

No. 2013-79

AN ACT

SB 379

Providing for benevolent gestures relating to medical professional liability insurance.

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

Section 1. Short title.

This act shall be known and may be cited as the Benevolent Gesture Medical Professional Liability Act.

Section 2. Definitions.

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

"Assisted living residence." As defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

"Benevolent gesture." Any action, conduct, statement or gesture that conveys a sense of apology, condolence, explanation, compassion or commiseration emanating from humane impulses.

"Health care provider." A primary health care center; a personal care home licensed by the Department of Public Welfare under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code; a person, including a corporation, university or other educational institution licensed or approved by the Commonwealth to provide health care or professional medical services as a physician, certified nurse midwife, podiatrist, hospital, nursing home or birth center; or an officer, employee or agent of any of them acting in the course and scope of employment.

"Relative." A patient's spouse, parent, stepparent, grandparent, child, stepchild, grandchild, brother, sister, half brother, half sister or spouse's parent or any person who has a family-type relationship with a patient.

"Representative." Any legal guardian, attorney, agent designated to make medical decisions under a power of attorney over health care matters, health care representative who is authorized to make health care decisions for a principal under applicable law, surrogate designated in an advance directive for health care or person recognized in law or custom as a patient's agent.

Section 3. Benevolent gesture by health care provider, assisted living residence or ostensible agent.

(a) Scope.—This section applies to any benevolent gesture made prior to the commencement of a medical professional liability action, administrative action, mediation or arbitration:

(1) by a health care provider or an officer, employee or agent of a health care provider to a patient or resident or the patient's or resident's relative or representative regarding the patient's or resident's discomfort, pain, suffering, injury or death, regardless of the cause, resulting from any treatment, consultation, care or service or omission of treatment,

consultation, care or service provided by the health care provider, assisted living residence or its employees, agents or contractors; or

(2) by an assisted living residence or an officer, employee or agent of an assisted living residence to a patient or resident or the patient's or resident's relative or representative regarding the patient's or resident's discomfort, pain, suffering, injury or death, regardless of the cause, resulting from any treatment, consultation, care or service or omission of treatment, consultation, care or service provided by the health care provider, assisted living residence or its employees, agents or contractors.

(b) Admissibility.—

(1) Except as set forth in paragraph (2), any benevolent gesture described in subsection (a) shall be inadmissible as evidence of liability.

(2) Notwithstanding any other provision of this act relating to benevolent gestures, paragraph (1) shall not apply to a communication, including an excited utterance, which also includes a statement or statements of negligence or fault pertaining to an accident or event.

(c) Applicability.—This section shall apply to actions commenced after the effective date of this section.

Section 20. Effective date.

This act shall take effect in 60 days.

APPROVED—The 25th day of October, A.D. 2013

TOM CORBETT