on its website in a style and format that can be easily
81 understood by the public.

82 (2) If the hospital is a division or subsidiary of another entity that owns or operates other hospitals
83 or related organizations, the quarterly report shall be for the specific division or subsidiary and not
84 for the other entity.

85 (d) (1) The statewide infection prevention and control program established in item 4570-1502 of
86 section 2A of chapter 58 of the acts of 2006, and the Betsy Lehman Center for Patient Safety and
87 Medical Error Reduction Expert Panel on Healthcare Associated Infection, referred to in this
88 section as the Expert Panel, shall assist the department in the development of all aspects of the
89 department's methodology for collecting, analyzing, and disclosing the information collected under
90 this section, including collection methods, formatting, and methods and means for release and
91 dissemination.

92 (2) The department shall disclose the data collection and analysis methodology as well as any
93 public disclosure of hospital-acquired infection rates to the public through its website.

94 (3) The department and the Expert Panel shall evaluate at least annually the quality and accuracy of
95 hospital information reported under this section and the data collection, analysis, and dissemination
96 methodologies.

97 (e) The department may, after consultation with the Expert Panel, require hospitals to collect data
98 on hospital-acquired infection rates in categories additional to those set forth in subsection (b).

99 (f) (1) The department shall annually submit to the joint committees on public health and health
100 care finance and the clerks of the house and senate a report summarizing the hospital quarterly
101 reports and shall publish the annual report on its website. The department may issue quarterly
102 informational bulletins at its discretion, summarizing all or part of the information submitted in the
103 hospital quarterly reports.

104 (2) All reports issued by the department pursuant to this section shall be risk adjusted, consistent
105 with the recommendations of the Expert Panel.

106 (3) The annual report shall annually compare the risk-adjusted hospital-acquired infection rates,
107 collected under subsection (c) of this section, for each individual hospital in the state. The
108 department, in consultation with the Expert Panel, shall make this comparison as easy to
109 comprehend as possible for the benefit of health care consumers. The report shall also include an
110 executive summary, written in plain language, that shall include, but not be limited to, a discussion
111 of findings, conclusions, and trends concerning the overall state of hospital-acquired infections in
112 the state, including a comparison to prior years. The report may include policy recommendations.

113 (4) The department shall publicize the report and its availability as widely as practical to interested
114 parties, including, but not limited to, hospitals, providers, media organizations, health insurers,
115 health maintenance organizations, purchasers of health insurance, organized labor, consumer or
116 patient advocacy groups, and individual consumers. The annual report shall be made available
117 through the department's web site and also to any person upon request.

118 (5) No hospital report or department disclosure may contain information identifying a patient,
119 hospital employee, or licensed health care professional in connection with a specific infection
120 incident.

121 (g) A patient's right of confidentiality shall not be violated in any manner. Notwithstanding any
122 general or special law to the contrary, patient social security numbers and any other information
123 that could be used to identify an individual patient shall not be released.

124 (h) Hospitals shall reduce the rates of hospital-acquired infections reportable under this section to
125 zero or as close to zero as feasible, in accordance with the recommendation of the statewide
126 infection prevention and control program established in item 4570-1502 of section 2A of chapter 58

127 of the acts of 2006, and the Betsy Lehman Center for Patient Safety and Medical Error Reduction
128 Expert Panel on Healthcare Associated Infection.

129 (i) A determination by the department that a hospital has violated the provisions of subsections (a)
130 to (g) inclusive of this section may result in any or all of the following:

131 (1) Termination of licensure or other sanctions, as imposed by the department, relating to licensure
132 under this chapter.

133 (2) A civil penalty of up to \$1,000 per day per violation for each day the hospital is in
134 violation of the act.

135 (j) The department shall promulgate regulations consistent with this section.

136 Section 70I. (a) As used in this section, the following words, unless the context clearly requires
137 otherwise, shall have the following meanings:-

138 "Health care facility" shall have the same meaning as found in section 70E.

139 "Health care professional", a person licensed or otherwise authorized under Massachusetts law to
140 provide health care services, including:-

141 (1) a doctor, nurse, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse
142 anesthetist, certified nurse midwife, respiratory therapist, psychologist, certified social worker,
143 registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other
144 individual health care practitioner; and

145 (2) any other health care professional specified in regulations promulgated by the secretary of the
146 executive office of health and human services.

147 (b) Each health care facility shall report to the department the occurrence of any of the adverse
148 medical events, known as "never events", described in items (1) to (6) of this subsection as soon as
149 is reasonably and practically possible, but no later than 15 working days after discovery of the

150 event. The report shall be filed in a format specified by the department and shall identify the
151 facility, but shall not include any information identifying any of the health care professionals,
152 facility employees, or patients involved. The department may consult with experts and
153 organizations familiar with patient safety when developing the format for reporting and in further
154 defining events in order to be consistent with industry standards. These reports shall be available to
155 the public through the department's website.

156 (1) Surgical events reportable under this subsection shall include:-

157 (i) surgery performed on a wrong body part that is not consistent with the documented informed
158 consent for that patient. Reportable events under this clause do not include situations requiring
159 prompt action that occur in the course of surgery or situations whose urgency precludes obtaining
160 informed consent;

161 (ii) surgery performed on the wrong patient;

162 (iii) the wrong surgical procedure performed on a patient that is not consistent with the documented
163 informed consent for that patient. Reportable events under this clause do not include situations
164 requiring prompt action that occur in the course of surgery or situations whose urgency precludes
165 obtaining informed consent;

166 (iv) retention of a foreign object in a patient after surgery or other procedure, excluding objects
167 intentionally implanted as part of a planned intervention and objects present prior to surgery that are
168 intentionally retained; and

169 (v) death during or immediately after surgery of a normal, healthy patient who has no organic,
170 physiologic, biochemical, or psychiatric disturbance and for whom the pathologic processes for
171 which the operation is to be performed are localized and do not entail a systemic disturbance.

172 (2) Product or device events reportable under this subsection shall include:-

173 (i) patient death or serious disability associated with the use of contaminated drugs, devices, or
174 biologics provided by the facility when the contamination is the result of generally detectable
175 contaminants in drugs, devices, or biologics regardless of the source of the contamination or the
176 product;

177 (ii) patient death or serious disability associated with the use or function of a device in patient care
178 in which the device is used or functions other than as intended. Device includes, but is not limited
179 to, catheters, drains, and other specialized tubes, infusion pumps, and ventilators; and

180 (iii) patient death or serious disability associated with intravascular air embolism that occurs while
181 being cared for in a facility, excluding deaths associated with neurosurgical procedures known to
182 present a high risk of intravascular air embolism.

183 (3) Patient protection events reportable under this subsection include:-

184 (i) an infant discharged to the wrong person;

185 (ii) patient death or serious disability associated with patient disappearance for more than 4 hours,
186 excluding events involving adults who have decision-making capacity; and

187 (iii) patient suicide or attempted suicide resulting in serious disability while being cared for in a
188 facility due to patient actions after admission to the facility, excluding deaths resulting from self-
189 inflicted injuries that were the reason for admission to the facility.

190 (4) Care management events reportable under this subsection include:-

191 (i) patient death or serious disability associated with a medication error, including, but not limited
192 to, errors involving the wrong drug, the wrong dose, the wrong patient, the wrong time, the wrong
193 rate, the wrong preparation, or the wrong route of administration, excluding reasonable differences
194 in clinical judgment on drug selection and dose;

195 (ii) patient death or serious disability associated with a hemolytic reaction due to the administration
196 of ABO-incompatible blood or blood products;

197 (iii) maternal death or serious disability associated with labor or delivery in a low-risk pregnancy
198 while being cared for in a facility, including events that occur within 42 days postdelivery and
199 excluding deaths from pulmonary or amniotic fluid embolism, acute fatty liver of pregnancy, or
200 cardiomyopathy;

201 (iv) patient death or serious disability directly related to hypoglycemia, the onset of which occurs
202 while the patient is being cared for in a facility;

203 (v) death or serious disability, including kernicterus, associated with failure to identify and treat
204 hyperbilirubinemia in neonates during the first 28 days of life. "Hyperbilirubinemia" means
205 bilirubin levels greater than 30 milligrams per deciliter;

206 (vi) stage 3 or 4 ulcers acquired after admission to a facility, excluding progression from stage 2 to
207 stage 3 if stage 2 was recognized upon admission; and

208 (vii) patient death or serious disability due to spinal manipulative therapy.

209 (5) Environmental events reportable under this subsection include:-

210 (i) patient death or serious disability associated with an electric shock while being cared for in a
211 facility, excluding events involving planned treatments such as electric countershock;

212 (ii) any incident in which a line designated for oxygen or other gas to be delivered to a patient
213 contains the wrong gas or is contaminated by toxic substances;

214 (iii) patient death or serious disability associated with a burn incurred from any source while being
215 cared for in a facility;

216 (iv) patient death associated with a fall while being cared for in a facility; and

217 (v) patient death or serious disability associated with the use of restraints or bedrails while being
218 cared for in a facility.

219 (6) Criminal events reportable under this subsection include:-

220 (i) an instance of care ordered by or provided by someone impersonating a physician, nurse,
221 pharmacist, or other licensed health care provider;

222 (ii) abduction of a patient of any age;

223 (iii) sexual assault on a patient within or on the grounds of a facility; and

224 (iv) death or significant injury of a patient or staff member resulting from a physical assault that
225 occurs within or on the grounds of a facility.

226 (c) The department shall annually submit to the joint committees on health care finance and public
227 health and the clerks of the house and senate a report summarizing the hospital quarterly reports and
228 shall publish the annual report on the internet. The department may issue quarterly informational
229 bulletins at its discretion, summarizing all or part of the information submitted in the hospital
230 quarterly reports.

231 (d) Notwithstanding any general or special law to the contrary, no third party payer, including the
232 commonwealth, an insurer licensed or otherwise authorized to transact accident or health insurance
233 organized under chapter 175, a nonprofit hospital service corporation organized under chapter
234 176A, a nonprofit medical service corporation organized under chapter 176B, a health maintenance
235 organization organized under chapter 176G and an organization entering into a preferred provider
236 arrangement under chapter 176I, may knowingly reimburse a health care professional or a health
237 care facility for services that resulted in any of the adverse health care events listed above, and no
238 health care professional or health care facility may bill the patient for such services.

239 (e) A determination by the department that a hospital has violated the provisions of this section may
240 result in any of the following:

241 (1) Termination of licensure or other sanctions relating to licensure under this chapter, as
242 determined by the department.

243 (2) A civil penalty of up to \$1,000 per day per violation for each day the hospital is in violation of
244 the act.

245 SECTION 5. Section 23D of chapter 233 of the General Laws is hereby amended by inserting after
246 the definition of "Family", the following definition:-

247 "Provider of health care", shall have the same meaning as found in section 60B of chapter 231.

248 SECTION 6. Section 23D of said chapter 233 is hereby further amended by inserting at the end
249 thereof the following paragraph:-

250 In an action for malpractice, negligence, error, omission, mistake, or the unauthorized
251 rendering of professional services against a provider of health care, statements or writings by such
252 provider of health care expressing apology or sympathy relating to the pain, suffering or death of a
253 person which is not the result of intentional misconduct by such provider of health care and made to
254 such person or to the family of such person shall be inadmissible as evidence of an admission of
255 liability.

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

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

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