
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1231 Session of
2006

INTRODUCED BY ORIE, CORMAN, O'PAKE, C. WILLIAMS, REGOLA,
FONTANA, BROWNE AND EARLL, JUNE 22, 2006

REFERRED TO JUDICIARY, JUNE 22, 2006

AN ACT

1 Establishing and evaluating an administrative medical liability
2 system to restore fairness and reliability to the medical
3 justice system; and promoting patient safety by fostering
4 alternatives to current medical tort litigation.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the
9 Administrative Medical Liability System Demonstration Act.

10 Section 2. Purpose.

11 The purpose of this act is to authorize the establishment of
12 a demonstration program to examine an administrative medical
13 liability system in this Commonwealth. The program is intended
14 to help determine whether the implementation of such a system
15 would confer the following benefits:

16 (1) Reduce the time necessary to make payments to
17 injured patients.

18 (2) Expand the number of patients that may receive

1 compensation for a medical injury.

2 (3) Establish fairer, more predictable and more uniform
3 payments for patients with similar medical injuries.

4 (4) Encourage better exchange between health care
5 providers and patients regarding preventable medical errors,
6 consistent with the goals of enhancing patient safety.

7 (5) Reduce legal fees and administrative costs.

8 (6) Promote patient safety by identifying preventable
9 errors and developing changes to reduce their incidence in
10 the future.

11 Section 3. Definitions.

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

15 "Administrative Medical Liability System Commission." The
16 commission established under this act that is responsible for
17 the demonstration program.

18 "Affiliated physicians." The physicians that have privileges
19 with participating providers.

20 "Health care services." Any services provided by a health
21 care provider or by any individual working under the supervision
22 of a health care provider that relate to:

23 (1) The diagnosis, prevention or treatment of any human
24 disease or impairment.

25 (2) The assessment of the health of human beings.

26 "Hospital." Any health care facility providing clinically
27 related health services, including, but not limited to, a
28 general or special hospital, including psychiatric hospitals,
29 rehabilitation hospitals, ambulatory surgical facilities, long-
30 term care nursing facilities, cancer treatment centers using

1 radiation therapy on an ambulatory basis and inpatient drug and
2 alcohol treatment facilities, both profit and nonprofit and
3 including those operated by an agency or State or local
4 government. The term shall also include a hospice. The term
5 shall not include an office used primarily for the private or
6 group practice by health care practitioners where no reviewable
7 clinically related health service is offered, a facility
8 providing treatment solely on the basis of prayer or spiritual
9 means in accordance with the tenets of any church or religious
10 denomination or a facility conducted by a religious organization
11 for the purpose of providing health care services exclusively to
12 clergy or other persons in a religious profession who are
13 members of the religious denominations conducting the facility.

14 "Participating providers." The hospitals and their
15 affiliated physicians who participate in the demonstration
16 program.

17 "Physician." An individual licensed under the laws of this
18 Commonwealth to engage in the practice of medicine and surgery
19 in all of its branches within the scope of the act of October 5,
20 1978 (P.L.1109, No.261), known as the Osteopathic Medical
21 Practice Act, or the act of December 20, 1985 (P.L.457, No.112),
22 known as the Medical Practice Act of 1985.

23 "Program." The demonstration program established under this
24 act.

25 Section 4. Administrative Medical Liability System Commission.

26 (a) Membership.--The commission shall consist of the
27 following members:

28 (1) The Chief Justice of the Supreme Court or a
29 designee.

30 (2) The Attorney General or a designee, who shall serve

1 as the chairperson of the commission.

2 (3) The Insurance Commissioner.

3 (4) Two individuals with academic and research expertise
4 in medical liability systems, appointed by the Governor.

5 (5) Four individuals, one each appointed by the:

6 (i) President pro tempore of the Senate.

7 (ii) Minority Leader of the Senate.

8 (iii) Speaker of the House of Representatives.

9 (iv) Minority Leader of the House of

10 Representatives.

11 (b) Staff and support.--The Joint State Government
12 Commission shall provide staff and technical support. The
13 commission shall cease following the conclusion of the
14 demonstration program.

15 Section 5. Demonstration program to evaluate administrative
16 medical liability system.

17 (a) General rule.--The commission is authorized to award
18 demonstration grants to hospitals and their affiliated
19 physicians for the development, implementation and evaluation of
20 alternatives to current tort litigation for resolving disputes
21 over injuries allegedly caused by hospitals or physicians.

22 (b) Duration.--The commission may award up to three grants,
23 and each grant awarded may not exceed a period of five years.

24 (c) Conditions for demonstration grants.--Any hospital and
25 its affiliated physicians may participate in the program by
26 meeting the following criteria:

27 (1) The hospital's primary coverage is self-insured.

28 (2) The hospital and its medical staff agree to
29 disclosure of incidents and serious events, in accordance
30 with current law.

1 (3) The hospital and its medical staff agree to a
2 uniform and comprehensive risk management plan.

3 (4) The hospital and its medical staff agree to a joint
4 defense agreement.

5 (5) The hospital and physicians' insurance carriers,
6 including risk retention groups and similar organizations,
7 agree to participate in the program.

8 Section 6. Description.

9 (a) Compensation to patients.--All patients who suffer
10 temporary or permanent injury as a result of an avoidable
11 medical error by a participating hospital or physician shall be
12 compensated for economic and noneconomic damages. Independent
13 medical experts shall be consulted in specific cases to
14 determine compensable injuries. The independent medical experts
15 shall meet the qualification requirements of the act of March
16 20, 2002 (P.L.154, No.13), known as the Medical Care
17 Availability and Reduction of Error (Mcare) Act, and Pa.R.C.P.
18 No. 1042.26 (relating to medical professional liability actions.
19 Expert reports.)

20 (b) Determination of compensation.--Participating hospitals
21 and physicians and patients shall agree to a uniform schedule of
22 compensation for injuries based on type of injury, severity of
23 the injury, age, life expectancy, past and future medical costs
24 not covered under other programs and lost past and future wages.
25 Eligible claims shall be paid in a uniform manner using a fixed
26 benefits schedule and shall include compensation for both
27 economic and noneconomic losses.

28 (c) Early offers.--Participating health care providers shall
29 offer early mediation following disclosure of an avoidable
30 error.

1 (d) Independent panel.--Each eligible claim shall be
2 submitted to an independent panel. Each panel is composed of
3 three individuals selected at random from an approved list. If
4 any of the selected panel members has a relationship with the
5 patient or a health care provider involved in the particular
6 case, he or she shall be disqualified, and another panel member
7 shall be selected at random. The commission shall determine
8 qualifications of eligible panelists. Each panel will consult
9 one or more qualified medical experts from the approved list to
10 determine if the patient is eligible for compensation. If there
11 is disagreement among the medical experts, the panel shall make
12 a final ruling consistent with generally accepted medical
13 standards and practices. All decisions of the independent panel
14 shall be in written form.

15 (e) Administration.--The participating health care providers
16 shall appoint an independent administrator. The independent
17 administrator is responsible for the following:

18 (1) Recruitment and maintenance of the qualified medical
19 experts.

20 (2) Recruitment and maintenance of the qualified
21 independent panelists.

22 (3) Collection of documents needed to determine if a
23 claim is compensable.

24 (4) Selection of the independent panel.

25 (5) Determination of compensation based on the opinion
26 of the independent panel and the adopted uniform schedule of
27 compensation.

28 (6) Ensuring proper payments are made to the claimant.

29 (7) Approval of any agreement for binding arbitration
30 between the patient and the participating health care

1 providers.

2 (8) Developing analysis and feedback to the
3 participating providers for improving care processes and
4 reducing the incidence of avoidable errors.

5 (9) Administration of the arbitration program.

6 (f) Patient participation.--Patients shall opt in to the
7 program prior to or at the point of care. At a minimum, the opt-
8 in process shall become an integral part of participating
9 physician and hospitals' existing informed consent policies and
10 procedures. A patient opts in to the program by accepting a
11 written agreement. If the patient agrees to the agreement, he or
12 she agrees to accept the determination of the independent panel.
13 The decision of the independent panel is final, legally binding
14 and enforceable in court.

15 (g) Incentives.--The Commonwealth should ensure that all
16 participating physicians and hospitals are held harmless for
17 incurring any costs that exceed a predetermined amount prior to
18 the start of the program.

19 (h) Term.--All participating physicians and hospitals must
20 agree to participate for a minimum of three years. The
21 demonstration period should be at least five years.

22 (i) Costs.--The participants and the Commonwealth will share
23 the costs of operating the administrative system during the
24 demonstration period. If the program continues beyond the
25 demonstration period, all costs are the responsibility of the
26 participating health care providers. Compensation to patients is
27 the responsibility of the participating physicians and
28 hospitals' health care providers.

29 (j) Attorney fees.--Fees to any attorneys retained by the
30 patient shall be limited to 20% of the total award.

1 Section 7. Requirements.

2 (a) General rule.--Each entity desiring a grant may
3 establish a scope of jurisdiction, such as a designated
4 geographic region, a designated area of health care practice or
5 a designated group of health care providers or health care
6 organizations, for the proposed alternative to current tort
7 litigation that is sufficient to evaluate the effects of the
8 alternative.

9 (b) Notification of patients.--An entity proposing a scope
10 of jurisdiction shall demonstrate how patients would be notified
11 that they are receiving health care services that fall within
12 such scope.

13 Section 8. Application.

14 (a) General rule.--Each entity desiring a grant under
15 section 4 shall submit to the commission an application, at such
16 time, in such manner and containing such information as the
17 commission may require.

18 (b) Review panel.--

19 (1) In reviewing applications under subsection (a), the
20 commission shall consult with a review panel composed of
21 relevant experts appointed by the commission.

22 (2) The panel shall be composed as follows:

23 (i) The commission shall solicit nominations from
24 the public for individuals to serve on the review panel.

25 (ii) The commission shall appoint at least 11 but
26 not more than 15 highly qualified and knowledgeable
27 individuals to serve on the review panel and shall ensure
28 that the following entities receive fair representation
29 on the panel:

30 (A) Patient advocates.

1 (B) Health care providers and health care
2 organizations.

3 (C) Attorneys with expertise in representing
4 patients and health care providers.

5 (D) Insurers.

6 (E) State officials.

7 (c) Chairperson.--A person designated by the commission
8 shall be the chairperson of the review panel.

9 (d) Availability of information.--The commission shall make
10 available to the review panel such information, personnel and
11 administrative services and assistance as the review panel may
12 reasonably require to carry out its duties.

13 (e) Information from agencies.--The review panel may request
14 directly from any department or agency of the Commonwealth any
15 information that such panel considers necessary to carry out its
16 duties. To the extent consistent with applicable laws and
17 regulations, the head of such department or agency shall furnish
18 the requested information to the review panel.

19 (f) Report.--Each entity receiving a grant under subsection
20 (a) shall submit to the commission a report evaluating the
21 effectiveness of activities funded with grants awarded under
22 subsection (a) at such time and in such manner as the commission
23 may require.

24 (g) Technical assistance.--The Joint State Government
25 Commission shall provide technical assistance to the entities
26 awarded grants under this act. Technical assistance shall
27 include:

28 (1) The development of a defined payment schedule for
29 noneconomic damages, including guidance on the consideration
30 of individual facts and circumstances in determining

1 appropriate payment, the development of classes of avoidable
2 injuries and guidance on early disclosure to patients of
3 adverse events.

4 (2) The development of common definitions, formats and
5 data collection infrastructure for participating providers
6 receiving grants under this section to use in reporting to
7 facilitate aggregation and analysis of data Statewide.

8 Section 9. Evaluation.

9 (a) General rule.--The commission, in consultation with the
10 review panel established under this act, shall enter into a
11 contract with an appropriate research organization to conduct an
12 overall evaluation of the effectiveness of grants awarded under
13 this act and to annually prepare and submit a report to the
14 appropriate committees of the General Assembly. Such an
15 evaluation shall begin not later than 18 months following the
16 date of implementation of the first program funded by a grant
17 under this act.

18 (b) Contents.--The evaluation under subsection (a) shall
19 include:

20 (1) An analysis of the effect of the alternative system
21 on the number, nature and costs of health care liability
22 claims.

23 (2) A comparison of the claim and cost information of
24 each entity receiving a grant.

25 (3) A comparison between entities receiving a grant
26 under this section and entities that did not receive such a
27 grant, matched to ensure similar legal and health care
28 environments and to determine the effects of the grants and
29 subsequent reforms on:

30 (i) The liability environment.

- 1 (ii) Health care quality.
- 2 (iii) Patient safety.
- 3 (iv) Patient and health care provider satisfaction
- 4 with the reforms.

5 Section 10. Medical Care Availability and Reduction of Error
6 Fund (Mcare Fund).

7 Program participating providers shall continue to participate
8 in the Mcare Fund in the same manner as nonparticipating
9 providers. For participating providers, the Mcare Fund shall
10 accept the independent panel decisions and pay its assigned
11 share of damages up to its statutory incident and aggregate
12 limits.

13 Section 11. Confidentiality.

14 Disclosure of documents used in the program shall be
15 protected. All participating health care providers shall be
16 provided maximum protections to conduct peer review.

17 Section 12. Authorization of appropriations.

18 There is authorized to be appropriated to carry out this
19 section such sums as may be necessary. Amounts appropriated
20 pursuant to this section shall remain available until expended.
21 The commission may seek Federal and private funds to carry out
22 the purposes of this act.

23 Section 13. Effective date.

24 This act shall take effect immediately.