

No. 2013-60

AN ACT

HB 1190

Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An act relating to health care; prescribing the powers and duties of the Department of Health; establishing and providing the powers and duties of the State Health Coordinating Council, health systems agencies and Health Care Policy Board in the Department of Health, and State Health Facility Hearing Board in the Department of Justice; providing for certification of need of health care providers and prescribing penalties," in licensing of health care facilities, further providing for definitions, for administration, for licensure, for term and content of license and for reliance on accrediting agencies and Federal Government; and providing for reliance on national accreditation organizations for hospitals.

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

Section 1. Section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, is amended by adding definitions to read:

Section 802.1. Definitions.

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

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"Deemed" or "deemed status." A process under which a hospital may be exempt from routine licensure renewal surveys conducted by the Department of Health.

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"National accreditation organization" or "accreditation organization." A nongovernmental organization that has been authorized by the Centers for Medicare and Medicaid Services (CMS) to conduct hospital surveys to ensure compliance with the CMS Conditions of Participation.

"Survey." An announced or unannounced examination by the Department of Health or its representatives, which may include an onsite visit, interviews with employees, patients and other individuals and review of medical and facility records, for the purpose of determining a health care facility's compliance with licensure requirements.

Section 2. Section 804 of the act, amended December 18, 1992 (P.L.1602, No.179), is amended to read:

Section 804. Administration.

(a) Discrimination prohibited.—Except as otherwise provided by law, no provider shall discriminate in the operation of a health care facility on the basis of race, creed, sex or national origin.

(b) Prevention of duplication.—In carrying out the provisions of this chapter and other statutes of this Commonwealth relating to health care facilities, the department and other departments and agencies of the State and local governments shall make every reasonable effort to prevent duplication

of inspections and examinations. The department may make the dates of licensure expiration coincide with medical assistance and Medicare certification or applicable **[nationally recognized accrediting agencies accreditation]** *accreditation by national accreditation organizations* and shall combine these surveys and inspections where practical.

(c) Health care innovation.—The department shall administer this chapter so as to encourage innovation and experimentation in health care and health care facilities consistent with the provisions of this chapter and shall encourage contributions of private funds and services to health care facilities.

(d) Reports.—The department shall report annually to the General Assembly on the effectiveness of the licensing and enforcement of this chapter. Such report shall include appropriate data according to nature of facility relating to provisional licenses issued, nature of violations of regulations and number of facilities against which sanctions had to be taken.

Section 3. Section 806(b), (c) and (d) of the act, amended December 18, 1992 (P.L.1602, No.179), are amended and the section is amended by adding a subsection to read:

Section 806. Licensure.

* * *

(b) Development of regulations.—In developing rules and regulations for licensure, the department shall take into consideration Federal certification standards and the standards of other third party payors for health care services and such **[nationally recognized accrediting agencies]** *national accreditation organizations* as the department may find appropriate.

(c) Fire and emergency standards.—Notwithstanding any other provision of law other than standards required for Federal certification by that type of health care facility in the Medicare or Medicaid program, no health care facility shall be required to satisfy any regulation relating to fire or similar emergency circumstance more stringent than those required of hospitals by the Joint Commission on Accreditation of Health Organizations or such **[nationally recognized accrediting agencies]** *national accreditation organizations* as the department may find appropriate, and the department shall adopt and enforce the appropriate standards.

(d) Home health care agency regulations.—In developing rules and regulations for licensure of home health care agencies the department shall take into consideration the standards of **[nationally recognized accrediting agencies]** *national accreditation organizations* as the department may find appropriate. Home health care agencies certified as providers by the department to the Federal Government for purposes of the Medicare program shall be deemed to comply with and satisfy the department's regulations governing home health care agencies.

* * *

(i) *Hospitals.*—

(1) In issuing a license to a hospital, the department shall, at the request of the hospital, rely on the reports of national accreditation organizations designated as acceptable to the department pursuant to the requirements set forth in section 810.1 and shall issue a license to a

hospital that received approval or accreditation from the designated organization.

(2) A hospital that is not accredited by a national accreditation organization or does not request that the department rely on the accreditation shall be required to comply with 28 Pa. Code Chs. 51 (relating to general information) and 101 (relating to general information).

(3) This subsection shall not be construed as a limitation on the department's right of inspection permitted under section 813, including the right to inspect in response to complaints or other reports made to the department.

(4) A hospital that is deemed shall comply with the standards established by a national accreditation organization that accredits the hospital. Any licensure survey of a deemed hospital shall be based on the standards established by the national accreditation organization that accredits the hospital and State law.

(5) All hospitals, whether licensed through accreditation or compliance with the department's regulations, shall submit plans for new construction and renovation of facilities to the department and must receive approval from the department before providing services in the newly constructed or renovated areas.

Section 4. Sections 809 and 810 heading and (a) of the act, amended December 18, 1992 (P.L.1602, No.179), are amended to read:
Section 809. Term and content of license.

(a) Contents.—All licenses issued by the department under this chapter shall:

(1) be issued for a specified length of time as follows, including the provision of section 804(b):

(i) all health care facilities other than hospitals for a period of one year, **and for hospitals for a period of two years** with the expiration date to be the last day of the month in which license is issued;

(ii) provisional licenses for the length of time to be determined by the department upon issuance of the provisional license;

(iii) all hospitals requesting that the department rely on the reports of a national accreditation organization as set forth under section 806(i)(1) and meeting the requirements of section 810.1(a):

(A) an initial license with an expiration date to be the last day of the month of the hospital's current accreditation cycle; and

(B) subsequently, provided the hospital is a deemed hospital in good standing, a license for the duration of the accreditation cycle with the expiration date to be the last day of the month in which the accreditation expires; and

(iv) all hospitals licensed by compliance with the department's regulations for a period of three years, with the expiration date to be the last day of the month in which the license is issued;

(2) be on a form prescribed by the department;

(3) not be transferable except upon prior written approval of the department;

(4) be issued only to the health care provider and for the health care facility or facilities named in the application;

(5) specify the maximum number of beds, if any, to be used for the care of patients in the facility at any one time; and

(6) specify limitations which have been placed on the facility.

(b) Posting.—The license shall at all times be posted in a conspicuous place on the provider's premises.

(c) Visitation.—Whenever practicable, the department shall make its visitations and other reviews necessary for licensure contemporaneously with similar visitations and other reviews necessary for provider certification in the Medicare and medical assistance programs and the department shall endeavor to avoid duplication of effort by the department and providers in the **[certificate of need,]** medical assistance and Medicare provider certification and licensure procedures. This shall not preclude the department from unannounced visits.

(d) Use of beds in excess of maximum.—Except in case of **[extreme emergency] natural disasters, catastrophes, acts of bioterrorism, epidemics or other emergencies**, no license shall permit the use of beds for inpatient use in the licensed facility in excess of the maximum number set forth in the license without first obtaining written permission from the department: Provided, That during the period of a license, a health care facility may without the prior approval of the department increase the total number of beds by not more than ten beds or 10% of the total bed capacity, whichever is less.

Section 810. Reliance on **[accrediting agencies] national accreditation organizations** and Federal Government **for health care facilities other than hospitals**.

(a) Reports of other agencies.—After a provider has been licensed or approved to operate a health care facility **other than a hospital** for at least two years under this or prior acts, none of which has been pursuant to a provisional license, the department may rely on the reports of the Federal Government or **[nationally recognized accrediting agencies] national accreditation organizations** to the extent those standards are determined by the department to be similar to regulations of the department and if the provider agrees to:

(1) direct the **[agency] national accreditation organization** or government to provide a copy of its findings to the department; and

(2) permit the department to inspect those areas or programs of the health care facility not covered by the **[agency] national accreditation organization** or government inspection or where the **[agency] national accreditation organization** or government report discloses more than a minimal violation of department regulations.

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Section 5. The act is amended by adding a section to read:

Section 810.1. Reliance on national accreditation organizations for hospitals.

(a) Report of other agencies.—After a provider has been licensed or approved to operate a hospital for at least three years under this or a prior act, no portion of which has been pursuant to a provisional or other restricted license, if requested by the facility, the department shall rely on the report of an acceptable accreditation organization authorized pursuant to this section and section 806.

(b) Application and approval process.—An accreditation organization shall apply to the department for approval. Prior to approval, the department shall:

(1) determine that the standards of the accreditation organization are equal to or more stringent than existing licensure survey requirements;

(2) evaluate the survey process of the accreditation organization to ensure the integrity of the survey process; and

(3) enter into a written agreement with the accreditation organization that includes requirements for:

(i) notice of all surveys;

(ii) sharing of complaints and other relevant information;

(iii) participation of the department in accreditation organization activities if determined to be appropriate by the department;

(iv) protection of the confidentiality of medical and personal records;

(v) all licensure surveys of deemed hospitals to be¹ based on the standards established by the national accreditation organization and State law; and

(vi) any other provision necessary to ensure the integrity of the accreditation and survey process.

(c) Finding of substantial compliance of hospital.—

(1) If an approved accreditation organization has issued a final report finding a hospital to be in substantial compliance with the accreditation organization's standards, the department shall accept the report as evidence that the hospital has met the department's licensure requirements and shall grant the hospital deemed status if the hospital provides a copy of the final report to the department within ten business days of the hospital receiving it from the approved accreditation organization. The final report must have been issued no more than one year prior to the expiration date of the hospital's license.

(2) A hospital that receives anything less than full accreditation shall be subject to full licensure survey by the department.

(d) Reports to department.—

(1) The department shall, in accordance with department practice, make a final report of an approved accreditation organization immediately available to the public.

(2) A preliminary or final report of an approved accreditation organization shall not be admissible as evidence in a civil action or proceeding.

¹"hospitals shall be" in enrolled bill.

(e) Inspection by department.—The department may inspect an accredited hospital to:

(1) follow up on a systemic concern or event identified by an approved accreditation organization or by a report filed by the facility;

(2) investigate a complaint;

(3) validate the findings of an approved accreditation organization that determined that a hospital is in compliance with conditions of participation issued by the Centers for Medicare and Medicaid Services and State licensure requirements; or

(4) comply with the request of any Federal or State regulatory entity.

(f) Department participation or observation of surveys by accreditation organization.—The department may participate in or observe a survey of a hospital conducted by an approved accreditation organization.

(g) Actions by the department on accreditation organization's failure to meet obligations.—

(1) Upon determination by the department that an approved accreditation organization has failed to meet its obligations under this section, the department shall have 30 days from the time it notifies the accreditation organization to resolve any issues that are resulting in the accreditation organization not meeting its obligations.

(2) If, after 30 days, the department and the accreditation organization have not reached an agreement that brings the accreditation organization back into compliance with this act, the department shall provide notice in the Pennsylvania Bulletin that it intends to take action to withdraw the approval of the accreditation organization, list the reasons the action is being taken, make available the accreditation organization's response to the department and receive public comment regarding the decision for a period of not less than 30 days.

(3) If, after the conclusion of the public comment period, the department's determination is that the approved accreditation organization has failed to meet its obligation under this section, the department may withdraw approval of the accreditation organization granted under sections 806 and 810 and immediately terminate the agreement between the department and the accreditation organization.

(4) Any hospital that has achieved deemed status as a result of being accredited by the accreditation organization terminated by the department shall keep the deemed status until the end of the current licensure period. To renew a license, the hospital shall either be accredited by another department-approved accreditation organization or shall be subject to the department's licensure regulations as provided for in section 806(i)(2).

Section 6. This act shall take effect in 180 days.