

No. 2006-30

AN ACT

HB 1591

Amending the act of March 20, 2002 (P.L.154, No.13), entitled "An act reforming the law on medical professional liability; providing for patient safety and reporting; establishing the Patient Safety Authority and the Patient Safety Trust Fund; abrogating regulations; providing for medical professional liability informed consent, damages, expert qualifications, limitations of actions and medical records; establishing the Interbranch Commission on Venue; providing for medical professional liability insurance; establishing the Medical Care Availability and Reduction of Error Fund; providing for medical professional liability claims; establishing the Joint Underwriting Association; regulating medical professional liability insurance; providing for medical licensure regulation; providing for administration; imposing penalties; and making repeals," extending patient safety standards to certain abortion facilities.

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

Section 1. The definition of "medical facility" in section 302 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, is amended and the section is amended by adding a definition to read:

Section 302. Definitions.

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

"Abortion facility." A facility or medical facility as defined in 18 Pa.C.S. § 3203 (relating to definitions) which is subject to this chapter pursuant to section 315(b) or (c) and which is not subject to licensure under the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

"Medical facility." An ambulatory surgical facility, birth center [or], hospital or abortion facility.

Section 2. Sections 305, 306(b), 310(a)(2), 311(f)(1) and 313(f) of the act are amended to read:

Section 305. Patient Safety Trust Fund.

(a) Establishment.—There is hereby established a separate account in the State Treasury to be known as the Patient Safety Trust Fund. The fund shall be administered by the authority. All interest earned from the investment or deposit of moneys accumulated in the fund shall be deposited in the fund for the same use.

(b) Funds.—All moneys deposited into the fund shall be held in trust and shall not be considered general revenue of the Commonwealth but shall be

used only to effectuate the purposes of this chapter as determined by the authority.

(c) **[Assessment] Payment.**—Commencing July 1, 2002, each *licensed* medical facility shall pay the department a surcharge on its licensing fee, *and each abortion facility not subject to State licensure shall pay an assessment* as necessary to provide sufficient revenues to operate the authority. *When determining the assessment for an abortion facility, the department shall apply the same methodology utilized for an ambulatory surgical facility.* The total **[assessment] payment** for all medical facilities shall not exceed \$5,000,000. The department shall transfer the total **[assessment amount] payments** to the fund within 30 days of receipt.

(d) **Base amount.**—For each succeeding calendar year, the department shall determine **[and assess]** each medical **[facility its] facility's** proportionate share of the authority's budget. The total **[assessment]** amount shall not exceed \$5,000,000 in fiscal year 2002-2003 and shall be increased according to the Consumer Price Index in each succeeding fiscal year.

(e) **Expenditures.**—Moneys in the fund shall be expended by the authority to implement this chapter.

(f) **Dissolution.**—In the event that the fund is discontinued or the authority is dissolved by operation of law, any balance remaining in the fund, after deducting administrative costs of liquidation, shall be returned to the medical facilities in proportion to their financial contributions to the fund **[in the preceding licensing period]**.

(g) **Failure to [pay surcharge] make payment.**—If, after 30 days' notice, a medical facility fails to pay a surcharge *or assessment* levied by the department under this chapter, the department may **[assess] impose** an administrative penalty of \$1,000 per day until the surcharge is paid.

Section 306. Department responsibilities.

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(b) **Department consideration.**—The recommendations made to medical facilities pursuant to subsection (a)(4) may be considered by the department for licensure purposes under the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, *and, in the case of abortion facilities, for approval or revocation purposes pursuant to 28 Pa. Code § 29.43 (relating to facility approval)*, but shall not be considered mandatory unless adopted by the department as regulations pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 310. Patient safety committee.

(a) **Composition.**—

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(2) An ambulatory surgical facility's, *abortion facility's* or birth center's patient safety committee shall be composed of the medical facility's patient safety officer and at least one health care worker of the medical facility and one resident of the community served by the ambulatory surgical facility, *abortion facility* or birth center who is not an

agent, employee or contractor of the ambulatory surgical facility, **abortion facility** or birth center. No more than one member of the patient safety committee shall be a member of the medical facility's board of governance. The committee shall include members of the medical facility's medical and nursing staff. The committee shall meet at least quarterly.

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Section 311. Confidentiality and compliance.

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(f) Access.—

(1) The department shall have access to the information under section 313(a) or (c) and may use such information for the sole purpose of any licensure, **approval** or corrective action against a medical facility. This exemption to use the information received pursuant to section 313(a) or (c) shall only apply to licensure or corrective actions and shall not be utilized to permit the disclosure of any information obtained under section 313(a) or (c) for any other purpose.

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Section 313. Medical facility reports and notifications.

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(f) Failure to report or notify.—Failure to report a serious event or an infrastructure failure as required by this section or to develop and comply with the patient safety plan in accordance with section 307 or to notify the patient in accordance with section 308(b) shall be a violation of the Health Care Facilities Act[,] **and, in the case of an abortion facility, may be a basis for revocation of approval pursuant to 28 Pa. Code § 29.43 (relating to facility approval)**. In addition to any penalty which may be imposed under the Health Care Facilities Act **or under 18 Pa.C.S. Ch. 32 (relating to abortion)**, a medical facility which fails to report a serious event or an infrastructure failure or to notify a licensure board in accordance with this chapter may be subject to an administrative penalty of \$1,000 per day imposed by the department.

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Section 3. The act is amended by adding a section to read:

Section 315. Abortion facilities.

(a) General.—This section shall apply to abortion facilities.

(b) Application during current year.—An abortion facility that performs 100 or more abortions after the effective date of this act during the calendar year in which this section takes effect shall be subject to the provisions of this chapter at the beginning of the immediately following calendar year and during each subsequent calendar year unless the facility gives the department written notice that it will not be performing 100 or more abortions during such following calendar year and does not perform 100 or more abortions during that calendar year.

(c) Application in subsequent calendar years.—In the calendar years following the effective date of this act, this chapter shall apply to an abortion facility not subject to subsection (b) on the day following the performance of its 100th abortion and for the remainder of that calendar year and during each subsequent calendar year unless the facility gives the department written notice that it will not be performing 100 or more abortions during such following calendar year and does not perform 100 or more abortions during that calendar year.

(d) Patient safety plan.—An abortion facility shall submit its patient safety plan under section 307(c) within 60 days following the application of this chapter to the facility.

(e) Reporting.—An abortion facility shall begin reporting serious events, incidents and infrastructure failures consistent with the requirements of section 313 upon the submission of its patient safety plan to the department.

(f) Construction.—Nothing in this chapter shall be construed to limit the provisions of 18 Pa.C.S. Ch. 32 (relating to abortion) or any regulation adopted under 18 Pa.C.S. Ch. 32.

Section 4. This act shall take effect in 60 days.

APPROVED—The 1st day of May, A.D. 2006.

EDWARD G. RENDELL